



STATE OF WEST VIRGINIA
Offices of the Insurance Commissioner

Legal Division

GASTON CAPERTON
Governor

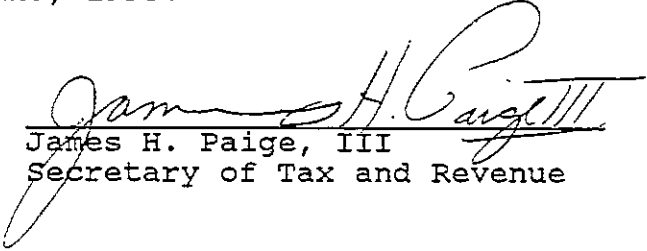
HANLEY C. CLARK
Insurance Commissioner

CONSENT TO FILING OF RULE

To Whom It May Concern:

Pursuant to West Virginia Code § 5F-2-2(a)(12), the undersigned hereby grants consent to the filing of the following rule proposed by the Insurance Commissioner of the State of West Virginia: Title 114, Series 20, "Regulation Relating to Excess Lines Brokers."

Signed this 26th day of June, 1995.


James H. Paige, III
Secretary of Tax and Revenue

Insurance Commissioner
Legislative Rule
Title 114, Series 20

REGULATION RELATING TO EXCESS LINE BROKERS

Title 114, Series 20

STATEMENT OF CIRCUMSTANCES

West Virginia Code § 33-12-11, as amended by House Bill 2266, was passed by the Legislature on March 2, 1995 and became effective on May 31, 1995. The Bill requires the commissioner to promulgate rules specifying the required reporting forms prior to August 1, 1995.

The purpose of this rule is to reduce the filing requirements of excess line brokers. Such a reduction in filing requirements will extend the current level of protection to policyholders while reducing the costs of the Office of the Insurance Commissioner and excess lines brokers.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 114, Series 20
Regulation Relating to Excess Lines Brokers

Type of Rule: Legislative Interpretive Procedural

Agency: INSURANCE COMMISSIONER

Address: Post Office Box 50540
2019 Washington Street, East
Charleston, West Virginia 25305-0540

1. Effect of Proposed Rule

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

2. Explanation of above estimates:

There will be no additional fiscal impact upon state, local or federal government.

3. Objectives of these rules:

The objective of this rule is to reduce the filing requirements of excess line brokers. Such a reduction will extend the current level of protection to policyholders while reducing the costs of the Office of the Insurance Commissioner and excess line brokers.

Rule Title: Regulation Relating to Excess Line Brokers

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.

None.

C. Economic Impact on Citizens/Public at Large.

This rule shall have no direct economic impact upon citizens or the public at large. This rule will protect the public in that it will extend a justifiable level of protection to policyholders.

Date:

6/26/95

Signature of Agency Head or Authorized Representative

B. Keith Hoffman, General Counsel

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: OFFICE OF THE INSURANCE COMMISSIONER

DATE: July 28, 1995

LEGISLATIVE RULE TITLE: Regulation Relating to Excess Line
Brokers
(Title 114, Series 20)

1. Authorizing statute(s) citation W. Va. Code §§ 33-2-10

2. a. Date filed in State Register with Notice of Hearing:

June 27, 1995

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

None

c. Date of hearing(s): Comment period ended on July

27, 1995

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received XX

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 28, 1995

f. Name and phone number of agency person to contact for additional information:

Donna S. Quesenberry

Associate Counsel

(304) 558-0401

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: 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:

Attached Not applicable

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REGULATION RELATING TO EXCESS LINE BROKERS

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BRIEF SUMMARY OF RULE

This proposed rule amending an existing rule, reduces the filing requirements of excess line brokers. The current requirements do not afford a justifiable level of protection for policyholders compared to the costs levied on the Office of the Insurance Commissioner and licensed excess line brokers. This amended rule will extend the current level of protection to policyholders while reducing the costs of the Office of the Insurance Commissioner and excess line brokers.

114CSR20

WEST VIRGINIA LEGISLATIVE RULE
INSURANCE COMMISSIONER

SERIES 20
REGULATION RELATING TO EXCESS LINE BROKERS

Section

- 114-20-1. General.
- 114-20-2. Definitions.
- 114-20-3. Licensing of an excess line broker;
revocation, suspension or refusal to renew
license and penalty in lieu thereof.
- 114-20-4. Placement of excess line coverage.
- 114-20-5. Excess Line premium tax annual return and
report by broker.
- 114-20-6. Separability.

