

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #2

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2005 JUN 22 A 11:02

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 X 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: _____

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 22, 2005 AT 5:00 PM ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Gregory 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.


John C. Musgrave
Acting Secretary of Tax and Revenue

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

\$5.00

Insurance Commissioner
Legislative Rule
Title 114, Series 2

**LICENSING AND CONDUCT OF INDIVIDUAL INSURANCE
PRODUCERS, AGENCIES AND SOLICITORS**

TITLE 114, SERIES 2

BRIEF SUMMARY OF RULE

This proposed amendment to the legislative rule at Series 2, "Licensing and Conduct of Individual Insurance Producers, Agencies and Solicitors," will address several producer (agent) licensing matters. It will expand the list of professional designations for which the required examination is not required as proof of competency; for instance, someone with a certification as a Certified Employee Benefits Specialist (CEBS) would be exempted from the examination requirements for obtaining a West Virginia insurance producer's license. It adopts the uniform definition of "limited lines license" for which neither an examination nor continuing education is required. Some reexamination provisions that predate the establishment of the continuing education requirements are repealed. The amendments also permit an agency producer to reinstate a lapsed license by paying a late fee in the same manner as is currently applicable to individual producers.

The amendment would provide a written procedure to govern the reinstatement of the producer's license of a person who surrendered such license upon employment with the Insurance Commissioner's office. The rule would also provide a procedure, including fees, regarding waivers for persons prohibited by federal law from holding employment in the insurance industry unless they obtain a waiver from their home state insurance regulator.

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**LICENSING AND CONDUCT OF INDIVIDUAL INSURANCE
PRODUCERS, AGENCIES AND SOLICITORS**

TITLE 114, SERIES 2

STATEMENT OF CIRCUMSTANCES

The Gramm-Leach-Bliley Act ("GLBA," 15 U.S.C. 6701 et seq.), which was enacted by Congress in 1999, provides that unless a majority of states enacted uniform or reciprocal producer licensing laws within three (3) years (and maintained the required level of uniformity/reciprocity thereafter), the National Association of Registered Agents and Brokers (NARAB) would be authorized to license producers under its own criteria and these producers would be permitted to operate in each state outside the regulatory reach of the states' insurance commissions. The National Association of Insurance Commissioners (NAIC) was charged with certifying that the uniformity/reciprocity goals had been met and that it continues to be met; the first deadline was met after twenty-seven (27) states enacted the requisite legislation or regulations.

NAIC adopted the Producer Licensing Model Act in 2000; West Virginia adopted the model act in 2002, thus enabling this state to be counted among the majority seeking to stave off federal intrusion into the licensing sphere. The NAIC continues to issue standards to further the uniformity goals of GLBA, and West Virginia keeps pace by periodic changes to its licensing rules. The proposed amendments to Section 2 of Series 2 mirror standards adopted by the NAIC working group in 2004, and their promulgation will enable West Virginia to maintain the requisite level of uniformity/reciprocity for purposes of continued NAIC certification.

The amendments also address two situations that to date have been handled on an informal *ad hoc* basis, the reinstatement of licenses of persons who are required to surrender their licenses upon employment with the Insurance Commission and the process for requesting a waiver for persons convicted of certain crimes to permit their employment in the insurance business.

APPENDIX B
FISCAL NOTE FOR PROPOSED RULES

Rule Title: Licensing and Conduct of Individual Insurance Producers, Agencies and Solicitors
(Title 114, Series 2)

Type of Rule: Legislative Interpretive Procedural

Agency: Insurance Commissioner

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

Phone Number: (304) 558-0401 Email: Greg.Elam@wvinsurance.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The rule will have no additional fiscal impact upon state government.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	2005 Increase/Decrease (use "-")	2006 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	None	None	None
Personal Services	None	None	None
Current Expenses	None	None	None
Repairs & Alterations	None	None	None
Assets	None	None	None
Equipment	None	None	None
Other	None	None	None
2. Estimated Total Revenues	None	None	None

Rule Title: Licensing and Conduct of Individual Insurance Producers, Agencies and Solicitors
(Title 114, Series 2)

3. Explanation of above estimates (including long-range effect):
Please include any increase or decrease in fees in your estimated total revenues.

