



**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION**

Form #7

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Filing Date

FILED

JUL 13 4 24 PM '93

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Effective Date

August 11, 1993

NOTICE OF AN EMERGENCY RULE

AGENCY: Insurance Commission TITLE NUMBER: 114

CITE AUTHORITY: West Virginia Code § 33-26A-19(d)

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 36

TITLE OF RULE BEING FILED AS AN EMERGENCY: West Virginia Life and Health
Insurance Guaranty Association Act Notice Requirements

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:

The rule is required by recently enacted House Bill 2632, effective July 9, 1993. West Virginia Code § 33-26A-19(d) requires that a rule be promulgated prior to August 2, 1993, regarding the policyholder disclaimer notice pursuant to that section.

Hanley C. Clark

Signature
Hanley C. Clark
Insurance Commissioner

Use additional sheets if necessary

5.00



STATE OF WEST VIRGINIA
Offices of the Insurance Commissioner

Legal Division

GASTON CAPERTON
Governor

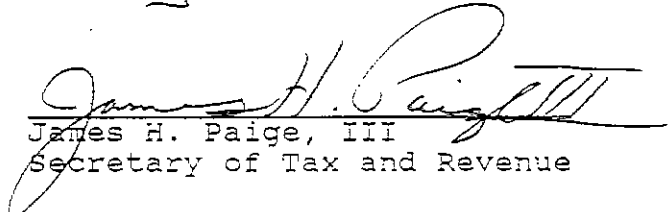
HANLEY C. CLARK
Insurance Commissioner

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 36, relating to Notice Requirements under the West Virginia Life and Health Guaranty Association Act.

Signed this 8th day of July, 1993.


James H. Paige, III
Secretary of Tax and Revenue

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: West Virginia Life and Health Insurance Guaranty Association Act
 Type of Rule: X Legislative Interpretive Procedural Notice Requirements
 Agency Insurance Commissioner
 Address 2019 Washington Street, East
Post Office Box 50540
Charleston, WV 25305-0540

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$	\$	\$	\$	\$
PERSONAL SERVICES	NONE				
CURRENT EXPENSE					
REPAIRS & ALTERNATIONS					
EQUIPMENT	NONE				
OTHER					

2. Explanation of above estimates:

The rule will have no fiscal impact upon state, local or federal government.

3. Objectives of these rules:

The objective of this rule is to provide notice and disclosure to policyholders of certain life, health and annuity insurance contracts that the policy, or portion thereof, may not be covered by the West Virginia Life and Health Insurance Guaranty Association Act.

Rule Title: West Virginia Life and Health Insurance Guaranty Association Act Notice Requirements.

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.

The economic impact of the required notice should have minimal impact on the insurance industry.

C. Economic Impact on Citizens/Public at Large.

None.

Date: July 13, 1993

Signature of Agency Head or Authorized Representative

Hanley C. Clark

Hanley C. Clark
Insurance Commissioner

DATE: July 12, 1993

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Insurance Commissioner

EMERGENCY RULE TITLE: West Virginia Life and Health Insurance Guaranty Association
Notice Requirements

1. Date of Filing July 13, 1993
2. Statutory authority for promulgating emergency rule:
West Virginia Code § 33-26A-19(d)
3. Date of filing of proposed legislative rule: July 13, 1993
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.
See next question.

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.

House Bill 2632, passed on April 10, 1993, effective July 9, 1993, enacted W. Va. Code § 33-26A-19(d) which requires the Insurance Commissioner to promulgate a rule on or before August 2, 1993 regarding the policyholder notice required by that subsection:

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

See previous question.

Insurance Commissioner
Legislative Rule
Title 114, Series 36

**WEST VIRGINIA LIFE AND HEALTH INSURANCE
GUARANTY ASSOCIATION ACT NOTICE REQUIREMENTS**

Title 114, Series 36

BRIEF SUMMARY OF RULE

This proposed emergency rule specifies the form and content of the notice and disclaimer required to be given, pursuant to West Virginia Code § 33-26A-19, to those certain persons identified in Section 3(a) of the West Virginia Life and Health Insurance Guaranty Association Act, as amended and re-enacted by House Bill 2632 (effective July 9, 1993). This notice is to be delivered to policyholders of certain life, health and annuity insurance policies or contracts where any portion of the policy or contract is not guaranteed by the insurer, or under which the risk is borne by the policy or contract holder. The disclaimer must be attached to the face of the Summary Document which describes the general purposes and current limitations of the Guaranty Association Act.

