

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

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DEC 22 4 07 PM '92

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Form #7

Effective Date

Jan. 7, 1993 jc

NOTICE OF AN EMERGENCY RULE

AGENCY: Insurance Commissioner TITLE NUMBER: 114

CITE AUTHORITY: WV Code §§ 33-2-10, 33-3-13(b), 33-3-16, 33-32-4(e) & (f)
33-32-17(e)

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED _____

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: Series 34

TITLE OF RULE BEING FILED AS AN EMERGENCY: Filing Fees for Purchasing Groups, and for Risk Retention Groups Not Chartered in this State

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 35TH DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

(See attachment)

4.80

Use Additional Sheets If Necessary.

Hanley C. Clark
Signature
Hanley C. Clark
Insurance Commissioner

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Insurance Commissioner
Legislative Rule
Title 114, Series 34
EMERGENCY

DEC 22 4 07 PM '92

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY

On March 7, 1992, the West Virginia Legislature passed House Bill 4666 which amended provisions of West Virginia Code Chapter 33, Article 32 relating to purchasing groups, and to risk retention groups not chartered in this State. This legislation took effect July 1, 1992. It instituted requirements that such purchasing groups and risk retention groups pay certain registration fees and annual statement filing fees to the Insurance Commissioner, for use in operating the Insurance Department of this State.

West Virginia Code §§ 33-32-4 and 33-32-17 as amended by House Bill 4666 require the Insurance Commissioner to promulgate the instant rule establishing the dollar amounts of the filing fees to be paid by such purchasing groups and risk retention groups. The Insurance Commissioner is also authorized to promulgate and adopt such rules and regulations relating to insurance as are necessary to discharge his duties and exercise his powers and to safeguard the interests of policyholders and the public of this State, pursuant to West Virginia Code § 33-2-10.

Until this rule becomes effective, the Commissioner will be unable to fulfill his statutory mandate (effective July 1, 1992) to collect the aforesaid filing fees from purchasing groups and certain risk retention groups. Purchasing groups, and risk retention groups not chartered in this State, are permitted to register with the Office of the Insurance Commissioner throughout the year. Therefore, it is imperative that this fee-setting rule take effect immediately, to avoid loss of revenue to the Insurance Department.

The Commissioner anticipates that implementation of the instant fee-setting rule will yield approximately \$60,000 in revenue annually. The account into which this revenue will be deposited subsidizes the Commissioner's activities focused on protecting the public from recalcitrant insurers that wrongfully withhold payment on valid claims, financially impaired insurance companies, unauthorized insurers, unscrupulous insurance agents, and other wrongdoers within the industry that the Insurance Commissioner is legally bound to regulate.

The Commissioner is also required to provide funding from this revenue account to the Health Care Planning Commission. That Commission has as its mission to identify, document, and recommend executive, legislative, and administrative actions required to develop an affordable delivery and payment system of appropriate

Insurance Commissioner
Legislative Rule
Title 114, Series 34
EMERGENCY

quality health care services available to all West Virginians and for which providers are adequately and equitably reimbursed. Furthermore, the Commissioner must provide funding from this account to the Office of Consumer Advocacy. One of the many charges of this office is to institute, intervene in, or otherwise participate in, as an advocate for the public interest and the interests of insurance consumers, proceedings before the Health Care Cost Review Authority. The Health Care Planning Commission and the Office of Consumer Advocacy were created by the West Virginia Legislature to mitigate the health care crisis facing the country and particularly the State of West Virginia.

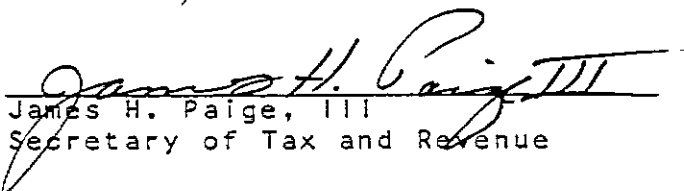
At its December 7, 1992 meeting, the West Virginia Legislative Rule-Making Review Committee (LRMRC) authorized the Insurance Commissioner to promulgate his proposed, modified legislative rule entitled "Filing Fees for Purchasing Groups, and for Risk Retention Groups Not Chartered in this State." The LRMRC also passed a resolution that the filing of the instant related emergency rule is necessary, to prevent substantial harm to the public interest by reason of loss of revenue from the filing fees established by the rule. The LRMRC has forwarded a copy of this resolution to the Secretary of State. Therefore, the Insurance Commissioner seeks to promulgate the instant emergency rule pursuant to West Virginia Code § 29A-3-15(g), to prevent substantial harm to the public interest and to enable him to fulfill his statutory mandate regarding filing fee requirements that took effect July 1, 1992 for purchasing groups and certain risk retention groups.

