WEST VIRGINIA

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

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JUL 23 9 00 AM '99

OFFICE OF WEST VIRGINIA SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Department of Administration Board of Risk & Insurance Management TITLE NUMBER: 115

CITE AUTHORITY W.Va. Code § 29-12-5

AMENDMENT TO AN EXISTING RULE: YES___ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: ______

TITLE OF RULE BEING AMENDED: ______

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 5

TITLE OF RULE BEING PROPOSED: Procedure for Providing Written Notification of Claims of Potential Liability to the State or its Employees

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

Authorized Signature

$3.20

STATE OF WEST VIRGINIA
DEPARTMENT OF ADMINISTRATION
BOARD OF RISK AND INSURANCE MANAGEMENT

4501 MACCORKLE AVENUE SW, 300 GHANNAM BLDG.
SOUTH CHARLESTON, WV 25309

(304) 766-2646 ADMINISTRATION
(304) 766-2653 FAX
(800) 345-4669 TOLL FREE WV

CECIL H. UNDERWOOD
GOVERNOR

Title 115

Legislative Rules

Board of Risk and Insurance Management

Series 5

Rules and Regulations Governing the Filing

Of Written Notification Concerning Incidents Which

Could Potentially Result in Liability to the

West Virginia Board of Risk and Insurance Management

CONSENT TO FILING

I, Joseph F. Markus, Cabinet Secretary to the Department of Administration, do hereby consent to the filing of Title 115, Series 5, titled "Rules and Regulations Governing the Filing Of Written Notification Concerning Incidents Which Could Potentially Result in Liability to the West Virginia Board of Risk and Insurance Management."

7-1-99

Date

Joseph F. Markus, Cabinet Secretary
Department of Administration

Title 115
Legislative Rules
Board of Risk and Insurance Management

Series 5

Procedure For Providing Written Notification of Claims of Potential Liability to the State or its Employees

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Title 115
Legislative Rules
Board of Risk and Insurance Management

Series 5

Procedure For Providing Written Notification of Claims of Potential Liability to the State or its Employees

§115-5-1. General

1.1. Scope. – This rule establishes a procedure for the West Virginia Board of Risk and Insurance Management to provide the applicable form(s) to insured entities in order for insured entities to properly and promptly notify the West Virginia Board of Risk and Insurance Management of potential liability claims against State employees and/or against the State of West Virginia.

1.2. Authority - W. Va. Code §29-12-5.

1.3. Filing Date -

1.4. Effective Date -

§115-5-2. Purpose.

2.1. To establish a procedure whereby the West Virginia Board of Risk and Insurance Management can be made aware in a timely manner of any incident which may, in the future, lead to potential liability for damages against the State of West Virginia.

§115-5-3. Definitions - As used in these regulations, unless used in a context that clearly requires a different meaning, the term:

3.1. "Board" means the West Virginia Board of Risk and Insurance Management.

3.2. "Insured entity" means any agency, board, college or university, commission, department, office of elected state official, the Legislature, the Supreme Court of Appeals, municipality, as defined in W. Va. Code §29-12A-3(b), or political subdivision, as defined in W. Va. Code §29-12A-3(c), or any other entity which is insured for liability purposes through the "Board."

3.3 "Employee" means any officer, agent, employee, or servant, whether compensated or not, whether full-time or not, who is authorized to act and is acting within the scope of his or her employment for an "insured entity." "Employee" includes any elected or appointed official of an "insured entity," but does not include an independent contractor of an "insured entity."

3.4. "Incident" means any activity either observed by an "employee" or made known to him or her, which may result in injury or property damage to a third party, or which may otherwise result in liability or a claim for damages against the State of West Virginia, its employees, or other "insured entity."

§115-5-4. Reporting Requirements.

4.1. The West Virginia Board of Risk and Insurance Management will assist the insured entity with establishing a contact person within the respective agency to facilitate completing the Insurance Loss Notice Form (claim form).

4.2. Any "employee" who either witnesses or is made aware of an "incident" as defined in Subsection 3.4, should as soon as practicable, gather all pertinent data and complete the Insurance Loss Notice Form (claim form), attached to and made a part of this rule as Appendix A, as appropriate.

4.3. The completed Insurance Loss Notice Form (claim form), shall be forwarded to the "Board," as soon as possible, via United States first class mail or transmitted by facsimile.

4.4. The "Board" and/or its insurance carrier, shall retain a copy of the submitted Insurance Loss Notice Form (claim form) for a period of two (2) years, or longer if the "Board," in its discretion, deems it necessary.