114CSR36

EMERGENCY
WEST VIRGINIA LEGISLATIVE RULE
INSURANCE COMMISSIONER

CHAPTER 33-26A
SERIES 36

WEST VIRGINIA LIFE AND HEALTH INSURANCE
GUARANTY ASSOCIATION ACT NOTICE REQUIREMENTS

Section

- § 114-36-1. General.
- § 114-36-2. Definitions.
- § 114-36-3. Form and Content of Notice.
- § 114-36-4. Form and Content of Disclaimer.
- Appendix A. Notice of Exclusion from Coverage or Limited Coverage Under the West Virginia Life and Health Insurance Guaranty Association Act.
- Appendix B. West Virginia Life and Health Insurance Guaranty Association Disclaimer.

FILED

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JUL 13 4 24 PM '93

EMERGENCY
WEST VIRGINIA LEGISLATIVE RULE OFFICE OF WEST VIRGINIA
INSURANCE COMMISSIONER SECRETARY OF STATE

CHAPTER 33-26A
SERIES 36

WEST VIRGINIA LIFE AND HEALTH INSURANCE
GUARANTY ASSOCIATION ACT NOTICE REQUIREMENTS

§ 114-36-1. General.

1.1. Scope. -- This rule applies to insurance companies and their agents that provide insurance coverage to those certain individuals defined in Code § 33-26A-3(a) for direct, nongroup life, health, annuity and supplemental policies or contracts, for certificates under direct group policies and contracts, and for unallocated annuity contracts, if any portion of the policy or contract is not guaranteed by the insurer or under which the risk is borne by the policy or contract holder.

1.2. Authority. -- West Virginia Code §§ 33-26A-19(d); 33-2-10.

1.3. Filing Date. --

1.4. Effective Date. --

§ 114-36-2. Definitions.

As used in this legislative rule:

2.1. "Act" means the West Virginia Life and Health Insurance Guaranty Association Act, West Virginia Code §§ 33-26A-1 et seq.

2.2. "Association" means the West Virginia Life and Health Insurance Guaranty Association created under section six of the Act.

2.3. "Code" means the Code of West Virginia.

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

2.5. "Covered Policy" means any policy or contract described in subdivision (1) of subsection (B) of section three of the Act, unless subdivision 2(d) of Subsection B of Section three of the Act applies to such policy.

Insurance Commissioner
Legislative Rule
Title 114, Series 36
EMERGENCY

2.6. "Disclaimer" means the disclaimer required to be placed on the face of the Summary Document pursuant to subsection c, section nineteen of the Act [Code § 33-26A-19(c)].

2.7. "Excluded Policy" means any policy or contract of insurance described in subdivision (1) of subsection (b) of section 3 of the Act [Code § 33-26A-3(b)(1)] and excluded from coverage in whole or in part, under paragraph (a), subdivision (2), subsection (b) of section three of the Act [Code § 33-26A-3(b)(2)(A)].

2.8. "Notice" means the notice required to be given to a policyholder of an Excluded Policy pursuant to Section 19(d) of the Act and as set forth in Appendix A of this rule.

2.9. "Summary Document" means the document, required by Subsection (b), Section 19 of the Act, as prepared by the Association and approved by the Commissioner which describes the general purposes and current limitations of the Act.

§ 114-36-3. Form and Content of Notice.

3.1. On or after August 2, 1993, no insurer or agent may deliver an Excluded Policy to a policy or contract holder, unless the Notice required by Code § 33-26A-19(d) is delivered to the policy or contract holder prior to or at the time of delivery of the Excluded Policy.

