

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

Form #2

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**FILED**  
2007 MAY 30 PM 4: 14  
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 WV Code §§33-2-10 & 33-12-37

AMENDMENT TO AN EXISTING RULE: YES \_\_\_\_\_ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

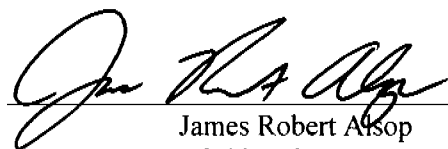
IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 2A

TITLE OF RULE BEING PROPOSED: Fingerprinting Requirements For Applicants For Insurance  
Producer License

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 7/2/07 AT 12 noon. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Timothy R. Murphy, Associate Counsel  
Offices of the Insurance Commissioner  
P.O. Box 50540  
Charleston, WV 25305-0540

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.



James Robert Alsop  
Cabinet Secretary  
West Virginia Department of Revenue

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Insurance Commissioner  
Legislative Rule  
Title 114, Series 2A

**FINGERPRINTING REQUIREMENTS FOR APPLICANTS  
FOR INSURANCE PRODUCER LICENSE**

**TITLE 114, SERIES 2A**

**BRIEF SUMMARY OF RULE**

This new rule specifically addresses fingerprinting requirements for applicants for certain insurance producer (agent) licenses. It is necessitated by 2007 legislation that adopted a National Association of Insurance Commissioners ("NAIC") model regarding criminal background checks for producer applicants as part of the movement to promote uniformity in the states' producer licensing laws. The proposed rule sets forth who must submit prints, how such submissions may be accomplished, who may procure the prints, and to whom the prints be sent for purposes of enabling the State Police and FBI to perform the background checks. It will only apply to applicants for new resident licenses or for a new line of authority.

Insurance Commissioner  
Legislative Rule  
Title 114, Series 2A

**FINGERPRINTING REQUIREMENTS FOR APPLICANTS  
FOR INSURANCE PRODUCER LICENSE**

**TITLE 114, SERIES 2A**

**STATEMENT OF CIRCUMSTANCES**

In 2007 HB 2764 added new Code §33-12-37 which provides that "(i) The commissioner shall promulgate emergency rules ... as are necessary for the administration of this section, including rules governing the issuance of provisional producer licenses pending receipt of the criminal background check". This enacted the NAIC model (number 222) regarding criminal background checks for producer applicants. The rule specifically addresses fingerprinting requirements for applicants for an insurance producer license. Because of the need for an emergency rule and the distinct nature of the matters to be covered by this rule, a new rule is being proposed instead of amendments to the general producer rule in series 2.

APPENDIX B  
**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: Fingerprinting Requirements For Applicants For Insurance Producer License  
 (Title 114 - Series 2A) \_\_\_\_\_

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 \_\_\_\_\_

Phone Number: (304) 558-0401 \_\_\_\_\_ Email: \_\_\_\_\_

**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	Current Increase/Decrease (use "-")	Next 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
Other	None	None	None
2. Estimated Total Revenues	None	None	None

**TITLE 114**  
**LEGISLATIVE RULE**  
**OFFICES OF THE INSURANCE COMMISSIONER**

**SERIES 2A**  
**FINGERPRINTING REQUIREMENTS FOR APPLICANTS**  
**FOR INSURANCE PRODUCER LICENSE**

Section

- 114-2A-1. General
- 114-2A-2. Definitions.
- 114-2A-3. Producer Fingerprints.
- 114-2A-4. Provisional Work Authority; Change in Residence Status.
- 114-2A-5. Fingerprint Format and Complete Application.
- 114-2A-6. Use and Confidentiality of Fingerprints.
- 114-2A-7. Nonresident Producers.

**TITLE 114**  
**LEGISLATIVE RULE**  
**OFFICES OF THE INSURANCE COMMISSIONER**  
**SERIES 2A**  
**FINGERPRINTING REQUIREMENTS FOR APPLICANTS**  
**FOR INSURANCE PRODUCER LICENSE**

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**§114-2A-1. General.**

1.1. Scope. -- This rule implements Enrolled Committee Substitute for House Bill 2764, enacted during the 2007 regular session of the West Virginia Legislature and made effective June 9, 2007, which mandates that the Insurance Commissioner procure fingerprints from certain classes of applicants for producer licenses for the purpose of obtaining criminal background checks from the Federal Bureau of Investigation and State Police.

1.2. Authority. -- W. Va. Code §§33-12-37 & 33-2-10.

1.3. Filing Date. --

1.4. Effective Date. --

**§114-2A-2. Definitions.**

2.1. "Applicant" means a natural person whose application for one of the following licenses is received by the Insurance Commissioner on or after the effective date of this rule:

- a. An initial home state license as an insurance producer;
- b. An additional line of authority under an existing home state insurance producer license where a criminal history record check has not been obtained; or
- c. A resident insurance producer license under change of home state provisions.

