

STATE OF WEST VIRGINIA



FRED E. WRIGHT  
INSURANCE COMMISSIONER

OFFICES OF THE  
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ARCH A. MOORE, JR.  
GOVERNOR

FILED  
OCT 16 PM 2:53  
CLERK OF COURTS  
DEPT. OF STATE

NOTICE OF EMERGENCY RULE

RULE TITLE: West Virginia Essential Property Insurance Association

The attached rule is filed as an Emergency Rule. The facts and circumstances constituting the emergency are as follows:

Promulgation of this rule on an emergency basis is necessary for the immediate preservation of the public welfare and to prevent substantial harm to the public interest pursuant to West Virginia Code §29A-3-15(g). Additionally, promulgation of the rule on an emergency basis is necessary to comply with the time requirements of West Virginia Code §33-20A-3.

The West Virginia Essential Insurance Coverage Act was enacted during the 1986 session of the Legislature as Senate Bill No. 565 and has been codified at Chapter 33, Article 20A. The purpose of this legislation is to establish a mechanism under which individuals and businesses can secure property insurance coverage when such coverage is not available in the voluntary insurance market. This legislation was introduced by the Insurance Department after receiving numerous complaints from West Virginia citizens and insurance agents that severe problems exist in regard to the availability of fire and extended coverage insurance for certain homes and commercial properties. The Department also held two (2) fact-finding public hearings on this issue. Information obtained by the Department revealed that the availability problem was most serious in southern West Virginia and that fire and extended coverage insurance was virtually unobtainable in certain southern counties.

"We are an Equal Opportunity Employer"

Since the Bill was enacted, the Department has been working to establish the mechanism under which the risk sharing plan will operate. The plan is set to become operative on November 1, 1986, and accordingly, the regulation must now be promulgated. The requirement that such regulation be promulgated prior to operation of the plan is found at West Virginia Code §33-20A-3(b). Because of the urgency of implementing the plan in order that individuals and businesses may secure fire and extended coverage insurance, the Department is promulgating this regulation on an emergency basis.

The Department will be glad to provide any additional information in support of this emergency filing.

A handwritten signature in cursive script, reading "Fred E. Wright". The signature is written in dark ink and is positioned above a horizontal line.

Fred E. Wright  
Insurance Commissioner of  
the State of West Virginia

FILED

OCT 18 PM 2:53

DEPT. OF STATE  
SECRETARY OF STATE

EMERGENCY

WEST VIRGINIA LEGISLATIVE RULE  
INSURANCE COMMISSIONER

CHAPTER 33-20A  
SERIES XXI

WEST VIRGINIA ESSENTIAL PROPERTY  
INSURANCE ASSOCIATION

- Section 1. General
- Section 2. Definitions
- Section 3. Type of Organization
- Section 4. Administration
- Section 5. Management
- Section 6. Commencement and Termination of Operation
- Section 7. Rates
- Section 8. Policy Forms
- Section 9. Coverage Limits and Types
- Section 10. Underwriting
- Section 11. Application for Insurance
- Section 12. Agent Commissions
- Section 13. Inspection of Property
- Section 14. Appeal Procedures
- Section 15. Premium Taxes
- Section 16. Annual Report
- Section 17. Severability

EMERGENCY

WEST VIRGINIA LEGISLATIVE RULE  
INSURANCE COMMISSIONER

CHAPTER 33-20A  
SERIES XXI

West Virginia Essential Property  
Insurance Association

Section 1. General

1.1 Scope - This legislative rule sets forth the plan of operation of the West Virginia Essential Property Insurance Association.

1.2 Authority - West Virginia Code §§ 33-20A-3(b), 33-2-10.

1.3 Filing Date -

1.4 Effective Date -

Section 2. Definitions - As used in this legislative rule:

2.1 Agent - Shall mean an individual licensed by the Commissioner to sell property and casualty insurance in West Virginia.

2.2 Association - Shall mean the West Virginia Essential Property Insurance Association.

2.3 Board - Shall mean the Board of Directors of the Association.

2.4 Commissioner - Shall mean the Insurance Commissioner of the State of West Virginia.

2.5 Eligible Applicant - Shall mean any person having an insurable interest in habitational or commercial property eligible for coverage under the provisions of this legislative rule and the Association's Plan of Organization.

2.6 Essential Property Insurance Coverage - Shall mean indemnification against loss caused by the perils of fire, lightning, riot, explosion, vehicle, smoke, hail, aircraft and wind.