3.2. The insurer or agent making the delivery of the Notice shall maintain a record of such delivery.

3.3. The Notice shall be printed on a separate sheet of paper in a minimum 10 point type. The Notice may not include the name and address of the insurance company issuing the Excluded Policy or the name and address of the agent who procured the Excluded Policy.

3.4. The Notice shall be identical to that prescribed by the Commissioner in Appendix A of this rule.

3.5. A form filing is not required for the Notice.

Insurance Commissioner
Legislative Rule
Title 114, Series 36
EMERGENCY

§ 114-36-4. Form and Content of Disclaimer.

4.1. Sixty (60) days after approval of the Summary Document by the Commissioner, no insurer or its agent may deliver a Covered Policy to a policy or contract holder unless the Summary Document and Disclaimer is delivered to the policy or contract holder prior to or at the time of delivery of the Covered Policy.

4.2. If a "free look" period is not required by state law for the type of policy coverage being solicited, the Summary Document and Disclaimer must be delivered by the insurer or agent to the applicant at the time of solicitation or preliminary negotiations.

4.3. An insurer or its agent shall make the Summary Document and Disclaimer available to a policyholder upon request.

4.4. The insurer or agent making the delivery of the Disclaimer and Summary Document shall maintain a record of such delivery.

4.5. The Disclaimer shall be printed in a minimum 10 point type and printed on the face of the Summary Document. This Disclaimer may not include the name and address of the insurance company issuing the Covered Policy or the name and address of the agent who procured the Covered Policy.

4.6. The Disclaimer shall be identical to that prescribed by the Commissioner in Appendix B of this rule.

4.7. A form filing is not required for the Summary Document or the Disclaimer.

APPENDIX A

NOTICE OF EXCLUSION FROM COVERAGE OR LIMITED
COVERAGE UNDER THE WEST VIRGINIA LIFE AND HEALTH
INSURANCE GUARANTY ASSOCIATION ACT

Residents of West Virginia who purchase life insurance, annuities, or health insurance should know that insurance companies licensed in West Virginia to write these types of insurance are members of the West Virginia Life and Health Insurance Guaranty Association (the "Guaranty Association"). The purpose of the Guaranty Association is assure that policyholders will be protected, within limits, in the event that a member insurance company becomes financially unable to meet its obligations. If this should happen, the Guaranty Association will assess its member insurance companies for the money to pay the claims of insured persons living in this State and, in some cases, to keep coverage in force. The valuable extra protection provided by insurers through the Guaranty Association is not unlimited, however.

The Guaranty Association may NOT provide coverage for this policy, or a portion of this policy. If coverage is provided by the Guaranty Association, it may be subject to substantial limitations or exclusions.

Coverage is NOT provided for your policy or any portion of it that is not guaranteed by the insurance company or for which you have assumed the risk, such as a variable contract sold by prospectus.

You should not rely on coverage by the West Virginia Life and Health Insurance Guaranty Association in selecting an insurance company or in selecting an insurance policy.

Insurance companies and their agents are required by law to give or send you this Notice. However, insurance companies and their agents are prohibited by law from using the existence of the West Virginia Life and Health Insurance Guaranty Association to induce you to purchase any kind of insurance policy.

Inquiries concerning this Notice may be directed to the following:

West Virginia Insurance Commission
Consumer Services Division
2019 Washington Street, East
P.O. Box 50540
Charleston, West Virginia 25305-0540
(304) 558-3386
Toll Free 1-800-435-7381

West Virginia Life and Health Insurance Guaranty Association
Post Office Box 816
Huntington, West Virginia 25712

This Notice does not change anyone's rights or obligations under the Guaranty Act or the rights or obligations of the Guaranty Association.

APPENDIX B

WEST VIRGINIA LIFE AND HEALTH INSURANCE
GUARANTY ASSOCIATION DISCLAIMER

The West Virginia Life and Health Insurance Guaranty Association (the "Guaranty Association") provides coverage of claims under some types of life, health and annuity policies if the insurer becomes financially unable to meet its obligations. COVERAGE MAY NOT BE AVAILABLE FOR YOUR POLICY. Even if coverage is provided, there are substantial limits and exclusions. Coverage may be conditioned on residence in West Virginia. Other conditions may also preclude coverage.