2.2. "Fingerprint" means an impression of the lines on the finger taken for the purpose of identification. The impression may be obtained electronically or in ink converted to an electronic format.

**§114-2A-3. Producer Fingerprints.**

3.1. a. Except as provided in subsection 3.2 of this section, every applicant must, at or near the same time that he or she submits an application for licensure, also submit:

1. A complete set of his or her fingerprints;
2. Full payment for all processing fees charged by the West Virginia State Police and the Federal Bureau of Investigation; and
3. All additional identifying information required by the West Virginia State Police and the Federal Bureau of Investigation for processing fingerprints.

b. An applicant is exempt from the fingerprint requirement if he or she:

1. Previously provided the Insurance Commissioner a complete, legible fingerprint card or electronic set of fingerprints as part of an earlier application that was granted under W. Va. Code §33-12-1 et seq. or W. Va. Code §33-12C-1 et seq. and which license is in good standing on, or within the previous sixty (60) days prior to, the date of the subsequent application or: *Provided*, That the Insurance Commissioner may require a complete set of fingerprints and payment of all fingerprint processing fees from an applicant if the previously submitted set of fingerprints is unable to be used to obtain a criminal background check;

2. Is currently licensed under article twelve, chapter thirty-three of the West Virginia Code, and is applying for a license that expired less than one (1) year prior to the date of the current application; or

3. Is applying for an temporary license pursuant to W. Va. Code §33-12-16: *Provided*, That a temporary licensee who later qualifies for a permanent license by examination is subject to the requirements of this rule.

c. The Insurance Commissioner may waive any requirements of this rule if he or she determines that the applicant is unable to provide fingerprints due to physical injury or illness.

d. Failure to provide a complete set of fingerprints and the required fees and information in accordance with this rule constitutes grounds for denial of an application

#### **§114-2A-4. Provisional Work Authority; Change in Residence Status.**

4.1. The Insurance Commissioner may issue a provisional license prior to receipt of a criminal background check to an applicant who has submitted in proper form the items required by section 3 of this rule if the submission does not disclose any matter that may disqualify the applicant from being licensed. A provisional license issued pursuant to this section shall expire on the earlier of the expiration date set forth on the provisional license or the issuance of the Insurance Commissioner's decision granting or denying the license applied for.

4.2. An applicant seeking a resident insurance producer license under change of home

state provisions shall, within thirty (30) days after establishing residency in West Virginia, notify the Insurance Commissioner of his or her change of address and contact information and, within ninety (90) days of establishing residency, submit an application to qualify as a resident insurance producer in West Virginia. The licensee shall submit completed fingerprint forms in a format prescribed by the Insurance Commissioner, including electronic fingerprinting. Upon receipt of this information, the licensee's status shall be changed from nonresident to resident.

#### **§114-2A-5. Fingerprint Format and Complete Application.**

5.1. Every applicant shall have a complete set of their fingerprints captured by the Insurance Commissioner's examination vendor or a criminal law enforcement agency (including a sheriff's office or police department) that has been approved by the Insurance Commissioner. Applicants are advised that processing time and rejection rates for applications and submissions with paper fingerprint cards may be substantially greater than with electronic fingerprints.

5.2. Applicants shall:

a. Pay, in a manner acceptable to the vendor or approved law enforcement agency, all fingerprint capture and processing fees directly to the vendor or agency when and in such manner as may be required by the vendor or agency; and

b. Submit to the Insurance Commissioner payment for all applicable fingerprint processing fees in the amount and in the manner set forth on the Insurance Commissioner's application, or as otherwise posted by the Insurance Commissioner if the individual is not using an agency form.

5.5. Fingerprint cards may be obtained by sending a written request to the Agent Licensing Division, Offices of the West Virginia Insurance Commissioner.

5.6. All fingerprint impressions must be legible and suitable for use by the West Virginia State Police and Federal Bureau of Investigation.

5.8. An applicant's application is not complete until the Insurance Commissioner receives the criminal history information.

#### **§114-2A-6. Use of Fingerprints.**

6.1. The Insurance Commissioner shall submit all fingerprints received pursuant to this rule to the West Virginia State Police and the Federal Bureau of Investigation to obtain criminal history information on the applicant to determine his or her fitness for licensure, authorization, certification, permit, or registration, or control of an entity holding or seeking a license, authorization, certificate, permit, or registration.

**§114-2A-7. Nonresident Producers.**

7.1. As authorized under W. Va. Code §33-12-33, the Insurance Commissioner may waive the requirement in W. Va. Code §33-12-37 to promote reciprocal licensing between the states for nonresident individuals holding an individual insurance producer license in their state of residence or to the extent necessary to comply with federal law.

7.2. The requirements of W. Va. Code §33-12-37 and this rule do not alter the reporting requirements set forth in W. Va. Code §33-12-34.