CONSENT TO PROPOSAL OF RULE

To Whom It May Concern:

Pursuant to West Virginia Code § 5F-2-2(a)(12), the undersigned hereby grants consent to the proposal of the following rule proposed by the Insurance Commissioner of the State of West Virginia: Title 114, Series 34, Filing Fees for Purchasing Groups, and for Risk Retention Groups Not Chartered in West Virginia.

Dated this 30 day of July, 1992.


James H. Paige, III
Secretary of Tax and Revenue

Insurance Commissioner
Legislative Rule
Title 114, Series 34
EMERGENCY

FILING FEES FOR PURCHASING GROUPS, AND FOR RISK
RETENTION GROUPS NOT CHARTERED IN THIS STATE

Title 114, Series 34

BRIEF SUMMARY OF RULE

This proposed emergency rule implements the provisions of West Virginia Code §§ 33-32-4 and 33-32-17, which require the registration of all purchasing groups, and risk retention groups not chartered in West Virginia. The Insurance Commissioner is statutorily required to assess such registration and filing fees which are designated for use in the operation of the Insurance Department. This rule imposes a \$200 registration processing fee for such purchasing groups and risk retention groups, and a \$100 annual financial statement filing fee for such risk retention groups. It also requires submission of a \$50 fee upon the filing of any registration materials modification by either type of the aforementioned entities.

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: OFFICE OF THE INSURANCE COMMISSIONER

DATE: December 22, 1992

EMERGENCY RULE TITLE: Filing Fees for Purchasing Groups, and for Risk Retention Groups Not Chartered in this State (Title 114, Series 34)

1. Date of filing: December 22, 1992

2. Statutory authority for promulgating the emergency rule:

West Virginia Code §§ 33-2-10, 33-3-13(b), 33-3-16, 33-32-4(e) and (f), and 33-32-17(e)

3. Date of filing of proposed legislative rule: August 10, 1992

4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?

Adopts new language

5. Has the same or similar emergency rule previously been filed and expired?

NO. (This emergency rule was initially filed as an emergency rule on August 10, 1992 and voluntarily withdrawn by the Insurance Commissioner on August 26, 1992. It did NOT expire.)

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.

See answers to Questions 7 and 8 below.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

WV Code §§ 33-32-4 and 33-32-17 as amended by H.B. 4666 require that this rule take effect as soon as possible following the July 1, 1992 effective date of H.B. 4666. Until this proposed fee-setting rule takes effect, the Insurance Commissioner is unable to collect the filing fees mandated by the 1992 amendments to the aforementioned statutes.

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

Until this emergency rule takes effect, the Insurance Commissioner will have to absorb the administrative costs of processing the filings by certain purchasing groups and risk retention groups that the 1992 amendments to West Virginia Code §§ 33-32-4 and 33-32-17 require. The Commissioner will lose approximately \$60,000 in revenue per year until this fee-setting rule takes effect. Therefore, to prevent harm to the public treasury, the West Virginia Legislative Rule-Making Review Committee passed a resolution at its December 7, 1992 meeting, stating that this rule should be designated an emergency rule to prevent substantial harm to the public interest by reason of loss of revenue.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Filing Fees for Purchasing Groups, and for
Risk Retention Groups Not Chartered in this State
(Title 114, Series 34)

Type of Rule: XX Legislative _____ Interpretive _____ Procedural

Agency: Insurance Commissioner Address: Post Office Box 50540
2019 Washington Street, East,
Charleston, WV 25305-0540

ANNUAL

FISCAL YEAR

1. Effect of Proposed Rule Increase Decrease Current Next Thereafter

Estimated Total Cost NONE

Personal Services

Current Expense

Repairs & Alterations NONE

Equipment

Other

2. Explanation of above estimates:

The proposed rule will have no cost impact on state, local,
or federal government.

3. Objectives of these rules:

The objective of this rule is to implement filing fee
requirements for purchasing groups and risk retention
groups not chartered in this State, as required by
Article 32, Chapter 33 of the West Virginia Code as
amended by the 1992 Legislature.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic impact on State Government.

Implementation of this rule should allow the Commissioner to collect approximately \$60,000.00 in filing fees annually.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens.