Your insurer and its agents are prohibited by law from using the existence of the Guaranty Association or its coverage to sell you an insurance policy. You should not rely on availability of coverage under the Guaranty Association when selecting an insurer or an insurance policy.

The Guaranty Association or the West Virginia Insurance Commission will respond to questions you may have which are not answered by this document. Policyholders with additional questions may contact:

West Virginia Insurance Commission
Consumer Services Division
2019 Washington Street, East
Post Office Box 50540
Charleston, West Virginia 25305-0540
(304) 558-0401
Toll Free 1-800-435-7381

or

West Virginia Life and Health Insurance Guaranty Association
Post Office Box 816
Huntington, West Virginia 25712

This document does not change anyone's right or obligations under the Guaranty Act or the rights and obligations of the Guaranty Association.



STATE OF WEST VIRGINIA
Offices of the Insurance Commissioner

Legal Division

GASTON CAPERTON
Governor

HANLEY C. CLARK
Insurance Commissioner

July 13, 1993

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 fourteen (14) copies of the following:

- 1) Notice of an Emergency Rule;
- 2) Notice of a Comment Period on a Proposed Rule (only one copy enclosed as required);
- 3) Brief Summary;
- 4) Legislative Rule-Making Review Committee Questionnaire;
- 5) Fiscal Note;
- 6) Consent to Proposed Rule;
- 7) The West Virginia Life and Health Guaranty Association Act Notice Requirement (Series 36).

Please contact me if further information is required.

Sincerely,

Jeffrey W. VanGilder
Associate Counsel

JWV/sar
Enclosures

FILED
JUL 13 11 24 AM '93
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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



STATE OF WEST VIRGINIA

SECRETARY OF STATE

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

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

(Plus all the volunteer
help we can get)

FAX: (304) 558-0900

August 11, 1993

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Insurance Commissioner

RULE: New Rule, Series 36, West Virginia Life and Health Insurance Guaranty Association Act Notice Requirements

DATE FILED AS AN EMERGENCY RULE: July 13, 1993

DECISION NO. 10-93

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.

FILED

Aug 11 4 16 PM '93

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE


KEN HECHLER
Secretary of State



KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

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(Plus all the volunteer
help we can get)

FAX: (304) 558-0900

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 10-93)

AGENCY: Insurance Commissioner
RULE: New Rule, Series 36, West Virginia Life and Health Insurance
Guaranty Association Act Notice Requirements

FILED AS AN EMERGENCY RULE: July 13, 1993

- 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 July 13, 1993 and with the LRMRC July 13, 1993.

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 §33-26A-19(d) reads:

An insurer or agent may not deliver a policy or contract described in §33-26A-3(b)(1) of this article and excluded under §33-26A-3(b)(2)(A) of this article from coverage under this article unless the insurer or agent, prior to or at the time of delivery, gives the policy or contract holder a separate written notice which clearly and conspicuously discloses that the policy or contract is not covered by the association. The commissioner shall by rule specify the form and content of the notice, which rules shall be promulgated on or before the second day of August, 1993.

par. 9 It is the determination of the Secretary of State that the Commissioner has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency -- WV Code 29A-3-15(g) defines "emergency" as follows:

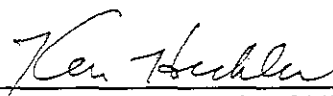
(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent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

par. 11 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. 12 The facts and circumstances as presented by the Commissioner are as follows:

On April 9, 1993, the West Virginia Legislature passed H.B. 2286 which took effect July 8, 1993. WV Code §33-27-14 requires the Insurance Commissioner to promulgate rules prior to August 1, 1993 setting forth procedural requirements necessary to implement the West Virginia Insurance Holding Company Systems Act, WV Code §33-27-1 et seq., and specifying the reporting forms required by the West Virginia Holding Company Systems Act.

- par. 13 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). . . "time limitation."
- par. 14 This decision shall be cited as Emergency Rule Decision 10-93 or ERD 10-93 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

AUG 11 4 16 PM '93

FILED