



## 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 29, 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

**LEGISLATIVE RULE TITLE:** LICENSING AND CONDUCT OF INDIVIDUAL  
INSURANCE PRODUCERS, AGENCIES AND  
SOLICITORS - (TITLE 114, SERIES 2)

**1. Authorizing statute(s) citation:**

W. Va. Code §33-2-10.

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

May 28, 2003 - 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 June 27, 2003.

**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 29, 2003

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

Same

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

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ATTACHMENT TO QUESTION 2 (d):

One set of comments was received during the comment period in response to the proposed legislative rule by the West Virginia Insurance Federation ("WVIF").

A. WVIF submitted the following comments by letter dated June 20, 2003 and received on June 23, 2003:

1. WVIF objects to language set forth in paragraph 3.8(b)(4) relating to the transaction of insurance. WVIF comments that as the regulation presently reads, it would arguably cause clerical workers and staff who accept premiums on an existing policy to have to become licensed. The regulation should be limited to those persons involved in the sale, solicitation, or negotiation of insurance to be licensed. WVIF believes that its suggestion is in keeping with the NAIC model rules. WVIF proposes paragraph 3.8(b)(4) be amended to the following language:

4. The receiving or collection of any premium, commission, membership fees, assessments, dues or other consideration required for ~~obtaining or renewing insurance~~ the sale solicitation or negotiation of insurance;

The Insurance Commissioner does not agree with WVIF's interpretation of this paragraph. Section 3 of Series 2 specifies the requirement for licensing of agencies. Section 3 does not apply to the licensing of individual producers. The definition of "transacting insurance" in Subsection 3.8 is identical to the definition of "transacting insurance" in Article 44 of Chapter 33 of the West Virginia Code. The Insurance Commissioner desires to maintain a consistent definition for transacting insurance. West Virginia Code Section 33-12-3 requires an individual to be licensed to sell, solicit or negotiate insurance in this state. West Virginia Code Section 33-12-4 provides exceptions to licensing as an individual insurance producer. The concerns expressed by WVIF are covered in these two sections. The definition defines transaction of insurance. Selling, soliciting or negotiating insurance requires an individual producer license. When the statutory provisions are read in *pari materia* with the rule, a consistent definition for transacting insurance is achieved and the concern expressed by WVIF is alleviated.

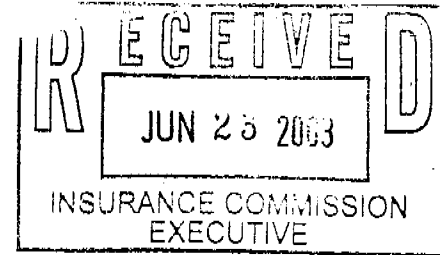
For clarification, the Commissioner will agree to the following amendment to Subsection 3.8.

*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 rule section:*

**West  
Virginia  
insurance federation**



June 20, 2003



West Virginia Insurance Commission  
P. O. Box 50540  
Charleston, West Virginia 25305

Attn: Commissioner Jane Cline

Re: West Virginia Legislative Rule, Series 2, Licensing and Conduct  
of Individual Insurance Producers, Agencies and Solicitors

Dear Commissioner Cline:

I am filing on behalf of the West Virginia Insurance Federation comments and suggested changes to the West Virginia Legislative Rule, Series 2, Licensing and Conduct of Individual Insurance Producers, Agencies and Solicitors and the corresponding Emergency Rule filed on May 22, 2003, and approved May 29, 2003. The Federation objects to language set forth in paragraph 3.8(b)(4) relating to the transaction of insurance and proposes the change illustrated below:

4. The receiving or collection of any premium, commission, membership fees, assessments, dues or other consideration required for obtaining or renewing insurance; the sale, solicitation or negotiation of insurance.


This change is suggested because as the regulation presently reads, it would arguably cause clerical workers and staff who accept premiums on an existing policy to have to become licensed. Rather, the regulation should be limited to those persons involved in the sale, solicitation, or negotiation of insurance to be licensed. We believe that our suggestion is in keeping with the NAIC model rules. Please let me know should you have any questions.

300 Kanawha Boulevard, East • Charleston, West Virginia • 25301  
Post Office Box 273 • Charleston, West Virginia • 25321  
(304) 340-3842 • (304) 340-3801 (Fax)

**RECEIVED**

JUN 30 2003


LEGAL DIVISION  
WVA INS. DEPT.



June 20, 2003  
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We appreciate your consideration and request that this change be made.

Sincerely,



Heather Heiskell Jones  
Executive Director

HHJ/cjb/263214

cc: Mary Jane Pickens  
Greg Elam

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**

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

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**LICENSING AND CONDUCT OF INDIVIDUAL INSURANCE PRODUCERS,  
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**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. Insurance agency representatives have subsequently indicated compliance with this rule places a substantial economic burden on insurance agencies to replace signs and physical structures bearing the agency's name. Amending the Series 2 rule eliminates the requirement and removes this economic cost from the insurance agencies.

Additionally, Series 2 references a repealed code section of chapter thirty-three of the West Virginia Code. The amendment to Series 2 corrects this reference.

## 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  Emergency

**Agency:** Insurance Commissioner

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

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#### 1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	Increase	Decrease	Current	Next	Thereafter
<b>ESTIMATED TOTAL COST</b>	None	\$350,000	None	\$350,000	None
<b>PERSONAL SERVICES</b>	None	None	None	None	None
<b>CURRENT EXPENSE</b>	None	None	None	None	None
<b>REPAIRS AND ALTERNATIONS</b>	None	\$350,000	None	\$350,000	None
<b>EQUIPMENT</b>	None	None	None	None	None
<b>OTHER</b>	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 with the existing rule will be without an amendment.

#### 3. Objectives of these rules:

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

**Rule Title:** Licensing and Conduct of Individual Insurance Producers, 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.**

The rule will have a significant impact on the specific industry of insurance agencies. The insurance agencies will incur significant expense in replacing existing signs to comply with the existing rule. The rule corrects this requirement and will alleviate the significant cost of compliance that insurance agencies will 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:** July 29, 2003

**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.

114CSR2

FILED

WEST VIRGINIA LEGISLATIVE RULE  
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 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.

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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:

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.