WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Risk And Insurance Management

TITLE-SERIES: 115-05

RULE TYPE: Legislative

Amendment to Existing Rule: No

Repeal of existing rule: Yes

RULE NAME: Procedure for Providing Written Notification of Claims of Potential Liablity to the State of its Employees

CITE STATUTORY AUTHORITY: W. Va. Code § 29-12-5

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 08/08/2020 5 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Mary Jane Pickens, Director

ADDRESS: BRIM, 1124 Smith Street, Suite 4300

Charleston, WV 25301

EMAIL: maryjane.pickens@wv.gov

PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

The legislative rule was filed following a decision of the W. Va. Supreme Court of Appeals in a mandamus action directing BRIM to create formal procedures and a form for notification of potential liability claims.

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

The legislative rule should be repealed because it does not implement any specific provision in Code, however, it describes a fundamental procedure for the agency and its insured to provide notification of potential damage claims. The rule is procedural in nature and promulgates an Insurance Loss Notice Form.

The repealed legislative rule will be replaced with a new procedural rule that includes modern methods of notification of potential claims which the current rule fails to consider. Adoption of a procedural rule and form content will satisfy the Courts directive.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

None

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

None

C. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS:

None

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2020 Increase/Decrease (use "-")	2021 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

BRIM is seeking to repeal this rule. The rule was promulgated in 2000 as a Legislative rule in order to promulgate a form. The rule is more appropriate as a procedural rule. The rule also needs updating and BRIM is promulgating an updated procedural rule to replace this Legislative rule. Repealing this Legislative rule will have no immediate or long-range increases or decreases in personal services, current expenses, repairs and alterations, assets, other costs and revenues.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Misty Peal -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 115
LEGISLATIVE RULE
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. -- May 26, 2000.

1.4. Effective Date -- June 1, 2000.

§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.~~

Appendix A

INSURANCE LOSS NOTICE - *State of West Virginia* BRIM USE ONLY

Instructions: For ***all*** losses, complete sections 1, 2 & 3 Coding

For ***Auto*** losses – ***also*** section 4 To Co.

For Insured ***Property*** losses – ***also*** section 5

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

Insured Address:

Insured Phone Number (*day*):

For insured (Contact Person)

Contact Person **Position with Insured**

(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
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