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WEST VIRGINIA LEGISLATIVE RULE
INSURANCE COMMISSIONER

SERIES 20
REGULATION RELATING TO EXCESS LINE BROKERS

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§ 114-20-1. General.

1.1. Scope. -- This legislative rule establishes certain requirements for the licensing and regulation of excess line brokers pursuant to article twelve, chapter thirty-three of the Code of West Virginia of 1931, as amended.

1.2. Authority. -- W. Va. Code §33-2-10

1.3. Filing Date. --

1.4. Effective Date. --

§ 114-20-2. Definitions.

2.1. "Commissioner" means the Insurance Commissioner of West Virginia.

2.2. "Evidence of Insurance" means written or printed statements evidencing the applicability and effectiveness of insurance coverages, including, but not limited to, policy forms, certificates, cover notes, binders and other traditionally acceptable evidences of insurance.

2.3. "Excess Line Insurer" means an insurer not licensed by the Commissioner to do insurance business, and considered to be a nonadmitted insurer, in the State of West Virginia.

2.4. "Excess Line Broker" means an individual licensed pursuant to the provisions of this regulation rule and West Virginia Code, section thirteen, article twelve, chapter thirty-three, for the purposes of placing insurance of risks resident, located or to be performed in this State, with an excess line insurer.

2.5. "Excess Line Market" means the entire scope of insurance business on risks resident, located or to be performed in this State, to be placed with an excess line insurer.

2.6. "Insolvent Insurer" means any insurer which is determined to be insolvent in accordance with the provisions of chapter thirty-three of the Code of West Virginia of 1931, as amended, or any insurer which is determined to be insolvent by the commissioner of any other state.

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2.7. "Licensed Insurer" means an insurer licensed by the Commissioner to do insurance business in the State of West Virginia.

§ 114-20-3. Licensing of an excess line broker; revocation, suspension or refusal to renew license and penalty in lieu thereof.

3.1. Licensing requirements. -- Any applicant for an excess line broker's license issued or renewed under the provisions of ~~West Virginia Code, section thirteen, article twelve, chapter thirty three~~ W. Va. Code § 33-12-13:

~~(a)~~a. Shall be a duly licensed West Virginia resident agent holding a current and valid license for the type(s) of insurance which the applicant expects and intends to export to the excess line market;

~~(b)~~b. Shall have held for at least three (3) consecutive years immediately preceding the date of application a valid agent's license for the type(s) of insurance the applicant expects and intends to export to the excess line market, and shall have held a valid West Virginia resident agent's license for such type(s) of insurance for at least one (1) of those three (3) years. The Commissioner, in his discretion, may waive this requirement if the applicant otherwise demonstrates the necessary trustworthiness and competence by education, experience or other relevant factors;

~~(c)~~c. Shall satisfactorily complete an examination administered by the office of the Commissioner or its designated agent. The Commissioner shall not require an examination for any person who holds a current and valid excess line broker's license in West Virginia on the effective date of this ~~regulation~~ rule;

~~(d)~~d. Shall pay the required license fee as established by the provisions of ~~West Virginia Code, section thirteen, article twelve, chapter thirty three~~ W. Va. Code § 33-12-13;

~~(e)~~e. Shall file with the Commissioner and thereafter maintain in force for so long as the license or any renewal thereof remains in effect, a bond in favor of the State of West Virginia in the penal sum as established by the provisions of ~~West Virginia Code, section thirteen, article twelve, chapter thirty three~~ W. Va. Code § 33-12-13, with an authorized corporate surety approved by the Commissioner, conditioned that he shall conduct business under his license in accordance with this

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~~regulation rule~~ and the West Virginia Code. No bond shall be terminated unless at least thirty (30) days' prior written notice thereof is filed with the Commissioner;

~~(f)f.~~ Shall be deemed trustworthy for the purpose of conducting insurance business as an excess line broker, as required by the provisions of ~~West Virginia Code, section thirteen, article twelve, chapter thirty three W. Va. Code § 33-12-13;~~ and

~~(g)g.~~ Shall satisfy any other criteria reasonably established by the Commissioner.

3.2. Revocation, suspension or refusal to renew license. -- Whenever, after notice and hearing, the Commissioner is satisfied that any excess line broker has violated any provisions of any administrative ~~regulation rule~~ of the Commissioner or any provisions of chapter thirty-three of the Code of West Virginia of 1931, as amended, or is incompetent or untrustworthy, he shall revoke, suspend or refuse to renew the license of such excess line broker as required by the provisions of ~~West Virginia Code, section twenty five, article twelve, chapter thirty three W. Va. Code § 33-12-25.~~ In lieu of revoking, suspending or refusing to renew such license, the Commissioner, in his discretion, may order such licensee to pay to the State of West Virginia a penalty in a sum not to exceed one hundred dollars (\$100) for each violation, and upon failure to such licensee to pay such penalty by delivery of such sum to the Commissioner within thirty (30) days of notice thereof, the Commissioner shall revoke, suspend or refuse to renew such license.

