

**WEST VIRGINIA  
SECRETARY OF STATE**

**JOE MANCHIN, III**

**ADMINISTRATIVE LAW DIVISION**

Form #2

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2002 MAY 29 P 2:26

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE**

AGENCY: Insurance Commissioner TITLE NUMBER: 114

RULE TYPE: Legislative CITE AUTHORITY: W. Va. Code § 33-2-10

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 2

TITLE OF RULE BEING AMENDED: Licensing and Conduct of Agents, Agencies  
and Solicitors

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

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

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 1, 2002 AT 4:30 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Gregory A. Elam, Associate Counsel

West Virginia Insurance  
Commission

P.O. Box 50540

Charleston, WV 25305-0540

THE ISSUES TO BE HEARD SHALL BE  
LIMITED TO THIS PROPOSED RULE.



Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

SCANNED

Department of Tax and Revenue  
Agency Questionnaire

Re: Administrative Rule to be Filed

LICENSING AND CONDUCT OF AGENTS, AGENCIES AND SOLICITORS

TITLE 114, SERIES 2

**Question 1: Are regulations required?**

Yes. The changes to the existing rule are required by the amendment of West Virginia Code §§ 33-12-1 et seq. made by H. B. 4497, which was passed March 9, 2002 and went into effect June 7, 2002.

**Question 2: Is the rule you are proposing controversial? If yes, what are the pros and the cons?**

There should be no controversy over the proposed rule regarding agent licensing and agency licensing. The sections dealing with commissions, switching and referrals may have opposition.

**Question 3: Is the rule you are proposing a copy of another state's rule? A model rule? Custom-drafted?**

The changes to the existing rule are custom-drafted.

**Question 4: What are the really important things you think the Secretary of Tax and Revenue should know about this rule and the issues that surround it?**

West Virginia Code §§ 33-12-1 et seq. were amended by H. B. 4497 to adopt the NAIC model producers licensing act. The current 114CSR2, which relates to agent licensing, must therefore be amended as well to conform to the amendment of the code. The sections relating to commissions, switching and referrals are designed to address holes in our current regulations and the licensing of agencies.

Insurance Commissioner  
Legislative Rule  
Title 114, Series 2

**LICENSING AND CONDUCT OF AGENTS, AGENCIES AND SOLICITORS**

**TITLE 114, SERIES 2**

**BRIEF SUMMARY OF RULE**

This rule sets forth the standards which the Insurance Commissioner deems necessary to carry out the provisions of Article 12, Chapter 33 of the West Virginia Code dealing with requirements for persons holding an insurance agent's license, establishing requirements for insurance agency licensing, nonresident reciprocity, and setting rules to address anticipated issues with agency licensing.

The proposed amendment to the rule clarifies nonresident reciprocity, establishes rules for agency licensing, and establishes prohibited practices which are anticipated to arise regarding commissions, referrals and switching.

Insurance Commissioner  
Legislative Rule  
Title 114, Series 2

**LICENSING AND CONDUCT OF AGENTS, AGENCIES AND SOLICITORS**

**TITLE 114, SERIES 2**

**STATEMENT OF CIRCUMSTANCES**

H.B. 4497, which goes into effect June 7, 2002, amended the statutory requirements for the licensing of insurance agents in Article 12, Chapter 33 of the West Virginia Code and required the licensing of insurance agencies by adopting the NAIC model producer licensing act. Title 114, Series 2 of the Code of State Rules establishes the administrative standards for licensing of insurance agents and insurance agencies, and must be amended to conform to the new language of the Code.

