

114CSR20

WEST VIRGINIA LEGISLATIVE RULE
INSURANCE COMMISSIONER

SERIES 20
~~REGULATION RELATING TO EXCESS LINE BROKERS~~

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§ 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 W.Va. Code § 33-12-1 et seq. 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 W. Va. Code, ~~section thirteen, article twelve, chapter thirty three, § 33-12-13~~ for the purposes of placing insurance of risks resident, located or to be performed in this State, with an excess line insurer.

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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 Code of 1931,~~ ~~as amended,~~ or any insurer which is determined to be insolvent by the commissioner of any other state.

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 or her discretion, may waive this requirement if the applicant otherwise demonstrates the necessary trustworthiness and competence by education, experience or other relevant factors;

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~~(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;~~

~~(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 or she shall conduct business under his or her license in accordance with this ~~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~~ considered 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~~ W. Va. Code § 33-12-25, or is incompetent or untrustworthy, he or she shall revoke, suspend or refuse to renew the license of ~~such~~ the excess line broker as required by the

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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 the~~ license, the Commissioner, in his or her discretion, may order ~~such the~~ licensee to pay to the State of West Virginia a penalty in a sum not to exceed ~~one hundred dollars (\$100)~~ one thousand dollars (\$1,000) for each violation, and upon failure ~~to of such the~~ licensee to pay ~~such the~~ penalty by delivery of ~~such the~~ sum to the Commissioner within thirty (30) days of notice ~~thereof the~~ penalty, the Commissioner shall revoke, suspend or refuse to renew ~~such the~~ 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 which shall include a sworn statement as to the reasons why the broker has been unable to place the risk with licensed insurers will be maintained as 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.

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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. 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 required under 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 computer-readable form compatible with the electronic data processing system of the Office of the Insurance Commissioner.

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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 or her office a full and true record of each excess line contract procured by him or her, and ~~such the~~ records may be examined at any time thereafter by the Commissioner. The records shall include the following items as they are applicable:

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

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~~(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 the~~ agent or broker ~~thereof the insurance~~. The excess line broker ~~shall have~~ has 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

~~(c)~~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 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

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insurance procured by ~~such~~ the 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~~ The Excess Lines Broker shall complete ~~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(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 quarter. For the fourth quarter, the 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 the taxes paid to the Commissioner shall be paid by him or her 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

GASTON CAPERTON
Governor

HANLEY C. CLARK
Insurance Commissioner

November 27, 1995

HAND DELIVERED

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

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) The proposed rule entitled "Excess Line Brokers" (Series 20).

Please contact me if further information is required.

Very truly yours,

Donna Quesenberry
Associate Counsel

DQ/sar
Enclosures

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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West Virginia Legislature
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Room MB47-State Capitol
Charleston, West Virginia 25305
(304) 347-4840

Senator Mike Ross, Co-Chair
Delegate Vickie Douglas, Co-Chair

Debra A. Graham, Counsel
Joe Altizer, Associate Counsel
Marie Nickerson, Admr. Assistant

November 15, 1995

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Mr. B. Keith Huffman
General Counsel
Office of Insurance Commissioner
2019 Washington St., East
Charleston, WV 25305

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: Regulation Relating to Excess Line Brokers

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

- 1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed
 - (b) as modified by the agency X
- 2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
- 3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
- 4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.
- 5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached.

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.

cc: Donna S. Quesenberry
Associate Counsel

114-20