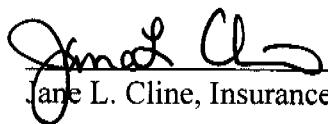
N/A

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Date: June 21, 2005

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
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.
- 114-2-7. Procedures Governing Persons Subject to 18 U.S.C. 1033

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INSURANCE COMMISSIONER

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SERIES 2

OFFICE WEST VIRGINIA
SECRETARY OF STATE

LICENSING AND CONDUCT OF
INDIVIDUAL INSURANCE PRODUCERS, AGENCIES AND SOLICITORS

§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 16, 2004.~~

1.4. Effective Date. -- ~~April 16, 2004.~~

§114-2-2. Requirements for Licensing.

2.1. Trustworthiness. -- Insurers making requisitions application for individual insurance producers' licenses appointments shall make an investigation as to the suitability of the appointee for the individual insurance producer's license. The requisitioning appointing company shall, prior to submitting the requisition appointment 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 appointing company to furnish proof that the company has made the investigation and that the investigation was made prior to the execution of the requisitions application for appointment.

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 section.

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 a resident 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: one or more of the following professional designations or degrees:

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a. Certified Employee Benefits Specialist (CEBS), Chartered Financial Consultant (ChFC), Certified Insurance Counselor (CIC), Certified Financial Planner (CFP), Chartered Life Underwriter (CLU), Fellow Life Management Institute (FLMI), Life Underwriting Training Counsel Fellow (LUTCF) for Life Line of Authority;

b. Registered Health Underwriter (RHU), Certified Employee Benefits Specialist (CEBS), Registered Employee Benefits Consultant (REBC), Health Information Administration (HIA) for Health Line of Authority;

c. Accredited Advisor in Insurance (AAI), Associate in Risk Management (ARM), Certified Insurance Counselor (CIC), Chartered Property Casualty Underwriter (CPCU) for Property and Casualty Lines of Authority;

d. College insurance degree for all lines of authority; or

e. 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 or her 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.~~

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~~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.~~

2.4. Applicants who previously held a West Virginia insurance license which was terminated as a condition of public employment, are exempt from re-examination provided that the public employment was in an insurance-related field and the license application is made within one year of the termination of that employment.

2.5. Limited lines insurance.

a. The Insurance Commissioner will not require an examination as proof of competency for those persons applying for a limited lines insurance license.

b. Each insurer that sells, solicits or negotiates any form of limited line insurance shall provide to each individual whose duties will include selling, soliciting or negotiating limited line insurance a program of instruction that may be approved by the Insurance Commissioner.

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c. Limited lines insurance includes the following lines of insurance:

1. Car rental – insurance offered, sold, or solicited in connection with and incidental to the rental of rental cars for a period not to exceed ninety consecutive days, whether at the rental office or by pre-selection of coverage in master, corporate, group or individual agreements that (i) is non-transferable; (ii) applies only to the rental car that is the subject of the rental agreement; and (iii) is limited to the following kinds of insurance:

A. Personal accident insurance for renters and other rental car occupants, for accidental death or dismemberment, and for medical expenses resulting from an accident that occurs with the rental car during the rental period;

B. Liability insurance that provides protection to the renters and other authorized drivers of a rental car for liability arising from the operation or use of the rental car during the rental period;

C. Personal effects insurance that provides coverage to renters and other vehicle occupants for loss of, or damage to, personal effects in the rental car during the rental period;

D. Roadside assistance and emergency sickness protection insurance; or

E. Any other coverage designated by the Insurance Commissioner.

2. Credit – credit life, credit disability, credit property, credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage disability, guaranteed automobile protection insurance, or any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing that credit obligation and that is designated by the Insurance Commissioner as limited line credit insurance.

3. Crop insurance – Insurance providing protection against damage to crops from unfavorable weather conditions, fire or lightning, flood, hail, insect infestation, disease or other yield-reducing conditions or perils provided by the private insurance market, or that is subsidized by the Federal Crop Insurance Corporation, including Multi-Peril Crop Insurance.