2.7 Insurer - Shall mean any insurance company authorized to write and engage in writing essential property insurance coverage in West Virginia.

Ins. Commissioner  
Leg. Rule 33-20A  
Series XXI, Sec. 3  
EMERGENCY

Section 3. Type of Organization

3.1 Nonprofit Unincorporated Organization - The Association shall be a nonprofit unincorporated organization.

Section 4. Administration

4.1 Board of Directors - The Association shall be administered by a Board of Directors under the general supervision of the Commissioner.

(A) The Board shall be appointed by the Commissioner with due consideration given to the composition of the membership of the Association and to the interests of the insureds who are provided essential property insurance coverage by the Association.

(B) The Board shall consist of not less than five nor more than nine members serving terms of one year or until their successors are appointed.

Section 5. Management

5.1 Servicing Facilities - The Board may contract with one or more servicing facility(ies) and/or hire its own employee(s) as are necessary to issue and service policies on risks insured by the Association.

5.2 Approval by Commissioner - Designation of a servicing facility by the Board is subject to approval by the Commissioner.

Section 6. Commencement and Termination of Operation

6.1 Commencement of Operation - The Association shall begin issuing policies of insurance for risks found insurable by the Association effective November 1, 1986.

6.2 Termination of Operation - The Association shall be dissolved at the earliest date when essential property insurance coverage becomes readily available in the voluntary market.

(A) Dissolution of the Association is subject to approval of the Commissioner.

(B) Dissolution of the Association shall be accomplished under the supervision of the Commissioner in an equitable and reasonable manner.

Ins. Commissioner  
Leg. Rule 33-20A  
Series XXI, Sec. 7  
EMERGENCY

Section 7. Rates

7.1 Establishment of Rates - The Association shall establish appropriate rates, rate classifications and rating adjustments in accordance with the provisions of West Virginia Code §33-20A-5(b)(6).

7.2 Approval of Rates - The Association's rates, rate classifications and rating adjustments are subject to approval by the Commissioner.

Section 8. Policy Forms

8.1 Standard Fire Policy - All policies issued by the Association shall conform with the provisions of West Virginia Code §33-17-2.

8.2 Total or Partial Fire Loss - All policies issued by the Association shall conform with the provisions of West Virginia Code §33-17-9.

8.3 Policy Term - All policies issued by the Association shall be for a term of one (1) year.

8.4 Policy Form Approval - Policies and endorsements may be issued only on forms approved by the Commissioner.

Section 9. Coverage Limits and Types

9.1 Coverage Limits - Coverage for risks found insurable by the Association shall be provided in an amount up to the reasonable insurable value of the property, but in no event shall coverage provided by the Association exceed the amount of one hundred thousand dollars (\$100,000.00) for any one habitational risk or three hundred thousand dollars (\$300,000.00) for any one commercial risk.

9.2 Coverage Types - Coverage issued by the Association shall be limited to indemnification against loss caused by the perils of fire, lightning, riot, explosion, vehicle, smoke, hail, aircraft and wind.

Section 10. Underwriting

10.1 Underwriting Standards - The Board shall adopt reasonable and equitable underwriting standards.

Ins. Commissioner  
Leg. Rule 33-20A  
Series XXI, Sec. 10  
EMERGENCY

10.2 Approval by Commissioner - Underwriting standards adopted by the Board are subject to approval by the Commissioner.

Section 11. Application for Insurance and Policy Issuance

11.1 Method of Application - An eligible applicant shall authorize an agent to make written application to the Association for essential property insurance coverage. The application shall be accompanied by proof, in such form as may be prescribed or approved by the Commissioner, of the applicant's effort and inability to obtain essential property insurance in the voluntary market.

11.2 Policy Issuance - Upon approval by the Association of an application for coverage and upon receipt by the Association of the full amount of the premium due, the Association shall issue a policy and a binding receipt. The Association may decline to issue a policy and binding receipt when the applicant owes premium monies to the Association for previous insurance coverage.

Section 12. Agent Commissions

12.1 New and Renewal Business - Agent commission shall be ten percent (10%) of the premium on new business and at such level as the Board shall determine on renewal business, not to exceed ten percent (10%) of the renewal commission.

12.2 Cancellation of Business - Upon cancellation of a policy, the agent shall refund commissions on the return premium to the Association at the same rate at which such commissions were originally paid.

