

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

Form #3

FILED Do Not Mark In this Box

2007 JUL 27 PM 4: 04

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Insurance Commissioner TITLE NUMBER: 114

CITE AUTHORITY WV Code §33-2-10 and 33-12-37

AMENDMENT TO AN EXISTING RULE: YES _____ NO X

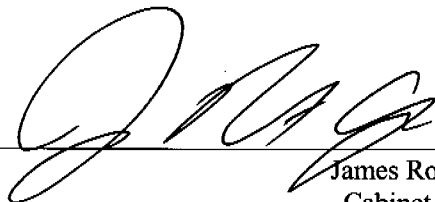
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

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

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



James Robert Alsop
Cabinet Secretary
West Virginia Department of Revenue

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 27, 2007

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: Fingerprinting Requirements for
Applicants for Insurance Producer
License - Title 114, Series 2A

1. Authorizing statute(s) citation:

WV Code §§33-2-10 and 33-12-37.

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

May 30, 2007 - Comment Period.

b. What other notice, including advertising, did you give of the hearing?

N/A

c. Date of Public Hearing(s) or Public Comment Period ended:

Comment period ended July 2, 2007.

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 27, 2007 (following Public Comment Period).

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all written correspondence regarding this rule: (Please type)

Timothy R. Murphy, Associate Counsel
West Virginia Insurance Commission
Legal Division
P.O. Box 50540
Charleston, WV 25305-0540
Phone: (304) 558-6279, Ext. 1210
Fax: (304) 558-1362
E-mail: timothy.murphy@wvinsurance.gov

- 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:

N/A

- 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.

N/A

- b. Date of hearing or comment period:

N/A

- c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

- d. Attach findings and determinations and reasons:

N/A

114 CSR 2A

Attachment of question 2(d)

Two groups submitted comments to the proposed rule. The American Council of Life Insurers questioned the absence of language mirroring the confidentiality provisions of the NAIC model act (#222). The statute authorizing this rule, W. Va. Code §33-12-37 et seq., contains the confidentiality language of the model, and the Insurance Commissioner (“Commissioner”) believes repeating this language in the rule is unnecessary (the title of section 6 in the table of contents will be corrected to remove the reference to “confidentiality.”)

Primerica Life Insurance Company submitted comments on the fingerprint collection process itself; each comment is individually set forth below, followed by the Commissioner’s response.

- Fingerprints should be collected, submitted, and maintained electronically.

The Offices of the Insurance Commissioner (“OIC”) cannot mandate electronic collection at this time because the State Police do not yet have the capability to collect electronic prints. The State Police, however, expect to have this capability in two years, and at that time OIC would consider an amendment mandating the use of electronic collection, etc.

- Electronic fingerprinting should be available at all license examination sites, at hours that coincide with the examination hours. Hours should accommodate applicants to the greatest extent possible, and should include evenings and weekends.

Hours of collection will be made available at times that are cost effective for the number of expected applicants. OIC intends to balance the costs of such extended hours with the convenience; these are matters better left to agreements with the providers.

- At the applicant’s option, registration and payment for the examination should include simultaneous and seamless registration and payment for fingerprinting.

The Commissioner believes that the process as proposed is the most practical and cost effective for the applicants.

- Applicants should be fingerprinted at the examination site immediately upon receiving their examination results.

Applicants will be fingerprinted at examination sites as scheduled. Applicants may also opt to be fingerprinted at local State Police Offices. There will be two examination sites which will offer fingerprint capture. To offer more examination-site fingerprinting would result in considerable cost to the applicants.

- Applicants whose prints are not legible or scannable should not be required to provide fingerprints more than 3 times. If re-fingerprinting is necessary, it should be available at the examination site on a walk-in basis, with no registration required and no additional cost to the applicant.

The rule provides for waiver of individuals whose prints are unobtainable. A business process must be maintained, so it would not be practical to have unannounced walk-ins for services.

- The state should provide a means for insurers to learn the status of fingerprint submissions. Insurers should have the ability to confirm that an applicant submitted fingerprints and the date of the submission.

An inquiry may be made; however, the status is controlled by third parties, the FBI and the State Police. The Insurance Commissioner will not be in a position to provide the status.

- As proposed in the regulation, delays in obtaining a background check after fingerprinting should not impede the granting of a license.

Section 4 of the proposed rule permits the issuance of a provisional license pending completion of background checks, as required by W. Va. Code §33-12-37(i).

- As proposed in the regulation, state requirements should be reciprocal for nonresidents.

Section 7 of the proposed rule permits the Commissioner to waive the fingerprinting requirements for nonresidents.