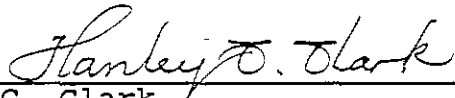
NONE

C. Economic Impact on Citizens/Public at Large.

NONE

Date: December 22, 1992

Signature of Agency Head or Authorized Representative



Hanley C. Clark
Insurance Commissioner

114CSR34

EMERGENCY
TITLE 114
LEGISLATIVE RULE
INSURANCE COMMISSIONER

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SERIES 34

FILING FEES FOR PURCHASING GROUPS, AND FOR WEST VIRGINIA
RISK RETENTION GROUPS NOT CHARTERED IN THIS STATE

Section

- 114-34-1. General
- 114-34-2. Registration Fees for Purchasing Groups, and for Risk Retention Groups Not Chartered in this State
- 114-34-3. Annual Financial Statement Filing Fees for Risk Retention Groups Not Chartered in this State
- 114-34-4. Retaliatory Fee Increases for Risk Retention Groups Not Chartered in this State
- 114-34-5. Fees Designated for Insurance Department Operation
- 114-34-6. Severability



WEST VIRGINIA LEGISLATURE
 LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
 Room M-152, State Capitol
 Charleston, West Virginia 25305
 (304) 340-3286

Senator William R. Wooton, Co-Chair
 Delegate David Grubb, Co-Chair

OFFICE OF WEST VIRGINIA
 SECRETARY OF STATE

DEC 23 11 46 PM '92

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Debra A. Graham, Counsel
 Michael McThomas, Associate Counsel
 Marie Nickerson, Admr. Assistant

December 18, 1992

The Honorable Ken Hechler
 Secretary of State
 State Capitol
 Charleston, WV 25305

Dear Mr. Hechler:

Enclosed is a resolution adopted by the Legislative Rule-Making Review Committee at its meeting on December 7, 1992.

The Committee Co-Chairmen, Senator William R. Wooton and Delegate David Grubb, have directed that this resolution be forwarded to you.

Thank you for your assistance in this matter.

Sincerely,

Marjorie Martorella
 Associate Counsel

MM:mgn

Enclosure

RESOLUTION
OF THE LEGISLATIVE RULE-MAKING
REVIEW COMMITTEE

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Dec 23 1 47 PM '92

FILED

"Recommending the filing of an an Insurance Commissioner rule designated 'Filing Fees for Purchasing Groups, and for Risk Retention Groups not Chartered in this State' as an emergency rule."

Whereas, the filing of a certain Insurance Commissioner rule designated "Filing Fees for Purchasing Groups, and for Risk Retention Groups not Chartered in this State" as an emergency rule was withdrawn by agreement, following a preliminary determination by the Secretary of State that sufficient evidence had not been presented by the agency to establish the existence of an emergency, and is now expected to be refiled by the agency; and

Whereas, The Secretary of State has requested that this Committee review the rule pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of the West Virginia Code to determine the existence of an emergency and make a recommendation; and

Whereas, The effect of disallowing the filing of the rule on an emergency basis would be to require the Insurance Commissioner to absorb the cost of processing filings, to the public detriment, until such time as the fee rule is approved by the Legislature, and that such an effect would be inimical to the public interest; therefore, be it

Resolved by the Legislative Rule-Making Review Committee:

That the efforts and sound judgment of the Secretary of State, and the close examination of the rules and fair application of the standards set forth in statute for determining the existence of an emergency, with respect to both this rule and other recent applications for emergency rule status, are recognized and deeply appreciated; and, be it

Further Resolved, That the filing of the Insurance Commissioner rule designated "Filing Fees for Purchasing Groups, and for Risk Retention Groups not Chartered in this State" as an emergency rule is necessary in this instance to prevent substantial harm to the public interest by reason of loss of revenue; and, be it

Further Resolved, That the staff of the Legislative Rule-Making Review Committee is directed to forward a copy of this Resolution to the Secretary of State.

EMERGENCY
TITLE 114
LEGISLATIVE RULE
INSURANCE COMMISSIONER

SERIES 34
FILING FEES FOR PURCHASING GROUPS, AND FOR
RISK RETENTION GROUPS NOT CHARTERED IN THIS STATE

§ 114-34-1. General

1.1. Scope. -- This legislative rule implements the provisions of West Virginia Code §§ 33-32-17 and 33-32-4 relating to all purchasing groups, and to risk retention groups not chartered in this State. The rule establishes the amounts of registration fees to be paid by both types of entities, as well as the amounts of annual financial statement filing fees to be paid by such risk retention groups. It also provides for increases in the aforementioned fees for risk retention groups chartered in other jurisdictions that impose higher analogous fees on risk retention groups domiciled in West Virginia.

