

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #2

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FILED
2010 JUN 15 PM 2:39

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Insurance Commission TITLE NUMBER: 114

RULE TYPE: Legislative CITE AUTHORITY W.Va. Code §33-2-10

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 PROPOSED: 41A

TITLE OF RULE BEING PROPOSED: Property and Casualty Actuarial Opinion

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON 7-15-2010 AT 5:00 pm. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Timothy R. Murphy

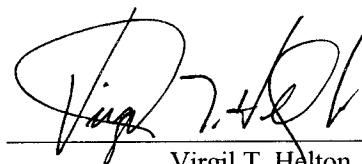
WV Offices of the Insurance Commissioner

P.O. Box 50540

Charleston, WV 25305-0540

Timothy.Murphy@wvinsurance.gov

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.



Virgil T. Halton
Cabinet Secretary
West Virginia Department of Revenue

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Offices of the Insurance Commissioner
Legislative Rule
Title 114, Series 41A

PROPERTY AND CASUALTY ACTUARIAL OPINION

TITLE 114, SERIES 41A

BRIEF SUMMARY OF RULE

This new rule will set forth standards for Property and Casualty insurers and reinsurers to file their actuarial opinion and actuarial opinion summary. This rule is based upon the National Association of Insurance Commissioners' model 745, "Property and Casualty Actuarial Opinion Model Law." The Offices of the Insurance Commissioner has a similar rule in place for life insurance insurers found in W.Va. Code of State Rules §§114-41-1 et seq. The actuarial opinion and actuarial opinion summary required by this rule are filing requirements according to the NAIC annual statement instructions.

Department of Revenue
Agency Questionnaire

Re: Legislative Rule to be Filed

PROPERTY AND CASUALTY ACTUARIAL OPINION

TITLE 114, SERIES 41A

Question 1: Are regulations required?

This rule is an accreditation requirement with the National Association of Insurance Commissioners.

Question 2: Is the rule you are proposing controversial? If yes, what are the pros and the cons?

This rule is not expected to be controversial.

Question 3: Is the rule you are proposing a copy of another state's rule? A model rule? Custom-drafted?

This rule is based upon the National Association of Insurance Commissioners' model 745, amended in 2009.

Question 4: What are the really important things you think the Secretary of Tax and Revenue should know about this rule and the issues that surround it?

This new rule will set forth standards for Property and Casualty insurers to file their actuarial opinion and actuarial opinion summary. This rule is based upon the National Association of Insurance Commissioners' model 745, "Property and Casualty Actuarial Opinion Model Law." The Offices of the Insurance Commissioner has a similar rule in place for life insurance insurers found in W.Va. Code of State Rules §§114-41-1 et seq. The actuarial opinion and actuarial opinion summary required by this rule are filing requirements according to the NAIC annual statement instructions. This rule is a requirement of accreditation purposes beginning in 2010.

Offices of the Insurance Commissioner
Legislative Rule
Title 114, Series 41A

PROPERTY AND CASUALTY ACTUARIAL OPINION

TITLE 114, SERIES 41A

STATEMENT OF CIRCUMSTANCES

The new rule is necessary for our agency starting in 2010 in order to retain NAIC accreditation to perform financial examinations that will be accepted in other accredited states. The actuarial opinion and actuarial opinion summary required by this rule are filing requirements according to the NAIC annual statement instructions. This rule is based upon the National Association of Insurance Commissioners' model 745, "Property and Casualty Actuarial Opinion Model Law."

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Property and Casualty Actuarial Opinion and (Title 114, Series 41A)

Type of Rule: X Legislative Interpretive Procedural Emergency

Agency: Insurance Commissioner

Address: Post Office Box 50540
1124 Smith Street, Greenbrooke Building
Charleston, West Virginia 25305-0540

Phone Number: (304) 558-0401 Email: Timothy.Murphy@wvinsurance.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

None

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	N/A	N/A	N/A
Personal Services	N/A	N/A	N/A
Current Expenses	N/A	N/A	N/A
Repairs & Alterations	N/A	N/A	N/A
Assets	N/A	N/A	N/A
Other	N/A	N/A	N/A
2. Estimated Total Revenues	N/A	N/A	N/A

Rule Title: Property and Casualty Actuarial Opinion (Title 114, Series 41A)

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

None

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Date: _____

Signature of Agency Head or Authorized Representative

Jane L. Cline, Insurance Commissioner

**TITLE 114
LEGISLATIVE RULE
INSURANCE COMMISSIONER**

**SERIES 41A
PROPERTY AND CASUALTY ACTUARIAL OPINION**

Section.

114-41A-1. General.

114-41A-2. Actuarial Opinion of Reserves and Supporting Documentation.

114-41A-3. Confidentiality.