4. Surety – Insurance or bond that covers obligations to pay the debts of, or answer for the default of another, including faithlessness in a position of public or private

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trust. For purpose of limited line licensing, Surety does not include Surety Bail Bonds.

5. Travel – insurance coverage for trip cancellation, trip interruption, baggage, life, sickness and accident, disability, and personal effects when limited to a specific trip and sold in connection with transportation provided by a common carrier.

§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 sole proprietors or partnerships in which there is only one licensed individual producer, so long as no other individual or agency insurance producer has any interest in, or affiliation with, the business of the individual insurance producer or his or her agency.

3.2. The Insurance Commissioner may refuse to grant a license to act as an agency insurance producer proposing to do business under a name which is likely to deceive or mislead the public in this state.

3.3. No agency insurance producer may be licensed in West Virginia which has or uses a name so similar to that of any agency insurance producer already so licensed as to cause uncertainty or confusion; except that in case of conflict of names between two agency insurance producers the commissioner may permit or require the newly licensed agency insurance producer to use in West Virginia a trade name that is reasonably necessary to avoid such conflict.

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

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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 must be licensed as an agency insurance producer. For purposes of this section:

a. "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.

b. "Transaction of insurance" means any of the following acts in this state effected by mail or otherwise considered to constitute the transaction of an insurance business in or from this state:

1. The making of or proposing to make an insurance contract;
2. The making of or proposing to make, as guarantor or surety, any contract of guaranty or suretyship as a vocation and not merely incidental to any other legitimate business or activity of the guarantor or surety;
3. The taking or receiving of an application for insurance;
4. The receiving or collection of any premium, commission, membership fees, assessments, dues or other consideration required for obtaining or renewing insurance;
5. The issuance or delivery in this state of certificates or contracts of insurance to residents of this state or to persons authorized to do business in this state;
6. The solicitation, negotiation, procurement or effectuation of insurance or renewals thereof;
7. The dissemination of information as to coverage or rates, or forwarding of applications, or delivery of policies or contracts, or inspection of risks, the fixing of rates or

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investigation or adjustment of claims or losses or the transaction of matters subsequent to effectuation of the contract and arising out of it, or any other manner of representing or assisting a person or insurer in the transaction of insurance with respect to any risk or exposure located or to be performed in this state;

8. The transaction of any kind of insurance business specifically recognized as transacting an insurance business within the meaning of the statutes relating to insurance;

9. The offering of insurance or the transacting of insurance business; or

10. Offering an agreement or contract which purports to alter, amend or void coverage of an insurance contract.

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.~~ An agency insurance producer who allows its license to lapse may reinstate the same license by filing its application for renewal of its license within twelve months from the due date of the renewal fee and paying a penalty in the amount of twenty-five dollars in addition to the unpaid renewal fee.

§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

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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.

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Code §33-12-24.

§114-2-7. Procedures Governing Persons Subject to 18 U.S.C. 1033.

7.1. No person having been convicted of a felony involving breach of trust or dishonesty or having been convicted under 18 U.S.C. § 1033 shall be employed in the business of insurance in this state in any capacity without having first obtained a waiver from the commissioner or from the insurance regulatory official of the home state of the person in accordance with the provisions of 18 U.S.C. § 1033(e)(2) and this rule.

7.2. No insurer, producer, or any other person or independent contractor involved in the business of insurance in this state shall employ any prohibited person in any capacity without having first determining that the prohibited person has obtained a waiver in accordance with 18 U.S.C. § 1033(e)(2) and this rule.

7.3. All prohibited persons seeking to obtain a waiver in accordance with subsection 7.1 of this section shall complete and file with the commissioner an application for waiver on the form prescribed by the commissioner, together with the nonrefundable application fee of one hundred dollars (\$100).

7.4. All fees collected under this section shall be deposited, transferred and paid out in accordance with W. Va. Code §33-3-13.

7.5. This State shall be deemed to be the appropriate state from which an applicant shall obtain a waiver where:

a. The applicant will be employed in the business of insurance in this state;

1. The applicant would be required to obtain a resident producer's license to do business in this state; or

2. The applicant is or will be an officer, director or employee of a domestic insurer, reinsurer, producer, third-party administrator or independent contractor performing substantial insurance related activities for a domestic insurer or producer.