

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Effective Date

Form #7

NOTICE OF AN EMERGENCY RULE

AGENCY: Insurance Commissioner TITLE NUMBER: 114

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

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES _____ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED _____

IF NO, SERIES NUMBER OF RULE BEING 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)

Use Additional Sheets If Necessary.

Hanley C. Clark

Signature
Hanley C. Clark
Insurance Commissioner

5.30



STATE OF WEST VIRGINIA
Offices of the Insurance Commissioner

Legal Division

GASTON CAPERTON
Governor

HANLEY C. CLARK
Insurance Commissioner

August 10, 1992

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 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 proposed 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,

A handwritten signature in cursive script that reads "Evalyn Anderson".

Evalyn Anderson
Associate Counsel

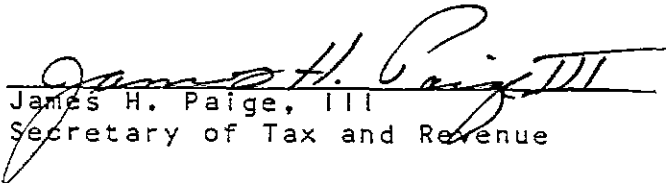
EA/fs
Enclosures

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**

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 proposed emergency 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. The 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

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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.

The Insurance Commissioner therefore seeks to promulgate the instant rule on an emergency basis pursuant to the time limitation criterion in West Virginia Code § 29A-3-15(g), to meet the July 1, 1992 implementation of the amendments to West Virginia Code §§ 33-32-4 and 33-32-17 made by the enrollment and enactment into law of House Bill 4666 on March 7, 1992. As alternative grounds for this emergency rule, the Commissioner cites the criteria in West Virginia Code § 29A-3-15(g) relating to preservation of public welfare and prevention of substantial harm to the public interest.

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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.

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: Aug. 7, 1992

Signature of Agency Head or Authorized Representative

Hanley C. Clark
Hanley C. Clark
Insurance Commissioner

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: OFFICE OF THE INSURANCE COMMISSIONER

DATE: August 7, 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: August 7, 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 33-32-17(e)

3. Date of filing of proposed legislative rule: August 7, 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

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.

The Insurance Department needs the additional revenue to be generated by this rule, to subsidize its regulatory activities that protect the public against such industry ills as financially impaired insurers, unauthorized insurers and unscrupulous insurance agents. Also, under state law the funds generated by this rule will be shared with the Governor's Health Care Planning Commission and the Office of Consumer Advocacy. Both of those entities were created to mitigate the health care crisis in West Virginia.

- 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.

West Virginia Code §§ 33-32-4 and 33-32-17 as amended by House Bill 4666 require that this rule take effect as soon as possible following the July 1, 1992 effective date of House Bill 4666. Until this proposed fee-setting rule takes effect, the Insurance Commissioner will be 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.

See Question 6 on the previous page.

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EMERGENCY
TITLE 114
LEGISLATIVE RULE
INSURANCE COMMISSIONER

SERIES 34
FILING FEES FOR PURCHASING GROUPS, AND FOR
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. Separability

114CSR34

EMERGENCY
TITLE 114
LEGISLATIVE RULE
INSURANCE COMMISSIONER

FILED

1992 AUG 10 AM 8:34

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

OFFICE OF WEST VIRGINIA
SECRETARY OF 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 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**

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

The retaliatory provisions of West Virginia Code § 33-3-16(a) apply to risk retention groups chartered in other jurisdictions that impose registration fees and annual financial statement filing fees upon West Virginia-domiciled risk retention groups that are higher than the analogous fees imposed by this rule upon foreign risk retention groups doing business or seeking to do business in West Virginia. Therefore, a risk retention group chartered in a jurisdiction imposing such higher fees upon West Virginia-domiciled risk retention groups shall remit to the Insurance Commissioner fees equivalent to the registration fees and annual statement filing fees, or their counterparts, imposed by its domiciliary jurisdiction upon a risk retention group chartered in West Virginia and doing business or seeking to do business in its domiciliary jurisdiction.

§ 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. Separability

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.