1.2. Authority. -- West Virginia Code §§ 33-2-10, 33-3-13(b), 33-3-16(a), 33-32-4(e) and (f), and 33-32-17(e)

1.3. Filing Date. --

1.4. Effective Date. --

§ 114-34-2. Registration Fees for Purchasing Groups, and for Risk Retention Groups Not Chartered in this State

2.1. Each purchasing group seeking to do business in this State, and each risk retention group not chartered in this State but seeking to do business in West Virginia, shall remit a two hundred dollar (\$200) processing fee upon the initial filing of registration materials with the Insurance Commissioner.

2.2. Each insuring entity described in Section 2.1 above shall remit a fifty dollar (\$50) processing fee upon the filing of any registration materials modification with the Insurance Commissioner.

§ 114-34-3. Annual Financial Statement Filing Fees for Risk Retention Groups Not Chartered in this State

Each risk retention group not chartered in this State, but registered or seeking to register with the Insurance Commissioner to do business as a risk retention group in West Virginia, shall remit a one hundred dollar (\$100) fee upon filing with the Commissioner its annual financial statement required by West Virginia Code § 33-32-4(e)(1).

**Insurance Commission
Legislative Rule
Title 114, Series 34
EMERGENCY**

**§ 114-34-4. Retaliatory Fee Increases for Risk Retention Groups
Not Chartered in this State**

As provided in West Virginia Code § 33-3-16(a), when another state charges a higher fee to West Virginia-domiciled risk retention groups than a fee set in Section 2 or 3 of this rule, a risk retention group chartered in that state and doing business or seeking to do business in West Virginia shall remit to the Insurance Commissioner the higher fee equivalent to the registration fee or annual statement filing fee, or its counterpart, which the other state charges to West Virginia-domiciled risk retention groups.

§ 114-34-5. Fees Designated for Insurance Department Operation

All fees remitted by purchasing groups, and by risk retention groups not chartered in this State, pursuant to this rule are designated by West Virginia Code § 33-3-13(b) for use by the Insurance Commissioner in operating the Insurance Department of this State.

§ 114-34-6. Severability

If any provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provision to other persons or circumstances shall not be affected thereby.



STATE OF WEST VIRGINIA
Offices of the Insurance Commissioner

Legal Division

GASTON CAPERTON
Governor

December 22, 1992

HANLEY C. CLARK
Insurance Commissioner

HAND DELIVERED

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

Dear Ms. Cooper:

Enclosed please find for filing fourteen (14) copies of each of the following:

- (1) Notice of an Emergency Rule;
- (2) Notice of a Comment Period on a Proposed Rule;
- (3) Consent to Proposed Rule;
- (4) Brief Summary of Rule;
- (5) Legislative Rule-Making Review Committee Questionnaire;
- (6) Fiscal Note; and
- (7) The Insurance Commissioner's emergency legislative rule entitled "Filing Fees for Purchasing Groups, and for Risk Retention Groups Not Chartered in this State" (Series 34).

Please contact me if further information is needed.

Very truly yours,

Linda Gay
Linda Gay
Associate Counsel

LG/sar
Enclosures

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 558-6000
Corporations: (304) 558-8000

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

(Plus all the volunteer
help we can get)

STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

January 7, 1993

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Insurance Commissioner

RULE: Series 34, New Rule, Filing Fees for Purchasing Groups and Risk Retention Groups Not Chartered in This State

DATE FILED AS AN EMERGENCY RULE: December 22, 1992

DECISION NO. 1-93

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

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

JAN 7 12 50 PM '93

FILED



KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

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STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
-1900 Kanawha Blvd., East
Charleston, WV 25305-0770

DECISION

EMERGENCY RULE DECISION (ERD 1-93)

AGENCY: Insurance Commissioner
RULE: Series 34, New Rule, Filing Fees for Purchasing
Groups and for Risk Retention Groups Not Chartered
in This State

