

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

Form #7

Do not mark in this box
Filing Date

FILED

2010 SEP -1 PM 1:49

WEST VIRGINIA
SECRETARY OF STATE

Effective Date

NOTICE OF AN EMERGENCY RULE

AGENCY: Offices of the Insurance Commissioner TITLE NUMBER: 114

CITE AUTHORITY W.Va. Code §33-2-10

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES ___ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

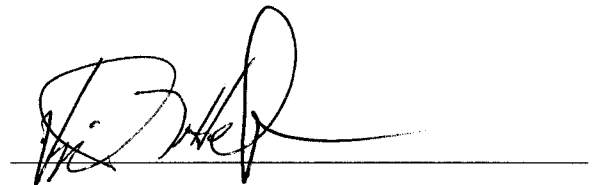
IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: 41A

TITLE OF RULE BEING AMENDED: Property and Casualty Actuarial Opinion

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

PLEASE SEE ATTACHED



Virgil T. Helton
Cabinet Secretary
West Virginia Department of Revenue

Use additional sheets if necessary

**Title 114, Series 41A - Emergency Rule
Property and Casualty Actuarial Opinion**

FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY:

This new rule, which sets forth additional standards for Property and Casualty insurers in filing their actuarial opinion and actuarial opinion summaries, is based upon the National Association of Insurance Commissioners' model 745, "Property and Casualty Actuarial Opinion Model Law." The new rule is necessary to comply with the NAIC accreditation requirements that will in turn enable OIC to perform financial examinations that will be accepted in other accredited states. The NAIC accreditation process is described as follows:

The mission of the accreditation program is to establish and maintain standards to promote sound insurance company financial solvency regulation. The accreditation program provides a process whereby solvency regulation of multi-state insurance companies can be enhanced and adequately monitored with emphasis on the following:

1. Adequate solvency laws and regulations in each accredited state to protect consumers and guaranty funds.
2. Effective and efficient financial analysis and examination processes in each accredited state.
3. Appropriate organizational and personnel practices in each accredited state.

WV OIC has been accredited continuously since 1999. This model law is currently an accreditation requirement and thus immediate implementation is necessary to ensure continued accreditation. NAIC conducts periodic reviews of state compliance.

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

PROPERTY AND CASUALTY ACTUARIAL OPINION

TITLE 114, SERIES 41A

BRIEF SUMMARY OF RULE

This new rule will require Property and Casualty insurers and reinsurers to file an annual "statement of actuarial opinion" and actuarial opinion summary that must be prepared in accordance with NAIC instructions. This rule is based upon the National Association of Insurance Commissioners' model 745, "Property and Casualty Actuarial Opinion Model Law." These filings will enable regulators to better assess a company's solvency. Promulgation of the rule is necessary for WV to maintain its accreditation with the NAIC.

Department of Revenue
Agency Questionnaire

Re: Emergency Rule to be Filed

PROPERTY AND CASUALTY ACTUARIAL OPINION

TITLE 114, SERIES 41A

Question 1: Are regulations required?

Yes, this rule is an accreditation requirement of the National Association of Insurance Commissioners (NAIC).

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

No

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 NAIC 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?

The amendments to this rule, which are based on changes adopted by the NAIC in 2009, involve the actuarial opinion and actuarial opinion summary required as part of an insurer's annual statement. Adoption of this rule is a requirement of accreditation program beginning on January 1, 2010 and should have been proposed as a legislative rule in 2009. The accreditation program mandates a uniform system of financial regulation that enables states to rely on another accredited state's financial oversight of its domestic insurers.

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period, Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE:

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: OFFICE OF THE INSURANCE COMMISSIONER
ATTN: Legal Division
1124 Smith Street
Post Office Box 50540
Charleston, West Virginia 25305-0540

EMERGENCY RULE TITLE: PROPERTY AND CASUALTY ACUTARIAL OPINION
(Title 114, Series 41A)

1. **Date of Filing:**

2. **Statutory authority for promulgating emergency rule:**

W.Va. Code §33-2-10

3. **Date of filing of proposed legislative rule:**

June 15, 2010.

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 has not been previously filed.

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

N/A

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.

