

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period, Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 26, 2002

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: OFFICE OF THE INSURANCE COMMISSIONER
ATTN: Legal Division
1124 Smith Street
Post Office Box 50540
Charleston, West Virginia 25305-0540

LEGISLATIVE RULE TITLE: LICENSING AND CONDUCT OF AGENTS, AGENCIES
AND SOLICITORS (Title 114, Series 2)

1. Authorizing statute(s) citation:

W. Va. Code §§ 33-2-10 and 33-12-35.

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

May 29, 2002 - Comment Period.

b. What other notice, including advertising, did you give of the hearing?

None

c. Date of Public Hearing(s) or Public Comment Period ended:

Comment period ended July 1, 2002.

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 26, 2002

Insurance Commissioner
Title 114, Series 2

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all written correspondence regarding this rule: (Please type)

Gregory A. Elam, Associate Counsel
West Virginia Insurance Commission
Legal Division
P.O. Box 50540
Charleston, WV 25305-0540
Phone: (304) 558-0401, ext. 158
Fax: (304) 558-1362
E-mail: elamg@wvnm.wvnet.edu

- g. IF DIFFERENT FROM ITEM 'f', please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

Not applicable

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

Not applicable

- b. Date of hearing or comment period:

Not applicable

- c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

Not applicable

- d. Attach findings and determinations and reasons:

Not applicable

Insurance Commissioner
Title 114, Series 2

ATTACHMENT TO QUESTION 2 (d):

Two sets of comments were received during the comment period in response to the proposed legislative rule; one from the State Farm Insurance Company and one from the American Insurance Association ("AIA").

A. State Farm Insurance Company submits the following comments by letter dated and received on June 28, 2002:

1. State Farm Insurance Company proposes that the notification time frame contained in Sections 3.6 and 3.9 be changed to a 30-day time frame as a 30-day time frame would be more consistent with that generally contemplated by the NAIC in the model act. The Commissioner agrees with the State Farm Insurance Company and therefore changes Section 3.6 and 3.9 to read as follows:

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 thirty (30) days after the last person to hold such a license was terminated with the agency or was no longer so licensed.

The licensee shall notify the commissioner of all changes among its members, directors, and officers, and all other individuals designated in the license within thirty (30) days after the change.

B. The American Insurance Association submits the following comments by letter dated and received on July 1, 2002:

1. AIA comments that the proposed text in Section 3.6 imposes a burden on the insurers, by requiring each insurer to notify its agencies of their responsibility to file an agency application and to pay the required fee. AIA does not feel the responsibility to meet the requirements of 114-2-3.6 should extend to the insurers. The Commissioner disagrees with AIA. Agencies have not previously been licensed in the State of West Virginia. There is no list of agencies in West Virginia that currently exists. The most effective way to provide notice is by the insurers associated with the agencies.

2. AIA comments on Section 4.2. AIA comments that the payments of commissions and appointments should not be tied together. AIA notes that the NAIC Model Producer Act, Section 13, does not use this approach. AIA comments they did not find authority for this regulation in commission section of the model law, 33-12-23, for such an approach. AIA suggests appointment requirements should establish those obligations, rather than a section dealing with commissions. The Commissioner disagrees with AIA. The Commissioner has interpreted the Insurance Code to require appointments to accept commissions. The Commissioner has previously issued an administrative order to this effect. The proposed regulation clarifies this position. The most appropriate place is in the Licensing Section as a violation results in an action against the individual producer's license.

3. AIA comments Section 4.1 is difficult to follow with its distinction between resident and non-resident producers and its reference to like and duly licensed residents and like and other duly licensed residents. AIA comments this section departs from Section 33-12-23(d) of the producer licensing law - a provision that prohibits payments "to a person for selling, soliciting or negotiating insurance in this state if that person is required to be licensed under this article and is not so licensed." AIA comments that it could not be certain as how to read the commission section against the referrals section (114-2-6). AIA suggests that there is a potential conflict, depending on how the sections are read. The Commissioner agrees to this amendment to clarify with AIA and therefore changes Section 4.1 to read as follows:

4.1. *Commission Sharing*

a. *A resident individual insurance producer may pay a commission for or on account of the solicitation or negotiation in this state of insurance on property or risks in this state only to another licensed resident or nonresident individual insurance producer appointed to the insurer with whom such insurance was placed.*

b. A nonresident individual insurance producer may pay a commission for or on account of the solicitation or negotiation in this state of insurance on property or risks in this state only to another licensed resident or nonresident individual insurance producer appointed to the insurer with whom such insurance was placed.