FILED AS AN EMERGENCY RULE: December 22, 1992

- par. 1. The Insurance Commissioner (Commissioner) has filed the above new rule as an emergency rule.
- par. 2. West Virginia Code 29A-3-a 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. 3. Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [(29A-3-a(a))].
- par. 4. (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. 5. If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the thirty-five day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

par. 6 The Commissioner filed this emergency rule with supporting documents with the Secretary of State December 22, 1992 and with the LRMRC December 22, 1992.

par. 7 It is the determination of the Secretary of State that the Commissioner has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code §33-2-10 reads:

The commissioner is authorized to promulgate and adopt such rules and regulations relating to insurance as are necessary to discharge his duties and exercise his powers and to effectuate the provisions of this chapter and to protect and safeguard the interests of policyholders and the public of this State.

par. 9. §33-3-13(b) of the WV Code further states:

(b) Such fees and charges collected by the commissioner under the provisions of this section or elsewhere in this chapter and designated for use by the commissioner for the operation of the department of insurance or for the purposes of this section, shall be paid into a special revenue account, hereby created in the state treasury, to be expended and used by the commissioner, upon his requisition and after appropriation by the Legislature, for the operation of the department of insurance. Notwithstanding any provisions in this code to the contrary, the commissioner may expend, in accordance with the provisions of §33-12-2a, from the special revenue account established pursuant to this section, amounts necessary to establish and maintain a system of continuing education for agents as provided in §12-2A.

par. 10 Also stated in §33-4-16 of the WV Code:

(a) No insurer shall retain any risk on any one subject of insurance, whether located or to be performed in West Virginia or elsewhere, in an amount exceeding ten percent of its surplus to policyholders.

(b) A "subject of insurance" for the purpose of this section, as to insurance against fire and hazards other than windstorm or earthquake, includes all properties insured by the same insurer which are customarily considered by insurers to be subject to loss or damage from the same fire or other such hazard insured against.

(c) Reinsurance in licensed or approved insurers as authorized by §33-4-15 of this article shall be deducted in determining risk retained. As to surety risk, deduction shall also be made of the amount assumed by any established incorporated cosurety and the value and security deposited, pledged or held subject to the surety's consent and for the surety's protection.

(d) "Surplus to policyholders" for the purposed of this section shall be deemed to include any voluntary reserves which are not required pursuant to law, and shall be determined from the last sworn statement of the insurer on file with the commissioner or by the last report of examination by the commisisoner, whichever is the more recent at the time of assumption of such risk.

(e) As to alien insurers this section shall apply only to risks and surplus to policyholders of the insurer's United States branch.

(f) This section shall not apply to life or accident and sickness insurance, title insurance, nor to any policy or type of coverage as to shich the maximum possible loss to the insurer is not reasonably ascertainable on issuance of the policy.

par. 11 §§33-32-4(e) and 33-32-4(f) of the WV Code state:

(e) Any risk retention group doing business in this state shall submit to the commissioner:

(1) Annually a copy of the goup's financial statement submitted to its state of domicile, which shall be certified by an independent public account and contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American academy of actuaries or a qualified loss reserve specialist (under criteria established by the national association of insurance commissioners);

(2) A copy of each examination of the risk retention group as certified by the commissioner or public official conducting the examination;

(3) Upon request by the commissioner, a copy of any audit performed with respect to the risk retention group; and

(4) Such information as may be required to verify its continuing qualification as a risk retion group under this article

(f) The commissioner shall promulgate rules pursuant to the provisions of §29A-1-1 et seq. of this code regarding all fees to be submitted with the filings required by this section.

par. 12 It is the determination of the Secretary of State that the Commissioner has not exceeded its statutory authority in promulgating this emergency rule.

par. 13 (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. 14 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. 15 The facts and circumstances as presented by the Commissioner are as follows:

On March 7, 1992, the West Virginia Legislature passed HB 4666 which amended provisions of WV Code §33,32 relating to purchasing groups and to risk retention groups not chartered in this State. This legislation took effect July 1, 1992. It instituted requirements that such purchasing groups and risk retention groups pay certain registration fees and annual statement filing fees to the Insurance Commissioner for use in operating the Insurance Department of this State.

WV Cod §§33-32-4 and 33-32-17 as amended by HB 4666 require the Insurance Commissioner to promulgate the instant rule establishing the dollar amounts of the filing fees to be paid by such purchasing groups and risk retention groups. The Insurance Commissioner is also authorized to promulgate and adopt such rules and regulations relating to insurance as are necessary to discharge his duties and exercise his powers and to safeguard the interests of policyholders and the public of this State pursuant to West Virginia Code §33-2-10.

