

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
**KEN HECHLER**  
**ADMINISTRATIVE LAW DIVISION**

Form #4

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1999 OCT 26 PM 2:54  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF RULE MODIFICATION OF A PROPOSED RULE**

AGENCY: Attorney General TITLE NUMBER: 142

CITE AUTHORITY West Virginia Code § 47-18-20

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 9

TITLE OF RULE BEING AMENDED: Proposed legislative rule pertain-  
ing to allowing persons who are indirectly injured by viola-  
tions of the W. Va. Antitrust Act to recover damages.

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

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.

Robert Wm. Schulenberg *RS*

TITLE 142

LEGISLATIVE RULE  
ATTORNEY GENERAL  
SERIES 9

Title: Proposed legislative rule pertaining to allowing persons who are indirectly injured by violations of the West Virginia Antitrust Act to recover damages.

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Section 142-9-1. General

142-9-2. General Recoverable by Persons Indirectly Injured

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TITLE 142

1989 OCT 26 PM 2:54

LEGISLATIVE RULE  
ATTORNEY GENERAL  
SERIES 9

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

Title: Proposed legislative rule pertaining to allowing persons who are indirectly injured by violations of the West Virginia Antitrust Act to recover damages.

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Section 142-9-1. General.

1.1 Rule Designation - This rule is legislative.

1.2 Scope - This rule shall apply to any action brought by any person under the provisions of Chapter 47, Article 18, Section 9 of the West Virginia Code, or any action brought by the Attorney General as *parens patriae* under the provisions of Chapter 47, Article 18, Section 17 of the Code.

1.3 Authority - Chapter 47, Article 18, Section 20 of the Code.

1.4 Purpose - The purpose of this rule is to allow persons who are indirectly injured by violations of the West Virginia Antitrust Act to maintain an action for damages; to allow the Attorney General, as *parens patriae*, to maintain an action on behalf of such persons who have suffered indirect injury under Chapter 47, Article 18, Section 17 of the Code; and to bring the application of the West Virginia Antitrust Act into conformity with the laws of other jurisdictions.

1.5 Filing Date -

1.6 Effective Date - This rule shall be effective upon passage of bill of authorizations.

1.7 Repeal of Former Rule - Not applicable.

1.8 Construction - This rule shall be liberally construed to effectuate the beneficial purposes of the West Virginia Antitrust Act.

Title 142  
Attorney General  
Proposed Legislative Rule  
Section 142-9-1

1.9 Severability - If, for any reason, any section, sentence, clause, phrase, or provision of this rule or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other sections, sentences, clauses, phrases, or provisions or their application to any other person or circumstance, and to this end, each and every section, sentence, clause, phrase, or provision of this rule is hereby declared severable.

Section 142-9-2. Damages Recoverable By Persons Indirectly Injured.

Any person who is injured directly or indirectly by reason of a violation of the West Virginia Antitrust Act, Chapter 47, Article 18, Section 1 et seq. of the Code, may bring an action for damages under Chapter 47, Article 18, Section 9 of the Code. The State and any of its political subdivisions shall be deemed a person within the meaning of this rule.



STATE OF WEST VIRGINIA  
OFFICE OF THE ATTORNEY GENERAL  
CHARLESTON 25305

ROGER W. TOMPKINS  
ATTORNEY GENERAL

(304) 348-8986

CONSUMER HOTLINE  
(800) 368-8808

October 26, 1989

The Honorable Ken Hechler  
Secretary of State  
State Capitol, Suite 157-K  
Charleston, West Virginia 25305

Re: Proposed legislative rule pertaining to  
allowing persons who are indirectly injured  
by violations of the West Virginia Antitrust  
Act to recover damages.

FILED  
1989 OCT 26 PM 2:54  
OFFICE OF THE ATTORNEY GENERAL  
SECRETARY OF STATE

Dear Secretary Hechler:

Enclosed please find the Notice of Rule Modification and a corrected copy of the above-referenced Rule. It has been modified as authorized by the Legislative Rule-Making Review Committee. Please file the Rule, as modified, in the official records of your office.

If you have questions, please contact me at your convenience.

Sincerely,

*Robert Wm. Schulenberg III*

ROBERT WM. SCHULENBERG III  
Senior Assistant Attorney General  
Antitrust Division

RWSIII/lp

Enclosures



FILED

1989 OCT 18 AM 9:08

WEST VIRGINIA LEGISLATURE  
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE  
Room M-438, State Capitol  
Charleston, West Virginia 25305  
(304) 340-3286

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

Senator Lloyd Jackson, Co-Chairman  
Legate Patrick H. Murphy, Co-Chairman

Debra A. Graham, Counsel  
Marie Nickerson, Receiving Clerk

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

October 16, 1989

TO: Ken Hechler, Secretary of State, State Register

TO: The Honorable Roger Tompkins  
Attorney General  
State Capitol  
Charleston, WV 25305

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: Proposed legislative rule pertaining to allowing  
persons indirectly injured by violations of the WV  
Antitrust Act to recover damages

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     X
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. \_\_\_\_\_

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

cc: Daniel N. Huck, Deputy AG  
Robert Wm. Schulenberg, III, Asst. AG