4. AIA comments Section 4.3 is broadly stated, making it difficult to determine what is prohibited. AIA suggests that if there is a prohibition in the rule to which this section is referring then it should be specifically stated. The Commissioner disagrees the regulation is overly broad. However, the Commissioner agrees the Section is unnecessary. Section 4.3 will be deleted.

5. AIA comments on Section 6. AIA suggests the Commissioner consider the treatment of referrals in the NAIC Unfair Trade Practices Act (Sec. 5(B)(8)) to avoid possible OCC preemption concerns. The Commissioner disagrees the Section is in conflict with the NAIC Unfair Trade Practices Act. This regulation does not conflict with West Virginia Code Section 33-11A-7's allowance for payments for referrals by financial institutions. It specifically retains this referral payment. The regulation restricts the payment for referrals to a financial institution, the employees of a financial institution, a business entity or employees of a business entity. To clarify this meaning the Commissioner changes Section 6 to read as follows:

Only employees of a financial institution or other business entity may, directly or indirectly, receive any compensation or consideration from an individual insurance producer, insurance agency, insurance company, based upon referral of potential insurance purchases to a licensed individual insurance producer. This compensation may not exceed a nominal amount and the amount may not be based on or related to the party's application or purchase of insurance. 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 application or purchase of insurance.

6. AIA comments on Section 5. AIA questions whether there are no consumer protections in place to address the concern. The Commissioner agrees there are consumer protection laws

addressing the acts of the financial institutions and their agents, West Virginia Code Section 33-11A-1 et seq. However, Article 11A references its application to financial institutions. This rule extends the violation to an individual producer, agency or insurer that participates.

In addition to the above, subsection 2.6 of the rule has been deleted. With the adoption of the NAIC's Model Licensing Act in Article 12, there is not longer a requirement for an appointment to maintain a license. Subsection 2.6 is in conflict with the statute and thus deleted.

State Farm Insurance Companies



Kanawha Valley Service Center
2403 Fairlawn Avenue
Dunbar, West Virginia 25064-1138
Phone: (304) 768-3951

June 28, 2002

Gregory A. Elam, Esquire
Associate Counsel
West Virginia Insurance Commission
P.O. Box 50540
Charleston, WV 25305-0540

**RE: Proposed Legislative Rule 114 CSR 2
Series 2 -- Licensing and Conduct of Agents,
Agencies and Solicitors**

Dear Mr. Elam:

Please accept the following comments from the State Farm Insurance Companies regarding the proposed revisions to 114 CSR 2, Series 2 -- Licensing and Conduct of Agents, Agencies and Solicitors. These comments are submitted pursuant to the public comment period established by the West Virginia Secretary of State's Administrative Law Division.

Section 114-2-3 Requirements for Licensing Insurance Agents.

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.

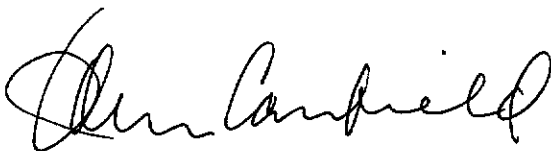
State Farm suggests that the 15-day time frame set forth in Rule 3.6 be changed to 30 days. A 30-day time frame is consistent with that generally contemplated by the NAIC in the Model Act. For example, under Section 15 of the Model Act, an insurer that terminates an appointment or relationship with a producer must notify the Commissioner within 30 days following the termination. A 30-day period better accommodates a corporate agency that is made up of a large number of active directors, officers, and associates. Communications and actions within 15 days can be difficult to accomplish.

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.

As noted above, the Model Act generally contemplates a 30-day time frame. For example, under Section 7F of the Model Act, changes of address or changes in legal name are to be reported to the Commissioner within 30 days of occurrence. State Farm suggests that 30 days is a more realistic time frame than 15 days.

