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May 29, 2003

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Insurance Commissioner

RULE: Amendments, 114CSR2, Licensing & Conduct of Individual Insurance Producers, Agencies & Solicitors

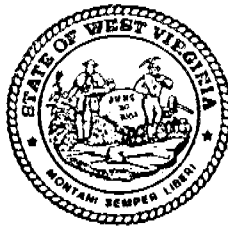
DATE FILED AS AN EMERGENCY RULE: May 22, 2003

DECISION NO. 6-03

FILED  
2003 MAY 29 P 4: 37  
OFFICE WEST VIRGINIA  
SECRETARY OF STATE

Following review under W. Va. Code §29A-3-15a, it is the decision of the Secretary of State that the above emergency rule is **approved**. A copy of the complete decision with required findings is available from this office.

  
JOE MANCHIN, III  
Secretary of State



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**EMERGENCY RULE DECISION  
(ERD 6-03)**

**AGENCY:** Insurance Commissioner  
**RULE:** Amendments, 114CSR2, Licensing & Conduct of Individual Insurance Producers, Agencies & Solicitors  
**FILED AS AN EMERGENCY RULE:** May 22, 2003

- par. 1 The Insurance Commissioner (Commissioner) has filed the above amendments to an existing rule as an emergency rule.
- par. 2 W. Va. Code 29A-3-15a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [§29A-3-15a].
- par. 4 (A) Procedural Compliance: W. Va. Code §29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

- par. 6 The Commissioner filed this emergency rule with supporting documents with the Secretary of State May 22, 2003 and with the LRMRC May 22, 2003.
- par. 7 It is the determination of the Secretary of State that the Commissioner has complied with the procedural requirements of W. Va. Code §29A-3-15 for adoption of an emergency rule.
- par. 8 (B) Statutory Authority -- W. Va. Code §33-2-10 reads:
- The commissioner is authorized to promulgate and adopt such rules and regulations relating to insurance as are necessary to discharge his duties and exercise his powers and to effectuate the provisions of this chapter and to protect and safeguard the interests of policyholders and the public of this state.*
- par. 9 It is the determination of the Secretary of State that the Commissioner has not exceeded its statutory authority in promulgating this emergency rule.
- par. 10 (C) Emergency -- W. Va. Code §29A-3-15(f) defines "emergency" as follows:
- (f) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.*
- par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.
- par. 12 The facts and circumstances as presented by the Commissioner are as follows:
- The emergency rule takes a substantial cost of compliance off of the insurance agency market. After 114CSR2 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 SB 287 on March 7, 2003 references a repealed section of §33 of the West Virginia Code. This reference was an oversight & technical error. This oversight may result in the licensing of insurance agencies to be required in an overly broad manner. Retail & other business entities would incur substantial licensing costs that were not intended in the rule. The emergency rule corrects this reference.
- par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(f). . . "immediate preservation

of public peace, health, safety & welfare" and "prevent substantial harm to public interest"

par. 14

This decision shall be cited as Emergency Rule Decision 6-03 or ERD 6-03 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Insurance Commissioner, the Attorney General and the Legislative Rule Making Review Committee.



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JOE MANCHIN, III  
Secretary of State

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**FILED**  
2003 MAY 29 P 4:42  
OFFICE WEST VIRGINIA  
SECRETARY OF STATE