Until this rule becomes effective, the Commissioner will be unable to fulfill his statutory mandate (effective July 1, 1992) to collect the aforesaid filing fees from purchasing groups and certain risk retention groups. Purchasing groups and risk retention groups not chartered in this State are permitted to register with the Insurance Commissioner throughout the year. Therefore, it is imperative that this fee-setting rule take effect immediately to avoid loss of revenue to the Insurance Department.

The Commissioner anticipates that implementation of the instant fee-setting rule will yield approximately \$60,000 in revenue annually. The account into which this revenue will be deposited subsidizes the Commissioner's activities focused on protecting the public from recalcitrant insurers that wrongfully withhold payment of valid claims, financially impaired insurance companies, unauthorized insurers, unscrupulous insurance agents, and other wrongdoers within the industry that the Insurance Commissioner is legally bound to regulate.


The Commissioner is also required to provide funding from this revenue account to the Health Care Planning Commission. That Commission has as its mission to identify, document and recommend executive, legislative and administrative actions required to develop an affordable delivery and payment system of appropriate quality health care services available to all

West Virginians and for which providers are adequately and equitably reimbursed. Furthermore, the Commissioner must provide funding from this account to the Office of Consumer Advocacy. One of the many charges of this office is to institute, intervene in or otherwise participate in as an advocate for the public interest and the interests of insurance consumers, proceedings before the Health Care Cost Review Authority. The Health Care Planning Commission and the Office of Consumer Advocacy were created by the West Virginia Legislature to mitigate the health care crisis facing the country and particularly the State of West Virginia.

At its December 7, 1992 meeting, the West Virginia Legislative Rule-Making Review Committee (LRMRC) authorized the Insurance Commissioner to promulgate his proposed modified legislative rule entitled "Filing Fees for Purchasing Groups and for Risk Retention Groups not Chartered in this State." The LRMRC also passed a resolution that the filing of the instant related emergency rule is necessary to prevent substantial harm to the public interest by reason of loss of revenue from the filing fees established by the rule. (Copy of this resolution is attached.) The LRMRC has forwarded a copy of this resolution to the Secretary of State. Therefore, the Insurance Commissioner seeks to promulgate the instant emergency rule pursuant to WV §29A-3-15(g) to prevent substantial harm to the public interest and to enable him to fulfill his statutory mandate regarding filing fee requirements that took effect July 1, 1992 for purchasing groups and certain risk retention groups.

par. 16 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(g).

par. 17 This decision shall be cited as Emergency Rule Decision 1-93 or ERD 1-93 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Insurance Commissioner, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER
Secretary of State

Entered _____

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

JAN 7 12 50 PM '93

FILED

RESOLUTION
OF THE LEGISLATIVE RULE-MAKING
REVIEW COMMITTEE

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Dec 23 1 47 PM '92

FILED

"Recommending the filing of an an Insurance Commissioner rule designated 'Filing Fees for Purchasing Groups, and for Risk Retention Groups not Chartered in this State' as an emergency rule."

Whereas, the filing of a certain Insurance Commissioner rule designated "Filing Fees for Purchasing Groups, and for Risk Retention Groups not Chartered in this State" as an emergency rule was withdrawn by agreement, following a preliminary determination by the Secretary of State that sufficient evidence had not been presented by the agency to establish the existence of an emergency, and is now expected to be refiled by the agency; and

Whereas, The Secretary of State has requested that this Committee review the rule pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of the West Virginia Code to determine the existence of an emergency and make a recommendation; and

Whereas, The effect of disallowing the filing of the rule on an emergency basis would be to require the Insurance Commissioner to absorb the cost of processing filings, to the public detriment, until such time as the fee rule is approved by the Legislature, and that such an effect would be inimical to the public interest; therefore, be it

Resolved by the Legislative Rule-Making Review Committee:

That the efforts and sound judgment of the Secretary of State, and the close examination of the rules and fair application of the standards set forth in statute for determining the existence of an emergency, with respect to both this rule and other recent applications for emergency rule status, are recognized and deeply appreciated; and, be it

Further Resolved, That the filing of the Insurance Commissioner rule designated "Filing Fees for Purchasing Groups, and for Risk Retention Groups not Chartered in this State" as an emergency rule is necessary in this instance to prevent substantial harm to the public interest by reason of loss of revenue; and, be it

Further Resolved, That the staff of the Legislative Rule-Making Review Committee is directed to forward a copy of this Resolution to the Secretary of State.