- Cost to applicants should be in the range of \$35 to \$50.

Some of the fees are set by third parties over which the Insurance Commissioner does not control the costs. With respect to vendors that OIC may contract with to collect prints, the Insurance Commissioner will endeavor to keep the costs as reasonably cost effective as possible.



Leah J. Walters
Counsel, State Relations

June 29, 2007

Mr. Timothy R. Murphy
Associate Counsel
Offices of the Insurance Commissioner
1124 Smith Street
Charleston, WV 25305

RE: Proposed Series 2A, Fingerprinting Requirement for Applicants for Insurance Producer License

Dear Mr. Murphy:

This letter is submitted on behalf of the American Council of Life Insurers (ACLI), a national trade association of legal reserve life insurance companies whose 373 member companies account for 93 percent of total assets, 91 percent of the life insurance premiums, and 95 percent of annuity considerations in the United States. Two hundred and ninety six ACLI member companies are licensed to do business in West Virginia and account for 93 percent of life insurance premiums and 97 percent of annuity considerations. ACLI appreciates the opportunity to comment on the above-captioned proposed Rule regarding Fingerprinting Requirement for Applicants for Insurance Producer License.

ACLI would like to provide a few comments on Proposed Series 2A. In the table of contents for this Rule it provides that Section 114-2A-6 is Use and Confidentiality of Fingerprints. However, when you go to Section 114-2A-6 in the Rule, there is no confidentiality section. ACLI would respectfully suggest that the Insurance Department insert a confidentiality provision as the maintenance of a producer's fingerprints is very important to producers. ACLI would also respectfully suggest that you use the confidentiality language in Section 4 of the NAIC Authorization For Criminal History Record Check Model Act.

Again, thank you for the opportunity to comment on this proposed rule.

Sincerely,

Leah J. Walters
Legislative Director - Mid-Atlantic States



3120 Breckinridge Boulevard
Duluth, Georgia 30099-0001
(770) 381-1000

June 26, 2007

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

RE: West Virginia Proposed Regulation Title 114, Series 2A

Dear Mr. Murphy:

Thank you for this opportunity to comment on the above proposal. We appreciate and support any initiative by the Department that will streamline and accelerate the insurance licensing process.

We especially support the provisions that electronic fingerprinting services will be available through the Department's approved testing vendor, and that a provisional license will be available pending the completion of the background check process.

In general, we would urge the Department to make fingerprinting available in the fastest and most convenient possible manner for all applicants. Some specific suggestions include the following:

- Fingerprints should be collected, submitted, and maintained electronically.
- Electronic fingerprinting should be available at all license examination sites, at hours that coincide with the examination hours. Hours should accommodate applicants to the greatest extent possible, and should include evenings and weekends.
- At the applicant's option, registration and payment for the examination should include simultaneous and seamless registration and payment for fingerprinting.
- Applicants should be fingerprinted at the examination site immediately upon receiving their examination results.
- Applicants whose prints are not legible or scannable should not be required to provide fingerprints more than 3 times. If re-fingerprinting is necessary, it should be available at the examination site on a walk-in basis, with no registration required and no additional cost to the applicant.
- The state should provide a means for insurers to learn the status of fingerprint submissions. Insurers should have the ability to confirm that an applicant submitted fingerprints and the date of the submission.
- As proposed in the regulation, delays in obtaining a background check after fingerprinting should not impede the granting of a license.

Primerica Life Insurance Company
Boston, Massachusetts


Underwriter for Primerica Financial Services

- As proposed in the regulation, state requirements should be reciprocal for nonresidents.
- Cost to applicants should be in the range of \$35 to \$50.

We would also like to encourage the Department to consider other means of improving an applicant's ability to quickly and efficiently obtain an insurance license.

Again, we support the proposal and appreciate the opportunity to provide comments.

Sincerely,

A handwritten signature in cursive script that reads "Mark Beauchamp". The signature is written in black ink and is positioned to the right of the word "Sincerely,".

Mark Beauchamp
Vice President, Licensing

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.

FISCAL NOTE FOR PROPOSED RULES

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

Type of Rule: X 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

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

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: July 27, 2007

Signature of Agency Head or Authorized Representative



Jane L. Cline, Insurance Commissioner

TITLE 114

FILED

**LEGISLATIVE RULE
OFFICES OF THE INSURANCE COMMISSIONER**

2007 JUL 27 PM 4: 04

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

COMMONWEALTH OF VIRGINIA
SECRETARY OF STATE

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 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**

§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 §§33-2-10 and 33-12-37.

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.