**APPENDIX B**

**FISCAL NOTE FOR PROPOSED RULES**

**Rule Title:** Licensing and Conduct Of Agents, Agencies  
and Solicitors  
Title 114, Series 2

**Type of Rule:** XX **Legislative** \_\_\_ **Interpretive** \_\_\_ **Procedural**

**Agency:** Insurance Commissioner

**Address:** Post Office Box 50540  
1124 Smith Street, Greenbrooke Building  
Charleston, West Virginia 25305-0540

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**1. Effect of Proposed Rule**

	<b>ANNUAL FISCAL YEAR</b>				
	<b>Increase</b>	<b>Decrease</b>	<b>Current</b>	<b>Next</b>	<b>Thereafter</b>
<b>ESTIMATED TOTAL COST</b>	None	None	None	None	None
<b>PERSONAL SERVICES</b>	None	None	None	None	None
<b>CURRENT EXPENSE</b>	None	None	None	None	None
<b>REPAIRS AND ALTERATIONS</b>	None	None	None	None	None
<b>EQUIPMENT</b>	None	None	None	None	None
<b>OTHER</b>	None	None	None	None	None

**2. Explanation of above estimates:**

The amendment to the existing rule will have no additional fiscal impact on local, state or federal governments.

**3. Objectives of these rules:**

The rule sets forth the provisions under which the Insurance Commissioner administers the responsibilities of W. Va. Code §§ 33-12-1 et seq., which requires the licensing of insurance agents and insurance agencies.

**Rule Title:** Licensing and Conduct Of Agents, Agencies  
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**4. Explanation of Overall Economic Impact of Proposed Rule.**

**A. Economic Impact on State Government.**

None

**B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.**

None

**C. Economic Impact on Citizens/Public at Large.**

None

**Date:** May 29, 2002

**Signature of Agency Head or Authorized Representative**

  
\_\_\_\_\_  
GREGORY A. ELAM, ASSOCIATE COUNSEL

114CSR2

WEST VIRGINIA LEGISLATIVE RULE  
INSURANCE COMMISSIONER

SERIES 2  
LICENSING AND CONDUCT OF AGENTS, ~~BROKERS~~ AGENCIES  
AND SOLICITORS

Section

- 114-2-1.      General.
- 114-2-2.      Requirements for Licensing.
- 114-2-3.      Requirements for Licensing Insurance Agencies.
- 114-2-4.      Commissions.
- 114-2-5.      Switching.
- 114-2-6.      Referrals.

114CSR2

WEST VIRGINIA LEGISLATIVE RULE  
INSURANCE COMMISSIONER

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SERIES 2

LICENSING AND CONDUCT OF AGENTS, ~~BROKERS~~ AGENCIES WEST VIRGINIA  
AND SOLICITORS SECRETARY OF STATE

**§114-2-1. General.**

1.1. Scope. -- This regulation establishes the general requirements and practices of agents, brokers and solicitors.

1.2. Authority. -- W. Va. Code §33-2-10.

1.3. Filing Date. -- ~~September 13, 1966.~~

1.4. Effective Date. -- ~~October 13, 1966.~~

**§114-2-2. Requirements for Licensing.**

2.1. Trustworthiness. -- Insurers making requisitions for ~~agents'~~ agents' individual insurance producers' licenses shall make an investigation as to the suitability of the appointee for the ~~agent's~~ agent's individual insurance producer's license. The requisitioning company shall, prior to submitting the requisition to this department, satisfy itself that the appointee is a suitable person and is trustworthy and qualified to act as its ~~agent~~ agent individual insurance producer. The Insurance Commissioner may, at any time, direct the requisitioning company to furnish proof that ~~said~~ the company has made ~~such~~ the investigation and that the investigation was made prior to the execution of the requisition.

2.2. Competency. -- The competency of persons applying to the Insurance Commissioner for an ~~agent's~~ agent's individual insurance producer's license shall be determined by examination with the exception of those persons qualifying under subsection 2.3 of this regulation rule.

2.3. Waiver of examination. -- The Insurance Commissioner will not require an examination as proof of competency for those persons applying to this department for an ~~agent's~~ agent's individual insurance producer's license if such person holds the designation of Chartered Life Underwriter or Chartered Property Casualty Underwriter, the person is currently licensed as a resident and in good standing in his or her home state, or if such person has satisfied the Insurance Commissioner as to his competency in insurance.

