

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

Form #4 ■

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Nov 17 10 52 AM '00

OFFICE OF THE SECRETARY OF STATE
WEST VIRGINIA

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Insurance Commissioner TITLE NUMBER: 114

CITE AUTHORITY: W. Va. Code § 33-2-10

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 42

TITLE OF RULE BEING AMENDED: Continuing Education for Insurance
Agents

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULES, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE, IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.



Authorized Signature



STATE OF WEST VIRGINIA
Offices of the Insurance Commissioner

Legal Division

CECIL H. UNDERWOOD
Governor

HANLEY C. CLARK
Insurance Commissioner

November 17, 2000

HAND DELIVERED

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

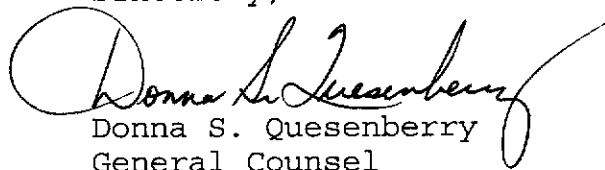
Dear Ms. Cooper:

Enclosed please find for filing one (1) copy of the following:

- 1) Notice of a Rule Modification of a Proposed Rule and Consent of Tax and Revenue Cabinet Secretary to Proposed Rule;
- 2) The proposed rule entitled "Continuing Education for Insurance Agents" (Series 42).

Please contact me if further information is required.

Sincerely,


Donna S. Quesenberry
General Counsel

DSQ/jz
Enclosures

114CSR42

WEST VIRGINIA LEGISLATIVE RULE
INSURANCE COMMISSIONER

SERIES 42
CONTINUING EDUCATION FOR INSURANCE AGENTS

Section

- 114-42-1. General.
- 114-42-2. Definitions.
- 114-42-3. Applicability.
- 114-42-4. Exemptions.
- 114-42-5. Continuing Insurance Education Course Requirements.
- 114-42-6. Agent Continuing Insurance Education Requirements.
- 114-42-7. Proof of Completion.
- 114-42-8. Disciplinary Process.
- ~~114-42-9. Severability.~~

FILED

114CSR42

Nov 17 10 52 AM '00

**WEST VIRGINIA LEGISLATIVE RULE
INSURANCE COMMISSIONER**

OFFICE OF THE CLERK OF THE WEST VIRGINIA
SECRETARY OF STATE

**SERIES 42
CONTINUING EDUCATION FOR INSURANCE AGENTS**

§ 114-42-1. General.

1.1. Scope. -- This legislative rule establishes standards for continuing insurance education requirements and the sanctions to be imposed for failure to comply with such requirements.

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

1.3. Filing Date. -- ~~April 24, 2000~~

1.4. Effective Date. -- ~~April 24, 2000~~

§ 114-42-2. Definitions.

2.1. "Agent" or "active insurance agent" means an individual licensed by the Commissioner and appointed by an insurer with the Commissioner to solicit, negotiate, effect or countersign insurance contracts on its behalf. For purposes of this rule, reference to the terms "agent" and "active insurance agent" include the term "solicitor" unless specifically excluded.

2.2. "Approved course" means a course or program of instruction approved by the Commissioner and the Board of Insurance Agent Education for continuing insurance education credit.

2.3. "Biennium" means the two-year reporting period beginning July 1, 1992 and ending June 30, 1994, and every two-year period thereafter until the thirtieth day of June, 2000.

2.4. "Board" means the Board of Insurance Agent Education created and established pursuant to W. Va. Code §33-12-2(f).

2.5. "Cancelled license" means a license to engage in the sale of insurance which has been:

a. voluntarily voided by request of the agent and approval by the Commissioner;

or

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b. terminated for failure to satisfy the mandatory continuing education requirements as of the last day of the biennium reporting period following his or her suspension.

2.6. "Certificate of course completion" means a document acceptable to the Commissioner which signifies satisfactory completion of an approved course and reflects hours of credit earned.

2.7. "Commissioner" means the Commissioner of Insurance of the State of West Virginia.

2.8. "Inactive agent" is an individual who has had all contractual relationships with the insurer(s) or employing agent(s) terminated for any reason.

2.9. "Provider" means a person, corporation, professional association or its local affiliates, an insurance company or other entity which is approved by the Commissioner and provides approved continuing insurance education to insurance agents.

2.10. "Reporting period" means the applicable biennium or triennium during which an agent must meet his or her continuing insurance education requirements in order to maintain his or her license as required by W. Va. Code §33-12-2a.