Section 13. Inspection of Property

13.1 Inspection of Property - Upon submission to the Association of a completed application for insurance, the property requested to be insured may be physically inspected.

13.2 Cost of Inspection - Any physical inspection shall be made without cost to the eligible applicant.

13.3 Inspection Report - A written inspection report shall be made for each property inspected and a copy provided to the eligible applicant.

Ins. Commissioner  
Leg. Rule 33-20A  
Series XXI, Sec. 14  
EMERGENCY

Section 14. Appeal Procedures

14.1 Initial Appeal to Board - Any applicant for insurance, person insured by the Association or member insurer aggrieved by any ruling action or decision of the Association or the designated servicing facility may appeal to the Board within fifteen (15) days of such ruling, action or decision. The appeal shall be in writing. The Board or an Appeals Committee designated by the Board shall hear and determine the appeal within fifteen (15) days after the appeal is filed.

14.2 Appeal to Commissioner - The determination of the Board may be appealed in writing to the Commissioner within ten (10) days of such determination. The Commissioner shall render a decision concerning the appeal within thirty (30) days.

Section 15. Premium Taxes

15.1 Premium Tax Liability - The Association shall be liable for premium taxes to the same extent and in the same manner as a licensed insurer engaged in writing fire and extended coverage insurance in West Virginia.

Section 16. Annual Report

16.1 Annual Report - The Board shall, on or before March 1 of each year, submit to the Commissioner a report of the operation of the Association for the previous calendar year.

Section 17. Severability

17.1 Severability - If any provision of this legislative rule is held invalid, the remainder of the rule shall not be affected thereby.



KEN HECHLER  
Secretary of State

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Deputy Secretary of State

BARBARA STARCHER  
Deputy Secretary of State

RICHARD S. STEPHENSON  
Deputy Secretary of State

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VIRGINIA SKEEN  
Special Assistant

(Plus all the volunteer  
help we can get)

STATE OF WEST VIRGINIA  
SECRETARY OF STATE  
Charleston 25305

November 28, 1986

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Insurance Commission

RULE: New Rule, Series 21, WV Essential Property Insurance Association

DATE FILED AS AN EMERGENCY RULE: October 16, 1986

DECISION NO. 22-86

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.

KEN HECHLER  
Secretary of State

FILED IN THE OFFICE OF  
THE SECRETARY OF STATE  
THIS DATE Nov 28, 1986  
ADMINISTRATIVE LAW DIVISION



KEN HECHLER  
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Special Assistant

(Plus all the volunteer  
help we can get)

STATE OF WEST VIRGINIA  
SECRETARY OF STATE

Charleston 25305

DECISION

Emergency Rule Decision  
(ERD 22-86)

AGENCY: Insurance Commission  
RULE: New Rule, Series 21, WV Essential Property Insurance Association

DATE FILED AS AN EMERGENCY RULE: October 16, 1986

- par. 1 The Insurance Commission has filed as emergency rule a new rule, Series 21.
- par. 2 The rule sets forth the plan of operations of the WV Essential Property Insurance Association required by SB 565 passed 1986 and codified as §33-20A of the WV Code.
- par. 3 West Virginia Code 29A-3-15A requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 4 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [29A-3-15a(a)].
- par. 5 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 6 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the ERD is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

par. 7 The Insurance Commission has filed this emergency rule with supporting documents with the Secretary of State on October 16, 1986.

par. 8 It is the determination of the Secretary of State that the Insurance Commission has complied with the procedural requirements of WV Code §29A-3-15.

par. 9 (B) Statutory Authority -- WV Code §33-20A-2 reads:

*§33-20A-2 Intent and purpose.*

*To provide for a mechanism whereby the commissioner may establish insurance plans to make available insurance coverage to persons who do not have coverages available to them in the voluntary insurance market.*

par. 10 WV Code 33-20A-3 reads:

*§33-20A-3. West Virginia essential insurance association.*

*(a) The commissioner shall establish a nonprofit unincorporated legal entity to be known as the West Virginia essential insurance association to make fire and extended coverage insurance available to any person having an insurable interest in habitational or commercial property situated in this state who is equitably entitled to but unable to secure such insurance in the voluntary insurance market. Participation shall be required of all insurers doing any insurance business in this state of the kinds covered by the association as a condition of their authority to transact insurance in this state.*

*(b) The association shall perform its functions under a plan of operation established by regulation promulgated by the commissioner pursuant to chapter twenty-nine-a, article three (§29A-3-1 et seq) of this code.*