2.4. Reexamination - automobile lines. -- All ~~agents~~ agents individual insurance producers, except those who qualify under subsection 2.3 of these rules, presently licensed by this department to sell

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casualty lines or automobile lines must be reexamined by this department to maintain such license if all of the following conditions exist:

a. The agent individual insurance producer is appointed by a company qualified to write automobile liability insurance, and

b. The agent individual insurance producer has been licensed to write automobile liability insurance for a period of five (5) years prior to ~~such~~ the appointment described in subdivision a herein, and

c. The agent individual insurance producer has not, in fact, for a period of five (5) years prior to ~~such~~ the appointment referred to in subdivision a herein, actively represented a company qualified to write automobile liability insurance.

The phrase "qualified to write automobile liability insurance" ~~shall be defined as being means~~ all licensed casualty companies who have had approved by this department the necessary rate and form filings for automobile liability insurance.

2.5. Reexamination - miscellaneous casualty lines. -- All agents individual insurance producers, except those who qualify under ~~subdivision~~ subsection 2.3 of these rules, presently licensed by this department to sell miscellaneous casualty lines of insurance must be reexamined by this department to maintain such license if all of the following conditions exist:

a. The agent individual insurance producer is appointed by a company qualified to write miscellaneous casualty insurance, and

b. The agent individual insurance producer has been licensed to write miscellaneous casualty insurance for a period of five (5) years prior to ~~such~~ the appointment described in subdivision a herein, and

c. The agent individual insurance producer has not, in fact, for a period of five (5) years prior to ~~such~~ the appointment referred to in subdivision a herein, actively represented a company qualified to write miscellaneous casualty insurance.

The phrase "qualified to write miscellaneous casualty insurance" ~~shall be defined as being means~~ all licensed casualty companies who have had approved by this department the necessary rate and form filings for miscellaneous casualty insurance.

2.6. Reexamination after cancellation. -- If, for any period longer than forty-five (45) days, records in this department indicate that an agent individual insurance producer is appointed by no

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company, his license shall be canceled. After one (1) year from the date of cancellation, no such canceled license shall be renewed without examination.

2.7. Repeating examinations. -- All persons having taken the examination as required by subdivision subsections 2.2, 2.4, 2.5 and 2.6 of these rules, may repeat any examination after the first failure on the next scheduled date; after the second failure he or she must wait thirty (30) days; after the third failure or subsequent failure he or she must wait ninety (90) days.

**§114-2-3. Requirements for Licensing Insurance Agencies.**

3.1. Each agency, as defined in W. Va. Code §33-12-2(e), as amended, shall file an application for an insurance producer license on a form provided by this department. This applies to each corporation, partnership, limited liability company, or other business entity in which more than one person has an interest or which operates under a corporate or trade name. The requirement for an agency insurance producer license does not apply to any agency owned by, and operated under the name of, an individual licensed agent, so long as no other person, firm or entity has any interest in, or affiliation with, the business of the individual agent or his agency.

3.2. No agency shall be licensed under a name which is likely to lead a reasonable person to believe that the agency is an insurer, an agency of any government, or a club, fraternity, association or social or military organization, or which is otherwise deceptive or misleading.

3.3. No entity may be licensed under any name which includes the word "insurance" or "insurer" unless the name also includes the word "agency" or "agent."

3.4. A license shall not be issued in a trade name except upon proof satisfactory to the commissioner that the trade name has been lawfully registered.

3.5. Foreign corporations, limited partnerships and any other entities required by law to be registered with the Secretary of State must be so registered before a license will be issued.

3.6. The agency is required to submit the application to the Insurance Commissioner and to pay the required fee; however, each insurer is required to notify all its agencies of their responsibility to file an agency application and to pay the required fee. Only one agency license is required for each agency regardless of the number of insurers it represents, but all insurers then represented must be identified in the application. At any time that an agency has no stockholder, officer, director, member, employee or associate possessing a current, individual insurance producer's license, the agency insurance producer license shall be considered terminated and shall be surrendered for cancellation not more than fifteen (15) days after the last person to hold such a license was terminated with the agency or was no longer so licensed.