§ 114-20-4. Placement of excess line coverages.

4.1. Due diligence. -- In accordance with the provisions of ~~West Virginia Code subsection (b), section ten, article twelve, chapter thirty three W. Va. Code § 33-12-10(b),~~ the insurance coverage written by an excess line insurer and placed by an excess line broker shall not be procurable from licensed insurers authorized to transact that kind of insurance in this State. The broker shall submit to the Commissioner a sworn notarized statement affidavit, as provided in Section 4.4 of this ~~regulation rule~~, that a diligent search has been made to place the risk with licensed insurers authorized to write and actually writing the particular type of risk sought to be placed in the excess line market. This statement affidavit also shall include a sworn statement that the reasons why the broker has been unable to place the risk with licensed insurers will be maintained as

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required by W. Va. Code § 33-12-15 as a part of the full and true record of each excess line contract procured.

4.2. Notification. -- Each excess line insurance policy or evidence of insurance shall have printed or stamped in contrasting color on the front page the following statement:

THIS COMPANY IS NOT LICENSED TO DO BUSINESS IN WEST VIRGINIA, AND IS NOT SUBJECT TO THE WEST VIRGINIA INSURANCE GUARANTY ACT.

4.3. Countersignature. -- In accordance with the provisions of ~~West Virginia Code, section seven, article twelve, chapter thirty three~~ W. Va. Code § 33-12-7, no contract of insurance covering a subject of insurance, resident, located or to be performed in this State, shall be executed, issued or delivered by an excess line broker unless the contract is signed or countersigned in writing by a duly licensed excess line broker. This section does not apply to: Reinsurance; credit insurance; any contract of insurance covering the rolling stock of any railroad or covering any vessel, aircraft or motor carrier used in interstate or foreign commerce, or covering any liability or other risks incident to the ownership, maintenance or operation thereof; any contract of insurance covering any property in interstate or foreign commerce, or any liability or risks incident thereto.

4.4. Excess line broker's affidavit and report. -- Each excess line broker shall execute and file with the Commissioner, in accordance with the provisions of ~~West Virginia Code, section eleven, article twelve, chapter thirty three~~ W. Va. Code § 33-12-11, the information requested on the ~~Form LEB-3~~ Annual Affidavit of Excess Line Broker and the Annual Report of Written Excess Line Policies, as revised, attached to and made a part of this ~~regulation rule~~. This affidavit and report shall be filed under oath, and shall be received by the Commissioner ~~within forty five (45) days after the effective date of coverage, or within fifteen (15) days after delivery of the policy or other acceptable evidence of insurance, whichever is sooner~~ on or before the first day of March in conjunction with the Annual Excess Line Tax Return Reconciliation, Form LEB-4A, as revised, and as provided in Section 5.1 of this rule. The Annual Affidavit of Excess Line Broker shall include a sworn statement that the Annual Report of Excess Line Policies is inclusive of every excess line policy procured by the Excess Line Broker during the preceding calendar year. The Commissioner may require that the Annual Report of Written Excess Line Policies be submitted in a

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computer-readable form compatible with the electronic data processing system of this agency.

4.5. Records of excess line broker. -- In accordance with the provisions of ~~West Virginia Code, section fifteen, article twelve, chapter thirty three~~ W. Va. Code § 33-12-15, each excess line broker shall keep in his office a full and true record of each excess line contract procured by him, and such records may be examined at any time thereafter by the Commissioner. The records shall include the following items as they are applicable:

- ~~(a)~~a. Name and address of the excess line insurer;
- ~~(b)~~b. Names and addresses of the insureds;
- ~~(c)~~c. Amount of insurance;
- ~~(d)~~d. Gross premium charged;
- ~~(e)~~e. Return premium paid, if any;
- ~~(f)~~f. Rate of premium charged on the several items of coverages;
- ~~(g)~~g. Effective date of the contract and the terms thereof; and
- ~~(h)~~h. Brief general description of the risks insured against and the property insured.