Thank you for the opportunity to comment on these proposed rules. Please feel free to contact me if you have any questions or need additional information.

Very truly yours,



John M. Canfield
Attorney
STATE FARM INSURANCE COMPANIES

cc: *General Counsel Vincent J. King*
WVIF Executive Director Heather Heiskell Jones

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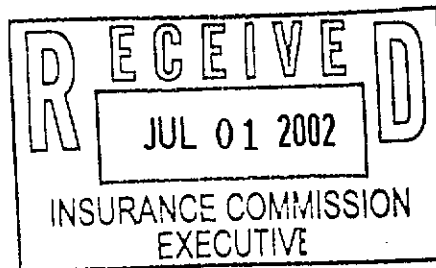
WRITER'S DIRECT DIAL NO.

(304) 340-3829
e-mail
tcox@spilmanlaw.com

July 1, 2002

VIA HAND-DELIVERY

Ms. Jane Cline, Commissioner
West Virginia Division of Insurance
1124 Smith Street
Charleston, West Virginia 25301



**RE: Comments – Proposed 114 CSR 62, 114 CSR 2,
114 CSR 30, and 114 CSR 20**

Dear Commissioner Cline:

Enclosed are the American Insurance Association's comments to the above-referenced proposed rules.

Very truly yours,

Randy Cox
T. Randolph Cox

TRC/lb

Encl.

RECEIVED

JUL 01 2002

LEGAL DIVISION
W.VA. INS. DEPT.

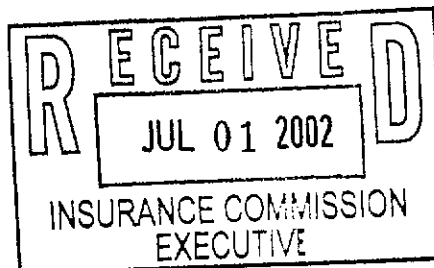


American Insurance Association

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Washington, DC 20036
202-828-7100
Fax 202-293-1219
www.aiadc.org

June 28, 2002

The Honorable Jane Cline, Commissioner
West Virginia Insurance Department
1124 Smith Street
Charleston, West Virginia 25305



Dear Commissioner Cline:

The American Insurance Association (AIA) has reviewed proposed amendments to several rules, 114 CSR2, 114 CSR30, and 114 CSR 20, and has the following comments:

Licensing and Conduct of Agents and Agencies:

Rule 114CSR2, addresses licensing requirements for agents and agencies. Yet, proposed text in 114-2-3.6 imposes a burden on insurers. It provides that "...each insurer is required to notify all its agencies of their responsibility to file an agency application and to pay the required fee." The responsibility to meet the requirements of 11-2-3.6 should not extend to insurers.

114-2-4.2, dealing with commissions, ties the payment of commissions/compensation to appointments. We respectfully submit that they should not be tied together. We note that the NAIC model Producer Licensing Law (see Section 13) does not use the proposed approach. In addition, we did not locate in the commission section (Section 33-12-23) of the producer licensing law authority for such an approach. Appointment requirements should establish those obligations, rather than a section dealing with commission/compensation payments.

Subsection 4.3 is broadly stated, making it difficult to determine just what is prohibited. If there is a prohibition in the rule to which this section is referring then it should be specifically stated, so as to provide direction in terms of compliance.

Subsection 4.1 also presents issues. The text is difficult to follow with its distinctions between resident and non-resident producers and its references to "like and duly licensed" residents and "other duly" residents. In addition, it departs from the Section 33-12-23 (d) of the producer licensing law—a provision that prohibits payments "to a person for selling, soliciting or negotiating insurance in this state if that person is required to be licensed under this article and is not so licensed." Furthermore, we could not be certain as how to read the commission section against the referrals section (114-2-6). The concern is that there is a potential for conflict, depending on how the sections are read.

114-2-6 is the proposed referrals section. We would respectfully urge consideration of the treatment of referrals in the NAIC Unfair Trade Practices Act (see Sec. 5(B)8) to avoid possible OCC preemption concerns. Considerable work went into the amendments, which address the Sec. 104(d) safe harbors of the Gramm-Leach-Bliley Act.