~~2.10~~2.11. "Solicitor" means an individual appointed and authorized by an agent to solicit and receive applications for insurance as a representative of the agent.

~~2.11~~2.12. "Suspended agent" is an individual whose license to engage in the sale of insurance has been temporarily withdrawn until such time as the agent has successfully completed his or her continuing insurance education requirements.

2.13. "Triennium" means the three-year reporting period beginning the first day of July, 2000, and ending on the thirtieth day of June, 2003, and every three-year period thereafter.

§ 114-42-3. Applicability.

3.1. This rule applies to solicitors and resident agents licensed by the Commissioner to engage in the sale of one or more of the following types of insurance:

a. Life insurance, annuity contracts, variable annuity contracts and variable life insurance;

b. Sickness, accident and health insurance;

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- c. All lines of property and casualty insurance;
- d. Preneed burial insurance contracts;
- e. All other lines of insurance for which an examination is required by the Commissioner;
- f. Agents appointed on behalf of a licensed health maintenance organization; and
- g. Agents engaged in telemarketing insurance products.

§ 114-42-4. Exemptions.

4.1. Continuing education requirements shall not apply to:

- a. Persons holding resident licenses for any kind or kinds of insurance for which an examination is not required by the Commissioner;
- b. Persons selling only credit life or credit accident and health insurance;
- c. Any such limited or restricted license as the Commissioner may exempt;
- d. Inactive agents;
- e. Agents whose licenses have expired pursuant to W. Va. Code §33-12-18;
- f. Agents who have voluntarily cancelled their licenses;
- g. Non-resident agents; and
- h. Adjusters.

4.2. Agents newly licensed on or after July 1 of the second year of a biennium are exempt from continuing insurance education requirements only for the biennium in which the license was issued.

4.3. Agents newly licensed on or after January 1 of the second year of a triennium are exempt from continuing insurance education requirements only for the triennium in which the license was issued.

§ 114-42-5. Continuing Insurance Education Course Requirements.

5.1. A continuing insurance education course shall not qualify for use as continuing insurance education credit unless it is filed with and approved by the Commissioner and the Board.

5.2. A provider shall not implement any material change in a continuing insurance education course previously approved by the Commissioner until the change has been filed with and approved by the Commissioner and the Board.

5.3. The Commissioner will not give an agent credit for any continuing insurance education course which is taken prior to the issuance of written approval by the Commissioner and the Board.

5.4. If a continuing insurance education course is taken more than once in a ~~biennium~~ reporting period, the Commissioner will give the agent credit only for the first time that course was taken and completed during the applicable reporting period.

5.5. The Commissioner may withdraw approval of a continuing insurance education course for any of the following reasons:

a. The continuing insurance education course teaching methods or course content have been materially changed without being filed with or approved by the Commissioner and the Board;

b. The continuing insurance education course provider has certified to the Commissioner that an agent has satisfactorily completed the course when, in fact, the agent has not done so;

c. The continuing insurance education course provider fails to certify to the Commissioner that the agent has satisfactorily completed the course when, in fact, the agent has done so; or

d. There is other good reason to withdraw approval of a continuing insurance education course.

5.6. In those instances where the Commissioner has withdrawn approval for a continuing insurance education course, agents who successfully completed the course prior to the withdrawal of approval shall receive credit toward their continuing education requirements.

5.7. Scripted presentations for insurance agents involved in telemarketing insurance products pursuant to W. Va. Code §33-12-2a shall be filed with the Commissioner no later than the first day of each biennium reporting period or at least sixty (60) days prior to doing business in the state, whichever comes first.

§ 114-42-6. Agent Continuing Insurance Education Requirements.

6.1. The Commissioner may, upon application for good cause shown, grant an agent an extension of time in which to meet the continuing insurance education requirements. Extensions may be granted for the following reasons:

a. The agent has been engaged in active military duty outside the state for at least twelve (12) months during the biennium or at least eighteen (18) months during the triennium;

b. The agent was or has become physically or mentally temporarily or permanently disabled by injury, illness or disease and was unable to perform adequately the duties required of him or her as a licensed insurance agent for a period of at least twelve (12) months during the biennium or at least eighteen (18) months during the triennium; or

c. Any such other reason as the Commissioner may determine on a case-by-case basis as constituting good cause.

6.2. An agent should submit a request for an extension of time in which to meet the continuing insurance education requirements to the Commissioner in writing at least thirty (30) days prior to the last day of the biennium reporting period and shall include in the request an explanation together with reasonable verification of the hardship rendering an extension necessary.