INSURANCE LOSS NOTICE - *State of West Virginia*

BRIM USE ONLY

Coding ______/______/______
To. Co. ______
______

Instructions: For ***all*** losses, complete sections 1, 2 & 3
For ***Auto*** losses -- ***also*** section 4
For Insured ***Property*** losses -- ***also*** section 5

(1) Insured Name: ______ Insured Acct. # (***required***) ______

Insured Address: ______

Insured Phone Number (*day*): ______

Contact Person For insured ______ Position with Insured (Contact Person) ______

(2) Date of Loss: ______ Time of Day: ______

Location of Occurrence: (*Street address*) ______

Description of Occurrence: ______

______

Investigated By: (*Police, Fire, etc.*) ______

(3) Injured/Property Damaged *use additional sheet(s) as necessary*

Name (*injured/owner*) ______ Home Phone #: ______

Address: ______ Work Phone #: ______

Age ____ Sex ____ Social Security #: ______ Occupation: ______

Employer: ______ Where is Property Now? ______

Description-Injury: ______

Description-Property Damage: ______ Estimate Amt. $______

Witnesses: ______

(4) Auto Losses Only *use additional sheet(s) as necessary*

Insured Vehicle	Claimant Vehicle
Year ______ Make ______ Model ______	Year ______ Make ______ Model ______
VIN ______	VIN ______
Vehicle Driver ______	Vehicle Driver ______
Vehicle Owner ______	Vehicle Owner ______
Passengers ______	Passengers ______

(5) Insured Property Losses Only: Loss Type

( ) Fire ( ) Windstorm ( ) Burglary & Theft ( ) Boiler & Machinery ( ) Fidelity

( ) Vehicle ( ) Aircraft ( ) Other ______

SUBMITTED BY: ______ **DATE:** ______

West Virginia Board of Risk & Insurance Management * 4501 MacCorkle Ave., S.W. Suite 300, So. Charleston, WV 25309
(304) 766-2646 * (800) 345-4669 * fax (304) 766-2653

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JUL 16 9 13 AM '99

OFFICE OF WEST VIRGINIA SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

State Capitol - Room MB-49
Charleston, West Virginia 25305
Phone: (304) 347-4840
Fax: (304) 347-4919

email: tanders@mail.wvnet.edu

Senator Mike Ross, Co-Chairman
Delegate Mark Hunt, Co-Chairman
Debra A. Graham, Counsel

Joseph A. Altizer, Associate Counsel
Rita Pauley, Associate Counsel
Teri Anderson, Administrative Assistant

July 11, 1999

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Charles E. Jones, Jr.
Board of Risk & Insurance Management
4501 MacCorkle Ave., SW
South Charleston, WV 25309

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Rules & Regulations Governing the Filing of Written Notification Concerning Incidents Which Could Potentially Result in Liability to the WV Board of Risk & Insurance Management, 115CSR5**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
   (a) as originally filed ______
   (b) as modified by the agency ✓

2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. ______

3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. ______

4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. ______

5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached. ______

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Staff Counsel: Rita A. Pauley
Date: July 2, 1999
Agency: Board of Risk and Insurance Management
Subject: Rules Governing the Filing of Written Notification Concerning Incidents Which Could Potentially Result in Liability to the West Virginia Board of Risk and Insurance Management, 115 CSR 5.

PERTINENT DATES

Filed for public comment:	April 6, 1999
Public comment period ended:	May 6, 1999
Filed following public comment period:	May 12, 1999
Filed LRMRC:	May 13, 1999
Filed as emergency:	N/A
Fiscal Impact:	None

ABSTRACT

This proposed legislative rule establishes a notification procedure for public entities insured by the Board of Risk and Insurance Management to notify the Board of any incident which may result in a law suit against the State of West Virginia. The West Virginia Supreme Court of Appeals in the case of State ex rel. Billy Ray C. vs. Skaff, 438 S.E.2d 847 (W.Va. 1993) ordered the Board of Risk and Insurance Management to propose this rule for promulgation and submit it to the Supreme Court. The Court in Skaff held that the Board was required by statute to investigate and settle claims under the state's liability insurance and to promulgate a rule for state agencies requiring notification to the board of potential liability to the State.

This rule attempts to require written notification of potential liability on the part of state agencies. However, the rule requires action by the governmental entities not controlled by the Board of Risk and Insurance Management. A form attached to the rule is to be completed and submitted to the Board by any employee or volunteer of a covered entity when an incident occurs that has or may result in property damage or personal injury. It would be a better approach if the Board would require itself to send each insured entity forms and instructions for completing those forms in the event an incident occurs which may result in liability or a claim for damages against the State.

AUTHORITY

Statutory authority: W.Va. Code, §29-12-5(a) which provides, in part, as follows:

§29-12-5.

> The board is hereby authorized and empowered to negotiate and effect settlement of any and all insurance claims arising on or incident to losses of and damages to state properties, activities and responsibilities hereunder and shall have authority to execute and deliver proper releases of all such claims when settled. The board may adopt rules and procedures for handling, negotiating and settlement of all such claims. All such settlements and releases shall be effected with the knowledge and consent of the attorney general.

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

Yes, the agency has exceeded the scope of its statutory authority in that it has required action by other agencies rather requiring action of the board itself.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

The rule may conflict with rules of other agencies because this rule requires action on the part of all other state agencies. Other state agencies may have a different policy or other requirements for reporting cases of potential liability or newly filed law suits.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

No.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. **WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?**

Yes.

VIII. OTHER.

Counsel has suggested technical modifications.