**TITLE 114
LEGISLATIVE RULE
INSURANCE COMMISSIONER**

**SERIES 41A
PROPERTY AND CASUALTY ACTUARIAL OPINION**

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OFFICE OF THE SECRETARY OF STATE

§114-41A-1. General.

1.1. Scope. -- This rule applies to all property and casualty insurance companies and fraternal benefit societies doing business in this State and to all property and casualty insurance companies and fraternal benefit societies that are authorized to reinsure property and casualty businesses in this State. This rule is based on the "Property and Casualty Actuarial Opinion Model Law (Model 745)," as adopted by the National Association of Insurance Commissioners (NAIC) in 2003 and amended in 2009.

1.2. Authority. -- W.Va. Code §33-2-10

1.3. Filing Date. --

1.4. Effective Date. --

§114-41A-2. Actuarial Opinion of Reserves and Supporting Documentation.

2.1. This section shall become operative with respect to reporting years ending on or after December 31, 2011.

2.2. Statement of Actuarial Opinion. Every property and casualty insurance company doing business in this state, unless otherwise exempted by the Insurance Commissioner of this state or the commissioner in the state where the company is domiciled, shall annually submit the opinion of an Appointed Actuary entitled "Statement of Actuarial Opinion." This opinion shall be filed in accordance with the appropriate NAIC Property and Casualty Annual Statement Instructions.

2.3. Actuarial Opinion Summary.

2.3.a. Every property and casualty insurance company domiciled in this state that is required to submit a Statement of Actuarial Opinion shall annually submit an Actuarial Opinion Summary, written by the company's Appointed Actuary. This Actuarial Opinion Summary shall be filed in accordance with the appropriate NAIC Property and Casualty Annual Statement Instructions and shall be considered as a document supporting the Actuarial Opinion required in subsection 2.1 of this rule.

2.3.b. A company licensed but not domiciled in this state shall provide the Actuarial Opinion Summary upon request.

**Insurance Commissioner
Legislative Rule
Title 114, Series 41A**

2.4. Actuarial Report and Workpapers

2.4.a. An Actuarial Report and underlying workpapers as required by the appropriate NAIC Property and Casualty Annual Statement Instructions shall be prepared to support each Actuarial Opinion.

2.4.b. If the insurance company fails to provide a supporting Actuarial Report and/or workpapers at the request of the Commissioner or the Commissioner determines that the supporting Actuarial Report or workpapers provided by the insurance company are otherwise unacceptable to the Commissioner, the Commissioner may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare the supporting Actuarial Report or workpapers.

2.5. The Appointed Actuary shall not be liable for damages to any person (other than to the insurance company and the commissioner) for any act, error, omission, decision or conduct with respect to the actuary's opinion, except in cases of fraud or willful misconduct on the part of the Appointed Actuary.

§114-41A-3. Confidentiality.

3.1. The Statement of Actuarial Opinion shall be provided with the Annual Statement in accordance with the appropriate NAIC Property and Casualty Annual Statement Instructions and shall be treated as a public document.

3.2. a. Documents, materials or other information in the possession or control of the Commissioner that are considered an Actuarial Report, workpapers or Actuarial Opinion Summary provided in support of the opinion, and any other material provided by the company to the Commissioner in connection with the Actuarial Report, workpapers or Actuarial Opinion Summary, shall be confidential by law and privileged, shall not be subject to W.Va. Code §§29B-1-1 *et seq.*, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.

3.2.b. This provision shall not be construed to limit the Commissioner's authority to release the documents to the Actuarial Board for Counseling and Discipline (ABCD) so long as the material is required for the purpose of professional disciplinary proceedings and that the ABCD establishes procedures satisfactory to the Commissioner for preserving the confidentiality of the documents, nor shall this section be construed to limit the Commissioner's authority to use the documents, materials or other information in furtherance of any regulatory or legal action brought as part of the Commissioner's official duties.

**Insurance Commissioner
Legislative Rule
Title 114, Series 41A**

3.3. Neither the Commissioner nor any person who received documents, materials or other information while acting under the authority of the Commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials or information subject to subsection 3.2 of this rule.

3.4. In order to assist in the performance of the Commissioner's duties, he or she may:

3.4.a. Share documents, materials or other information, including the confidential and privileged documents, materials or information subject to subsection 3.2 of this rule, with other states, federal and international regulatory agencies, the NAIC and its affiliates and subsidiaries, and with state, federal and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material or other information and has the legal authority to maintain confidentiality;

3.4.b. Receive documents, materials or information, including otherwise confidential and privileged documents, materials or information, from the NAIC and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and

3.4.c. Enter into agreements governing sharing and use of information consistent with subsections 3.2 and 3.4 of this rule.

3.5. No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the Commissioner under this section or as a result of sharing as authorized in subsection 3.4 of this rule.