

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #4

FILED
1991 JAN 23 AM 9:50
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Attorney General TITLE NUMBER: 142

CITE AUTHORITY W. Va. Code 47-18-20 (1978)

AMENDMENT TO AN EXISTING RULE: YES___ NO X

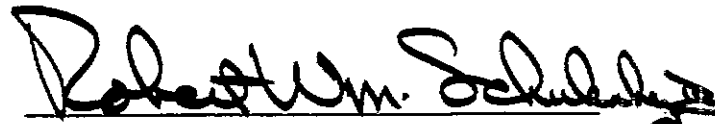
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 18

TITLE OF RULE BEING PROPOSED: Proposed legislative rule pertaining to the regulated business exemption under the West Virginia Antitrust Act.

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, III
Senior Assistant Attorney General
Antitrust Division

TITLE 142

PROPOSED LEGISLATIVE RULE
ATTORNEY GENERAL
SERIES 18

Title: Proposed legislative rule pertaining to the regulated business exemption under the West Virginia Antitrust Act.

§ 142-18-1. General.

1.1 Scope - This rule shall apply to any action brought by the Attorney General under W. Va. Code §§ 47-18-1, -23 (1978).

1.2 Authority - W. Va. Code § 47-18-20 (1978).

1.3 Filing Date -

1.4 Effective Date -

1.5 Purpose - The purpose of this rule is to implement, apply, interpret, and make specific the exemption contained in W. Va. Code § 47-18-5 (1978) relating to regulated businesses.

1.6 Construction - This rule shall be interpreted in conformity with the federal decisional law relating to exemptions under the federal antitrust laws.

1.7 Severability - If, for any reason, any section, sentence, clause, phrase, or provision of this rule or the application thereof to any person or circumstances 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.

§ 142-18-2. Exemption from the West Virginia Antitrust Act for Regulated Businesses.

Conduct of a regulated business shall be exempt from the application of the West Virginia Antitrust Act upon a showing of both the following:

Attorney General
Proposed Legislative Rule
§ 142-18-2.

2.1 There must be a clearly articulated and affirmatively expressed legislative policy to displace competition; and

2.2 The state agencies charged with regulating the business must actively supervise the regulated business with respect to the conduct in question.



WEST VIRGINIA LEGISLATURE
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
 Room M-438, State Capitol
 Charleston, West Virginia 25305
 (304) 340-3236

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

Debra A. Graham, Counsel
 Michael McThomas, Associate Counsel
 Marie Nickerson, Admr. Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

January 9, 1991

TO: Ken Hechler, Secretary of State, State Register

TO: The Honorable Mario Palumbo
 Attorney General
 State Capitol
 Charleston, WV 25305

FROM: Legislative Rule-Making Review Committee

FILED
 1991 JAN 23 PM 3:25
 OFFICE OF WEST VIRGINIA
 SECRETARY OF STATE

PROPOSED RULE: Proposed legislative rule pertaining to the Regulated Business Exemption under the West Virginia Antitrust Act

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: Robert Wm. Schulenberg III, Sr. Asst. AG
 Donna S. Quesemberry, Asst. AG