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3.7. A domestic insurance agency must be organized pursuant to the provisions of the laws of this state and must maintain its principal place of business in this state.

3.8. No entity may be licensed as an agency unless the insurance business to be transacted pursuant to the license is the primary purpose of the entity as described in its organizing documents or the entity is a national banking association that qualifies for an insurance agency license pursuant to federal law or the regulations and policies of the United States Comptroller of the Currency or the Board of Governors of the Federal Reserve System issued pursuant thereto, or a bank that qualifies for an insurance agency license pursuant to West Virginia law.

3.9. The licensee shall notify the commissioner of all changes among its members, directors, and officers, and all other individuals designated in the license within fifteen (15) days after the change.

3.10. No individual whose license as an insurance producer has been revoked by order of the commissioner, or may be denied a license pursuant to W. Va. Code §33-12-24, nor any entity in which such individual has a majority ownership interest, whether direct or indirect, may own any interest in any entity licensed pursuant to the provisions of this section.

3.11. No individual insurance producer whose license has been revoked by order of the commissioner or may be denied a license pursuant to W. Va. Code §33-12-24, may be employed by an insurance agency in any position that involves the transaction of insurance.

3.12. The provisions of this section shall become effective on July 1, 2003.

**§114-2-4. Commissions.**

4.1. A resident individual insurance producer may pay a commission or compensation for or on account of the solicitation or negotiation in this state of insurance on property or risks in this state only to another like and duly licensed resident individual insurance producer, of the insurer with whom such insurance was placed, or other duly licensed resident or nonresident individual insurance producer. A nonresident individual insurance producer may pay a commission or compensation for or on account of the solicitation or negotiation in this state of insurance on property or risks in this state only to a duly licensed resident individual insurance producer of the insurer in this state, or to a duly licensed resident or nonresident, of this state.

4.2. No licensee may accept any commission or compensation for a policy issued by an insurer for which the licensee is not appointed.

4.3. No licensee may accept any commission or compensation to which he or she is not

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entitled under this section.

**§114-2-5. Switching.**

5.1. No bank, trust company, loan company, building and loan association, individual, or other loaning agency, that owns an insurance agency or connection therewith may require, as a condition precedent to securing a loan, that the borrower cancel insurance and purchase new insurance with the lender or with an agency with which the lender is in any way connected.

5.2. Any insurance producer who directly or indirectly or by subterfuge or artifice, aids, abets or participates in the practice of switching is guilty of violation of this regulation and is subject to the penalties prescribed by W. Va. Code §33-12-24.

5.3. The act of any bank, trust company, loan company, building and loan association, individual, or any other loaning agency having a direct or indirect connection with an insurance agency will be considered to be the act of the individual insurance producer or agency with whom it is connected and the insurance producer or agency will be held strictly accountable for the act of the bank, trust company, loan company, building and loan association, individual, or other loaning agency.

5.4. Any insurance company, licensed under the laws of West Virginia, that accepts business from insurance producers with knowledge or under circumstances or conditions that ordinarily amounts to constructive notice that the insurance producer is in violation of this rule is subject to the penalties prescribed by W. Va. Code §33-3-11.

**§114-2-6. Referrals.**

Only employees of a financial institution or other business entity who are licensed by the Insurance Commissioner may, directly or indirectly, receive any compensation or consideration from an individual insurance producer, insurance agency, insurance company, financial institution, or other business entity based upon referral of potential insurance purchases to, or making appointments with, a licensed individual insurance producer. However, an employee of a financial institution or other business entity who is not licensed to sell insurance may refer a party to a person who is licensed to sell insurance if the employee making the referral is compensated for the referral in an amount that does not exceed a nominal amount and the amount is not based on or related to the party's purchase of insurance.