*(c) If the commissioner finds after a public hearing that in any part of this state any other kind of essential insurance coverage is not readily available in the voluntary insurance market and that the public interest requires such availability, he may by regulation promulgate plans to provide such coverage through the association for any risks in this state which are equitably entitled to but unable to secure such insurance in the voluntary insurance market. Participation shall be required of all insurers doing any insurance business in this state of the kinds covered by the association as a condition of their authority to transact insurance in this state.*

par. 11 It is the determination of the Secretary of State that the Insurance Commission has not exceeded its statutory authority by adopting this rule.

par. 12 (C) Emergency: WV Code 29A-3-15(g) defines "emergency" as follows:

*(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.*

par. 13 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 14 The Insurance Commission claims this rule is necessary for the immediate preservation of the public welfare and to prevent substantial harm to the public interest and to comply with time limitations.

par. 15 The facts and circumstances as presented by the Insurance Commission are as follows:

Promulgation of this rule on an emergency basis is necessary for the immediate preservation of the public welfare and to prevent substantial harm to the public interest pursuant to West Virginia Code §29A-3-15(g). Additionally, promulgation of the rule on an emergency basis is necessary to comply with the time requirements of West Virginia Code §33-20A-3.

The West Virginia Essential Insurance Coverage Act was enacted during the 1986 session of the Legislature as Senate Bill No. 565 and has been codified at Chapter 33, Article 20A. The purpose of this legislation is to establish a mechanism under which individuals and businesses can secure property insurance coverage when such coverage is not available in the voluntary insurance market. This legislation was introduced by the Insurance Department after receiving numerous complaints from West Virginia citizens and insurance agents that severe problems exist in regard to the availability of fire and extended coverage insurance for certain homes and commercial properties. The Department also held two (2) fact-finding public hearings on this issue. Information obtained by the Department revealed that the availability problem was most serious in southern West Virginia and that fire and extended coverage insurance was virtually unobtainable in certain southern counties.

Since the Bill was enacted, the Department has been working to establish the mechanism under which the risk sharing plan will operate. The plan is set to become operative on November 1, 1986, and accordingly, the regulation must now be promulgated. The requirement that such regulation be promulgated prior to operation of the plan is found at West Virginia Code

§33-20A-3(b). Because of the urgency of implementing the plan in order that individuals and businesses may secure fire and extended coverage insurance, the Department is promulgating this regulation on an emergency basis.

- par. 16 It has been made clear to this office that there has been expressed by the legislative branch, an emergency in insurance coverage. This office will adhere to this crisis pronouncement and agree to this filing.
- par. 17 It is the decision of the Secretary of State that this proposal by the Insurance Commission is in procedural compliance with WV Code 29A-3-15; does not exceed the statutory authority of the Insurance Commission; and that the facts and circumstances presented constitute an emergency. Therefore, the Secretary of State decides that this emergency rule should be approved.
- par. 18 This decision shall be cited as Emergency Rule Decision 22-86 or ERD 22-86 and may be cited as precedent. This decision is available from the Secretary of State's office and has been filed with the Insurance Commission, the Attorney General and the Legislative Rule Making Review Committee.

KEN HECHLER  
SECRETARY OF STATE

FILED IN THE OFFICE OF  
THE SECRETARY OF STATE

THIS DATE Nov 28, 1986  
ADMINISTRATIVE LAW DIVISION

Entered \_\_\_\_\_

KEN HECHLER  
Secretary of State

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(Plus all the volunteer  
help we can get)

NOTICE OF THE EXPIRATION OF AN EMERGENCY RULE

AGENCY: INSURANCE COMMISSIONER  
RULE: WEST VIRGINIA ESSENTIAL PROPERTY INSURANCE ASSOCIATION  
DATE FILED AS AN EMERGENCY RULE: OCTOBER 16, 1986

THE ABOVE EMERGENCY RULE EXPIRES ON JANUARY 19, 1988 WITH THE  
EXPIRATION OF THE FIFTEENTH MONTH AS REQUIRED BY WEST VIRGINIA  
CODE 29A-3-15. THIS EMERGENCY RULE WAS IN EFFECT FROM OCTOBER  
16, 1986 UNTIL JANUARY 16, 1988.

A handwritten signature in cursive script, appearing to read "Rich O. Hartman".

Rich O. Hartman, Dir.

FILED  
1988 JAN 19 11 30 AM