

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

Form #7

Do Not Mark In This Box
Filing Date

FILED

2003 MAY 22 P 2:00

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Effective Date

NOTICE OF AN EMERGENCY RULE

AGENCY: Insurance Commissioner TITLE NUMBER: 114

CITE AUTHORITY: W. Va. Code §33-2-10

EMERGENCY 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

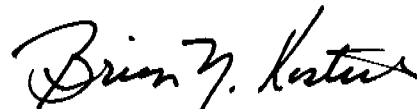
IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

PLEASE SEE ATTACHED



Authorized Signature

Use additional sheets if necessary

Insurance Commissioner
Emergency Rule
Title 114, Series 2

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

TITLE 114, SERIES 2

BRIEF SUMMARY OF EMERGENCY RULE

The emergency rule modifies a requirement that insurance agencies must use the word agent or agency in their name if the agency name includes the word insurance.

The emergency rule also corrects a reference in the current rule to a repealed section of the code. The emergency rule defines the term transaction of insurance.

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

TITLE 114, SERIES 2

STATEMENT OF CIRCUMSTANCES

After completing the notice and comment period and proceeding through the Legislative process, S.B. 287 passed on March 07, 2003 and was signed by the Governor March 31, 2003. Series 2 was filed with the Secretary of State and became effective April 3, 2003. The rule requires an insurance agency which uses the term insurance in its name to include the word agent or agency. Agency representatives came forward after the rule became effective and provided information showing there would be a substantial economic burden on insurance agencies to replace signs to comply with the rule as passed. The emergency rule eliminates the requirement and removes this economic cost from the insurance agencies.

Additionally, an amendment was made in a committee which referenced a repealed code section. This emergency rule corrects this reference.

APPENDIX B

FISCAL NOTE FOR PROPOSED EMERGENCY RULES

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

Type of Rule: Legislative Interpretive Procedural Emergency

Agency: Insurance Commissioner

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

=====

1. Effect of Proposed Emergency Rule

	ANNUAL FISCAL YEAR				
	Increase	Decrease	Current	Next	Thereafter
ESTIMATED TOTAL COST	None	\$200,000	None	\$200,000	None
PERSONAL SERVICES	None	None	None	None	None
CURRENT EXPENSE	None	None	None	None	None
REPAIRS AND ALTERNATIONS	None	\$200,000	None	\$200,000	None
EQUIPMENT	None	None	None	None	None
OTHER	None	None	None	None	None

2. Explanation of above estimates:

These are estimates industry has presented to this office stating what the cost of compliance will be to the existing rule.

3. Objectives of these emergency rules:

The objective of the emergency rule is to remove an unanticipated economic cost in replacing signs on insurance agencies that the current rule placed on them. Additionally, the emergency rule corrects a reference to a repealed statute that was made during an amendment.

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

4. Explanation of Overall Economic Impact of Proposed Emergency Rule.

A. Economic Impact on State Government.

None.

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

The emergency rule will have a significant impact on the specific industry of insurance agencies. The insurance agencies would have an enormous expense replacing existing signs to comply with the existing rule. The emergency rule corrects this and alleviates the cost of compliance that insurance agencies would have to bear. This cost has been estimated to be \$1,000.00 to \$10,000.00 for an agency depending on the size of the existing sign.

C. Economic Impact on Citizens/Public at Large.

There is no economic impact on citizens or the public at large.

Date: May 22, 2003

Signature of Agency Head or Authorized Representative



James L. Cline, Insurance Commissioner

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: May 22, 2003

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

EMERGENCY RULE TITLE: LICENSING AND CONDUCT OF INDIVIDUAL
INSURANCE PRODUCERS, AGENCIES AND
SOLICITORS (Title 114, Series 2)

1. Date of filing:

May 22, 2003

2. Statutory authority for promulgating emergency:

W. Va. Code §33-2-10.

3. Date of filing of proposed legislative rule:

N/A

4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?

This rule amends and repeals a current legislative rule.

5. Has the same or similar emergency rule previously been filed and expired?

No.

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety and welfare.

The emergency rule takes a substantial cost of compliance off of the insurance agency market. After Series 2 became effective, the agency market notified the Commissioner of the substantial cost of making name changes on physical signs that the industry would have to bear. The emergency rule alleviates this cost to industry.

The legislative rule passed by S.B. 287 on March 7, 2003 references a repealed section of Chapter Thirty-Three of the Code of West Virginia. This reference was an oversight and technical error. This oversight may result in the licensing of insurance agencies to be required in an overly broad manner. Retail and other business entities would incur substantial licensing costs that were not intended in the rule. The emergency rule corrects this reference.

7. **If the emergency rule was promulgated in order to comply with a time limit established by the Code of federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.**

W. Va. Code § 33-12-6b.

8. **State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to public interest.**

The Series 2 rule currently requires insurance agencies to include the word agency or agent in the agency name if the agency uses the word insurance in its name. The insurance agency market has provided the Insurance Commissioner information that shows the cost of compliance with this rule will result in several thousands of dollars in physical sign name changes.

The legislative rule passed by S.B. 287 on March 7, 2003 references a repealed section of Chapter Thirty-Three of the West Virginia Code. This reference was an oversight and technical error. This oversight may result in the licensing of insurance agencies to be required in an overly broad manner. This may result in placing licensing costs on car dealerships, retail stores, and other entities in which agency licensing was not intended. The emergency rule corrects this reference.

114CSR2

**WEST VIRGINIA EMERGENCY 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

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WEST VIRGINIA EMERGENCY RULE
INSURANCE COMMISSIONER

2003 MAY 22 P 2:00

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 3, 2003~~ May 22, 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.

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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.

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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. 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 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." 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

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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~~ rule:

a. "i 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;

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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 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.

§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.

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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.



STATE OF WEST VIRGINIA

Offices of the Insurance Commissioner

Legal Division

BOB WISE
Governor

JANE L. CLINE
Insurance Commissioner

May 22, 2003

HAND DELIVERED

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

Dear Ms. Cooper:

Enclosed please find for filing fourteen (14) copies of the following:

- 1) Notice of an Emergency Rule and Consent of Tax and Revenue Cabinet Secretary to Emergency Rule;
- 2) Brief Summary of Rule;
- 4) Statement of Circumstances;
- 5) Fiscal Note;
- 6) Legislative Rule-Making Review Committee Questionnaire
- 7) The proposed Emergency Rule entitled "Licensing and Conduct of Individual Insurance Producers, Agencies and Solicitors" (Series 2).

Please contact me if further information is required.

Sincerely,

A handwritten signature in black ink, appearing to read "Jane L. Cline".

Jane L. Cline
Insurance Commissioner

JLC/jz
Enclosures