BERNARD L. HENGESBAUGH
Chairman

ROBERT P. RESTREPO, JR.
Chairman Elect

DAVID B. MATHIS
Vice Chairman

JAY S. FISHMAN
Vice Chairman

ROBERT E. VAGLEY
President

We also have a question regarding 114-2-5, which addresses "switching." Are there no consumer protections in place to address the concern? Again, we would refer to the NAIC model Unfair Trade Practices Act for guidance on consumer protections.

"Tail" Malpractice Insurance:

Rule 114CSR30, addresses "tail" malpractice insurance. 114-30-6.2, which is proposed for amendment, addresses providers' defaults in the making of quarterly payments. Rather than the balance of a premium for tail coverage becoming due and payable in full when there has been a default, the proposal would require a certain notice and a 30 day period before the entire balance of payments would be due. The preference is to receive the entire premium payment immediately upon the effective date of coverage to avoid complication, so the prospect of introducing further delay is troublesome. The proposed changes also raise questions. How will this apply to clinic or group-practice rated policies? Will the proposal require new filings?

Excess Line Brokers Regulation:

Rule 114CSR20, which addresses the regulation of excess lines brokers, includes references to a countersignature requirement (see 114-20-4 4.4 and 4.7). Consistent with AIA's position on countersignatures generally, we urge the deletion of a countersignature requirement.

Thank you very much for this opportunity to provide comments.

Very truly yours,

Pamela M. Young
Assistant General Counsel

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.

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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

=====

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	Increase	Decrease	Current	Next	Thereafter
ESTIMATED TOTAL COST	None	None	None	None	None
PERSONAL SERVICES	None	None	None	None	None
CURRENT EXPENSE	None	None	None	None	None
REPAIRS AND ALTERATIONS	None	None	None	None	None
EQUIPMENT	None	None	None	None	None
OTHER	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
and Solicitors
Title 114, Series 2

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.

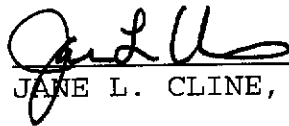
None

C. Economic Impact on Citizens/Public at Large.

None

Date: July 26, 2002

Signature of Agency Head or Authorized Representative



JANE L. CLINE, INSURANCE COMMISSIONER

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

FILED

WEST VIRGINIA LEGISLATIVE RULE
INSURANCE COMMISSIONER

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

OFFICE WEST VIRGINIA
COMMISSIONER 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' individual insurance producers' licenses shall make an investigation as to the suitability of the appointee for the 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 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 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 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 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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Legislative Rule
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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 is appointed by no company, his license shall be~~

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

~~2.7.~~ 2.6. 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 thirty (30) 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 thirty (30) 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. Commission Sharing

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

b. A nonresident individual insurance producer may pay a commission for or on account of the solicitation or negotiation in this state of insurance on property or risks in this state only to another licensed resident or nonresident individual insurance producer appointed to the insurer with whom such insurance was placed.

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

§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 may, directly or indirectly, receive any compensation or consideration from an individual insurance producer, insurance agency, insurance company, based upon referral of potential insurance purchases to a licensed individual insurance producer. This compensation may not exceed a nominal amount and the amount may not be based on or related to the party's application or purchase of insurance. 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 application or purchase of insurance.



STATE OF WEST VIRGINIA

Offices of the Insurance Commissioner

Legal Division

BOB WISE
Governor

JANE L. CLINE
Insurance Commissioner

July 26, 2002

HAND DELIVERED

Ms. Judy Cooper, Director
Administrative Law Division
Office of Secretary of State
State Capitol
Charleston, West Virginia 25305


Dear Ms. Cooper:

Please find herewith, one (1) copy of the following for filing:

- 1) Notice of Agency Approval of a Proposed Rule and Consent of Cabinet Secretary of Tax and Revenue;
- 2) Legislative Rule-Making Review Committee Questionnaire;
- 3) Brief Summary of Rule;
- 4) Statement of Circumstances;
- 5) Fiscal Note for Proposed Rule; and
- 6) Agency approved proposed rule entitled "Licensing and Conduct of Agents, Agencies and Solicitors" (Title 114, Series 2).

Please contact me if further information is required.

Sincerely,


Jane L. Cline

Insurance Commissioner

JLC/jz
Attachments