N/A

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

This new rule, which will require Property and Casualty insurers to file actuarial opinion and actuarial opinion summaries, will better enable OIC to assess the solvency of such companies. This rule is based upon the National Association of Insurance Commissioners' model #745, "Property and Casualty Actuarial Opinion Model Law" (OIC has a similar rule in place for life insurance insurers at W.Va. Code of State Rules §114-41-1 et seq.) The circumstances justifying an emergency rule being promulgated are that this new rule is a requirement for NAIC accreditation beginning January 1, 2010.

The NAIC describes the importance of the accreditation process as follows in an informational pamphlet it publishes (emphasis added):

What is accreditation?

..., accreditation is a certification given to a state insurance department once it has demonstrated it has met and continues to meet an assortment of legal, financial and organizational standards as determined by a committee of its peers.

Why is accreditation necessary?

The concept of accrediting state insurance departments began in the mid-to-late 1980s when several large insurance companies became insolvent. In May 1988, as a response to the insolvencies, a congressional inquiry began looking at the insolvencies. In turn, the NAIC began discussing and shaping the Financial Regulation Standards and Accreditation Program in September 1988.

It was apparent that a system of effective solvency regulation could provide crucial safeguards for America's insurance consumers. Insurance consumers benefit when the insurance industry is strong enough financially to be able to pay and settle claims in a timely manner, to provide diverse and competitively priced products, and to provide meaningful customer service.

An effective system of solvency regulation has certain basic components. It requires that regulators have adequate statutory and administrative authority to regulate an insurer's corporate and financial affairs. It requires that regulators have the necessary resources to carry out that authority. Finally, it requires that insurance departments have in place organizational and personnel practices designed for effective regulation.

...In an effort to provide guidance to the states regarding the baseline Standards and as an incentive to put them in place, the NAIC adopted in June 1990 a formal certification program. Under this plan, each state's insurance department will be reviewed by an independent review team whose job is to assess that department's compliance with the Standards. Departments meeting the Standards will be publicly acknowledged, while departments not in compliance will be given guidance by the NAIC to bring the department into compliance. ...

What is the program's mission statement?

The mission of the NAIC accreditation program is to establish and maintain standards to promote sound insurance company financial solvency regulation. The accreditation program provides a process whereby solvency regulation of multi-state insurance companies can be enhanced and adequately monitored with emphasis on the following:

1. Adequate solvency laws and regulations in each accredited state to protect consumers and guarantee funds. 2. Effective and efficient financial analysis and examination processes in each accredited state. 3. Appropriate organizational and personnel practices in each accredited state. The accreditation program will accomplish its mission by continually evaluating the adequacy and appropriateness of accreditation standards in accordance with the changing regulatory environment and through continued monitoring of accredited states ...

What are the benefits of accreditation?

The accreditation program allows for inter-state cooperation and reduces regulatory redundancies. That is, if a company is domiciled in an accredited state, the other states in which that company is licensed and/or writes business may be assured that, because of its accredited status, the domiciliary state insurance department is adequately monitoring the financial solvency of that company. In fact, each accredited state's laws or regulations on financial examinations contain a provision that all licensed companies are to be examined periodically; however, in lieu of performing its own examination, a state may accept the examination report prepared by an insurance department that was accredited at the time of examination. Therefore, the inter-state reliance that the accreditation program produces ultimately saves millions of dollars in duplicative examination costs.

If the emergency rule is made effective in mid-2010, companies will be able to implement the new provisions with respect to the annual statements due in March 2011. Otherwise, there is a possibility that WV will lose its accreditation if the rule is not made effective with respect to these statements or, at the very least, be out of step with all or many of the other accredited states. This in turn will have adverse effects

on the regulatory system that depends to a large degree on uniformity in the solvency rules of the states.

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PROPERTY AND CASUALTY ACTUARIAL OPINION

TITLE 114, SERIES 41A

STATEMENT OF CIRCUMSTANCES

The new rule must be made applicable to P&C carriers' 2010 annual statements in order to ensure OIC's accreditation by NAIC 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: Legislative Interpretive Procedural X 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
EMERGENCY 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
EMERGENCY RULE
INSURANCE COMMISSIONER**

FILE
2010 SEP -1 PM 1:49

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

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, 2010.

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.

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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.

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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.