4.6. Responsibilities of the excess line broker. -- Each licensed excess line broker who participates directly or indirectly in effecting any insurance contract on an excess line basis:

~~(a)~~a. In no instance shall knowingly place any coverage in an insolvent insurer, in accordance with the provisions of ~~West Virginia Code, section twenty two, article twelve, chapter thirty three~~ W. Va. Code § 33-12-22;

~~(b)~~b. May accept and place authorized excess line business from any insurance agent or broker licensed in this State for the kind of insurance involved, and may compensate such agent or broker thereof. The excess line broker shall have the right to receive from the excess line insurer the customary commission, in accordance with the provisions of ~~West Virginia Code, section fourteen, article twelve, chapter thirty three~~ W. Va. Code § 33-12-14; and

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~~(e)c.~~ In those instances in which excess line business is produced to an excess line broker by an agent or broker licensed in this State for the kind of insurance involved, it ~~remains~~ is the excess line broker's responsibility to ~~make~~ include the necessary ~~filing of the Form Leb 3, as revised~~ information in the Annual Report of Written Excess Line Policies required by Section 4.4 of this rule and the Annual Excess Line Tax Return Reconciliation Form LEB-4A, as revised, as required by Section 5.1 of this rule.

4.7. Excess line insurance valid. -- In accordance with the provisions of ~~West Virginia Code, section twelve, article twelve, chapter thirty three W. Va. Code § 33-12-12,~~ any insurance contract procured as excess line coverage from an excess line insurer shall be fully valid and enforceable as to all parties, and shall be given recognition in all matters and respects to the same effect as like contracts issued by licensed insurers.

§ 114-20-5. **Excess line premium tax annual return and report by broker.**

5.1. Reporting of premiums placed and taxed. -- Each excess line broker licensed in accordance with the provisions of this ~~regulation rule and West Virginia Code, section thirteen, article twelve, chapter thirty three W. Va. Code § 33-12-13,~~ shall make under oath to the Commissioner, a quarterly return on or before the twenty-fifth day of the month succeeding the close of the quarter and an annually reconciliation return, under oath, on or before the first day of March, to the Commissioner, of the gross amount of premium charged the insured by excess line insurers for insurance procured by such licensee, including any so-called dividends on participating insurance policies applied in reduction of premiums, less premiums returnable for cancellation. Such returns shall be reported by the completion of the Quarterly Excess Line Tax Return, Form LEB-4 and Annual Excess Line Tax Return Reconciliation Broker's Annual Statement Form Leb-4A, as revised, prepared and supplied by the Commissioner.

5.2. Payment of excess line premium taxes. -- The ~~annual~~ tax required to be paid under the provisions of this ~~regulation rule~~ shall be a sum equal to that in accordance with the provisions of ~~West Virginia Code, section sixteen, article twelve, chapter thirty three and section sixteen a, article twelve, chapter thirty three W. Va. Code §§ 33-12-16 and 33-12-16(a),~~ and shall be paid to the Commissioner on a calendar year basis and in quarterly estimated installments due and payable on or before the twenty-fifth day of the month succeeding the close of the quarter in which they accrued, except for the fourth

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quarter, in respect of which taxes shall be due and payable and final computation of the actual total liability for the prior calendar year shall be made, less credit for the three quarterly estimated payments on or before the first day of March. All such taxes paid to the Commissioner shall be paid by him into a special account in the state treasury, for the benefit of the state fund designated the "municipal pensions and protection fund," and after appropriation by the Legislature, shall be distributed in accordance with the provisions of W. Va. Code § 33-3-14d(c) unless otherwise required by the Code of West Virginia of 1931, as amended.

§ 114-20-6. Separability.

6.1. Partial invalidity. -- If any provision of this ~~regulation~~ rule is held invalid, the remainder of this ~~regulation~~ rule shall not be affected thereby.



STATE OF WEST VIRGINIA
 Offices of the Insurance Commissioner

Legal Division

GASTON CAPERTON
 Governor

HANLEY C. CLARK
 Insurance Commissioner

July 28, 1995

HAND DELIVERED

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

RECEIVED
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 OFFICE OF WEST VIRGINIA
 SECRETARY OF STATE

Dear Ms. Cooper:

Enclosed please find for filing one (1) copy of the following:

- (1) Notice of Agency Approval of a Proposed Rule and Filing with the Legislative Rule-Making Review Committee;
- (2) Fiscal Note;
- (3) Consent to Proposed Rule;
- (4) Brief Summary of the Rule;
- (5) Statement of Circumstances;
- (6) Legislative Rule-Making Review Committee Questionnaire; and
- (7) The agency-approved rule entitled "Regulation Relating to Excess Line Brokers" (Series 20).

Please contact me if further information is required.

Very truly yours,

B. Keith Huffman
 General Counsel

BKH/sar
 Enclosures