

**WEST VIRGINIA  
SECRETARY OF STATE  
JOE MANCHIN, III  
ADMINISTRATIVE LAW DIVISION**

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Form #6

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED  
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY Insurance Commission

NUMBER: 114

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 Individual  
Insurance Producers, Agencies and Solicitors

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

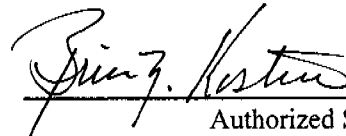
TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) S.B. 287

SECTION 64-7-1(c), PASSED ON March 7, 2003

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE  
FOLLOWING DATE: April 3, 2003



Authorized Signature

PROMULGATION HISTORY

WEST VIRGINIA INSURANCE COMMISSION

TITLE

LICENSING AND CONDUCT OF INDIVIDUAL INSURANCE PRODUCERS, AGENCIES  
AND SOLICITORS

TITLE 114, SERIES 2

5/29/02	Notice of Comment Period Filed
7/01/02	Last Date Comments Were Received
7/26/02	Agency Approved Legislative Rule Filed
9/15/02	Date Reviewed by Legislative Rule-Making Review Committee
4/03/03	Filing Date
4/03/03	Effective Date

**114CSR2**

**WEST VIRGINIA LEGISLATIVE RULE  
INSURANCE COMMISSIONER**

**SERIES 2  
LICENSING AND CONDUCT OF  
INDIVIDUAL INSURANCE PRODUCERS, 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

SERIES 2

LICENSING AND CONDUCT OF  
INDIVIDUAL INSURANCE PRODUCERS, AGENCIES AND SOLICITORS

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OFFICE OF THE  
INSURANCE COMMISSIONER  
STATE OF WEST VIRGINIA

**§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. -- April 3, 2003.

1.4. Effective Date. -- April 3, 2003.

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

2.1. Trustworthiness. -- Insurers making requisitions for individual insurance producers' licenses shall make an investigation as to the suitability of the appointee for the individual insurance producer's license. The requisitioning company shall, prior to submitting the requisition to this office, satisfy itself that the appointee is a suitable person and is trustworthy and qualified to act as its individual insurance producer. The Insurance Commissioner may, at any time, direct the requisitioning company to furnish proof that the company has made 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 individual insurance producer's license shall be determined by examination with the exception of those persons qualifying under subsection 2.3 of this rule.

2.3. Waiver of examination. -- The Insurance Commissioner will not require an examination as proof of competency for those persons applying to this office for an 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 and otherwise meets the requirements of W. Va. Code §33-12-14(a), or if such person has satisfied the Insurance Commissioner as to his competency in insurance.

2.4. Reexamination - automobile lines. -- All individual insurance producers, except those who qualify under subsection 2.3 of these rules, presently licensed by this office to sell casualty lines or automobile lines must be reexamined by this office to maintain such license if all of the following conditions exist:

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

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

a herein, and

c. The individual insurance producer has not, in fact, for a period of five (5) years prior to 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" means all licensed casualty companies who have had approved by this office the necessary rate and form filings for automobile liability insurance.

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

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

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

c. The individual insurance producer has not, in fact, for a period of five (5) years prior to 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" means all licensed casualty companies who have had approved by this office the necessary rate and form filings for miscellaneous casualty insurance.

2.6. Repeating examinations. -- All persons having taken the examination as required by subsections 2.2, 2.4 and 2.5 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 with the commissioner for an agency insurance producer license on a form provided by this office. This requirement 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 producer, so long as no other person, firm or entity has any interest in, or affiliation with, the business of the individual insurance producer or his agency.

3.2. No agency insurance producer 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 business entity may be licensed pursuant to this rule under any name which

includes the word "insurance" or "insurer" unless the name also includes the word "agency" or "agent."

3.4. No license shall 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 Each application shall be accompanied by the fee required by W. Va. Code §33-12-10. Each insurer is required to notify every agency affiliated with the insurer of its responsibility to file an agency insurance producer application and to pay the required fee. No agency is required to obtain more than one agency insurance producer license regardless of the number of insurers it represents, but all insurers then represented must be identified in the application. When an agency ceases to have a stockholder, officer, director, member, employee or associate possessing a current individual insurance producer's license, the agency insurance producer license shall be considered terminated. The agency insurance producer shall surrender the terminated agency insurance producer license for cancellation not more than thirty (30) days after the last person to hold the individual insurance producer license ceased affiliation with the agency or was no longer so licensed.

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

3.8. Every business entity transacting insurance as defined in W. Va. Code §33-1-4 must be licensed as an agency insurance producer. For purposes of this section, "insurance" means all products defined or regulated by the State of West Virginia except: (i) Limited lines insurance as defined in W. Va. Code §33-12-2(i) and (k); (ii) insurance placed by a lender in connection with collateral pledged for a loan when the debtor breaches the contractual obligation to provide this insurance; and (iii) private mortgage insurance.

3.9. The licensee shall notify the commissioner of all changes in status among its members, directors, and officers, and all other individuals designated in the application within ten (10) days after the change.

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

3.11. No individual insurance producer whose license has been revoked by order of the commissioner or whose application for a license may be denied 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

An 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 individual insurance producer appointed by the insurer with which such insurance was placed.

4.2. Any licensee who accepts any commission or compensation from the sale of a policy issued by an insurer who has not appointed the licensee is subject to the penalties prescribed by W. Va. Code § 33-12-24.

#### **§114-2-5. Switching.**

5.1. No person that owns or is affiliated with an insurance agency or individual insurance producer may require, as a condition precedent to making a loan, that the borrower cancel insurance and purchase new insurance with the individual insurance producer or with an agency insurance producer with which the person is affiliated.

5.2. Any individual insurance producer who, directly or indirectly, or by subterfuge or artifice aids, abets or participates in violating this section is subject to the penalties prescribed by W. Va. Code §33-12-24.

5.3. The act of any person, that owns or is affiliated with an insurance agency or individual insurance producer, in making a loan in violation of this section, will be considered to be the act of the individual insurance producer or agency insurance producer with which the person making the loan is affiliated. The individual insurance producer or agency insurance producer will be held strictly accountable for the acts of a person who is affiliated with the individual insurance producer or agency insurance producer and who makes a loan in violation of this section.

5.4. Any insurance company licensed under the laws of West Virginia that accepts business from an insurance producer, which it knows or reasonably should know to have violated this rule is subject to the penalties prescribed by W. Va. Code §33-3-11.

#### **§114-2-6. Referrals.**

6.1. A person who is not licensed to sell insurance may refer a customer who seeks to purchase or seeks an opinion or advice on any insurance product to, or provide the phone number of, a person who sells or provides opinions or advice on such product, only if the person making the referral receives no fee or only a nominal fee for the referral and such fee is not based on the customer's application for or purchase of the insurance product.

6.2. Any individual insurance producer or agency insurance producer licensed under the laws of West Virginia who violates this rule is subject to the penalties prescribed by W. Va. Code §33-12-24.