



WORKERS' COMPENSATION FUND

601 MORRIS STREET
CHARLESTON, WEST VIRGINIA 25301

JOHN D. ROCKEFELLER IV
Governor

TIMOTHY E. HUFFMAN
Commissioner

January 23, 1985

Mr. Ken Hechler
Secretary of State
State Capitol
Suite 157-K
Executive Office
Charleston, WV 25305

Re: Agency Approved Proposed
Legislative Rules Filed
October 25, 1984

Dear Mr. Hechler:

At the conclusion of a public hearing held by the Legislative Rule-Making Review Committee on January 8, 1985, this office was directed to prepare an amendment of the Agency Approved Proposed Legislative Rules that are on file in the State Register, such amendment to be proposed to the Legislature by the Legislative Rule-Making Review Committee.

The enclosures are an addition to page 6, along with a revised index, of Series V of the aforesaid proposed rules which were filed in the State Register on October 25, 1984.

If further information is needed, please contact this office at your convenience.

Yours truly,

William Mitchell
Senior Counsel

WM/cm

Enclosures

OFFICE OF THE SECRETARY OF STATE
STATE OF WEST VIRGINIA

1985 JAN 25 PM 12:18

FILED

self-insurance and the Commissioner shall continue to have jurisdiction over such claims and payments. The Commissioner may require reports from the employer and may conduct audits of the employer's records to identify the continuing liability of the employer.

4.04. Reapplication. An employer may reapply for self-insured status after five (5) successive years as a premium paying subscriber during which no proven violation of the workers' compensation statutes or rules has occurred. Reinstatement as a self-insurer shall follow those requirements for self-insured status in effect at the time of reapplication.

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1985 JAN 25 PM 12:18
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE



WORKERS' COMPENSATION FUND

601 MORRIS STREET
CHARLESTON, WEST VIRGINIA 25301

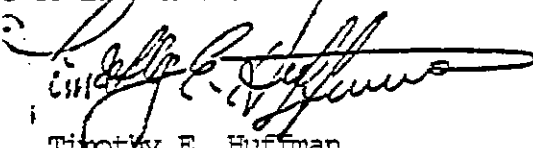
JOHN D. ROCKEFELLER IV
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NOTICE OF AGENCY APPROVAL AND SUBMISSION

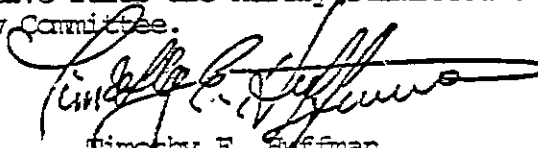
Subject: Agency Approved Proposed Legislative Rules of the Workers' Compensation Commissioner, Series IV, Series V, and Series VI

The above titled legislative rules constitute the official rules approved by the Workers' Compensation Commissioner on the 25th day of October, 1984, and filed pursuant to law in the office of the Secretary of State, State of West Virginia.


Timothy E. Huffman
Commissioner

Entered

The above titled legislative rules are hereby submitted to the Legislative Rule-Making Review Committee.


Timothy E. Huffman
Commissioner

Entered

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

1984 OCT 25 AM 10:10

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WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee



NOTICE OF ACTIONS TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Jan. 8, 1985

TO: A. James Manchin, Secretary of State; State Register
And

TO: Workers' Compensation Commission

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: Hearing and Review Process Regarding the Performance
of Self-Insured Employers; Chapter 23-2, Series V (1984)

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

1. Authorize the agency to promulgate the Legislative Rule

XXX

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

OFFICE OF THE SECRETARY OF STATE
WEST VIRGINIA

1985 JAN 15 PM 4:33

Pursuant to Code 29A-3-11(c), this notice has been filed with the state register and with the agency proposing the rule.

FILED

PROPOSED LEGISLATIVE RULE ANALYSIS

Agency: Workers' Compensation Commission

Rule: Hearing and Review Process Regarding the Performance of Self-Insured Employers; Chapter 23-2, Series V (1984)

Abstract

This is a new rule governing the hearing and review process for complaints filed by claimants about the performance of self-insured employers. This rule was promulgated at the direction of the West Virginia Supreme Court of Appeals in UMWA, et al. v. Lewis (1983). In the words of the court:

Therefore, we order the Commissioner to establish a procedure by which claimants can bring action against self-insurers who fail to make required payments. A self-insurer who is found to have failed to make such required payments should either pay a sufficiently heavy fine to discourage such conduct in the future or forfeit his status as a self-insurer and become a member of the state-funded pool.

Authority

§23-1-15. Procedure before commissioner.

"The commissioner shall not be bound by the usual common-law or statutory rules of evidence, but shall adopt formal rules of practice and procedure as herein provided, and may make investigations in such manner as in his judgment is best calculated to ascertain the substantial rights of the parties and to carry out the provisions of this chapter." (emphasis added) and general statute governing self-insurers, Code 23-2-9.

Pertinent Dates

Filed for Public Hearing: August 9, 1984
Date of Public Hearing: October 4, 1984
Filed following Public Hearing: October 25, 1984
Filed LRMRC: October 25, 1984
Filed as Emergency Rule: June 6, 1984

Analysis

Section 1 - Administrative.

Section 2 - Complaint procedure.

2.01 - An employee who believes his self-insured employer has not discharged his responsibility may file a written complaint with the commissioner.

NB-1: Comment at hearing sought a time limit which an employee may file a complaint. This recommendation was not accepted.

2.02 - Upon receipt of a complaint, a copy will be filed with the employer who has 30 days to respond. The commissioner will investigate the complaint.

2.03 - The results of such an investigation will be dismissal, based on informal resolution between the parties, or the scheduling of a hearing.

Section 3 - Hearing, notice and review. Establishes the hearing, notice of decision and appeal following statutory guidelines.

Section 4 - Penalties.

4.01 - Allows, following hearing, the assessment of a financial penalty not to exceed \$5,000.

NB-2: Comment at hearing sought a limit not to exceed the amount of compensation or expenses in controversy or \$5,000 whichever is less. Suggestion not accepted.

4.02 - Allows, in addition to the financial penalty, the revocation of self-insured status if the employer

has failed to discharge his responsibility with such frequency to substantially impair the rights of his employees.

NB-3: No indication how many cases of infraction must occur before revocation occurs. It is assumed this will be at the discretion of the commissioner on a case-by-case basis until a "rule of thumb" develops.

NB-4: Comment at hearing also sought a five-year limit on revocation. Suggestion not accepted.

Staff Comments

The Committee should solicit response from the commissioner on why comments mentioned in NB1, NB2 and NB4 were not included.