6.3. The Commissioner shall refuse to renew the appointments or issue new appointments for those lines of insurance specified in section 3 of this rule to any agent who does not satisfy the minimum continuing insurance education requirements.

6.4. An agent may not carry forward excess credit hours accumulated during one biennium reporting period to satisfy the continuing insurance education requirements of the following biennium reporting period.

6.5. Any agent who has not complied with the continuing insurance education requirements by the end of the biennium reporting period may thereafter obtain credits to be carried back to meet the requirements of the preceding biennium reporting period.

6.6. An agent may use any continuing insurance education credit obtained to satisfy the mandatory continuing insurance education requirements of one biennium reporting period only.

6.7. Inactive agents must satisfactorily complete one-half of the continuing insurance education requirements of one biennium reporting period within the twelve (12) months immediately preceding his or her return to active status.

a. An agent may not count the continuing insurance education requirements completed for a return to active status toward the continuing insurance education requirements for the biennium in which active status is granted.

b. No agent shall be permitted to make use of a transfer from active to inactive status as a means to circumvent the mandatory continuing insurance education requirements.

6.8. Agents who have a cancelled license or an expired license pursuant to W. Va. Code §33-12-18 shall successfully complete pre-licensing education and examination before qualifying for a new license, and shall thereafter successfully complete the continuing insurance education credits required pursuant to W. Va. Code §33-12-1 et seq. and the guidelines established by the Board.

a. No agent shall allow his or her license to expire as a means to circumvent the mandatory continuing education requirements.

6.9. The Commissioner shall recognize the continuing insurance education requirements obtained during the biennium reporting period through an approved provider of another state only in those instances where all the following conditions are met:

a. The agent is a former resident agent for whom a clearance letter was previously issued by the Commissioner;

b. The agent is currently licensed in good standing in another state and has been so licensed since leaving West Virginia; and

c. The agent is in the process of establishing residency in West Virginia and has requested to have his or her resident agent's license reinstated.

§ 114-42-7. Proof of Completion.

7.1. Upon completion of a continuing insurance education course, the provider shall certify to the Commissioner the names of all agents who satisfactorily completed the continuing

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insurance education course. The certification shall be in the form prescribed by the Commissioner.

a. The continuing education attendance roster shall be mailed by the provider to the Commissioner within thirty (30) days after the continuing insurance education course is completed.

b. The provider of the continuing insurance education course shall furnish a certificate of completion to the agent attending the course, ~~a certificate of completion~~ and the agent shall retain a copy of the certificate for not less than ~~three (3)~~ four (4) years from the date the course is completed.

c. The provider shall retain a copy of the attendance roster for not less than ~~three (3)~~ four (4) years from the date the course is completed.

7.2. Providers of continuing insurance education courses and agents shall make available to the Commissioner or his or her designee copies of certificates upon request of the Commissioner.

§ 114-42-8. Disciplinary Process.

8.1. No later than sixty (60) days prior to the end of the biennium reporting period, the Commissioner shall provide written notification to agents subject to continuing insurance education requirements advising them as to the status of their continuing insurance education credits.

a. The Commissioner shall provide the notification to each agent either by personal delivery or by regular mail addressed to the agent at the last address appearing for the agent in the records of the Commissioner.

b. Agents who sell only preneed burial insurance contracts shall file with the Commissioner an affidavit, on a form to be provided by the Commissioner, verifying that the agent is not engaged in the sale of any other type of insurance product.

c. Agents engaged solely in telemarketing insurance products by a scripted presentation which has been filed with and approved by the Commissioner shall file an affidavit, on a form to be provided by the Commissioner, verifying that the agent is not engaged in the sale of any other type of insurance product.

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8.2. Any agent who does not anticipate pursuing the required continuing insurance education requirements may elect to cancel his or her license prior to the end of the biennium reporting period by submitting a written request to the Commissioner. Cancellation of a license revokes any privilege the agent may have had to reinstate his or her license without completion of a pre-licensing insurance education course and examination.

a. Each request for cancellation of a license shall include the agent's name, address, agent license number, telephone number and reason for cancellation.

b. Cancellation of a license prohibits an individual from further transacting insurance in West Virginia without successful completion of pre-licensing education and examination.

8.3. Any agent who has not met the continuing insurance education requirements for the biennium any reporting period may agree to a voluntary suspension of his or her license until such time as the continuing insurance education requirements have been met.

a. Each request for a voluntary suspension of a license shall include the agent's name, address, agent license number and telephone number.

b. An agent may not transact insurance in West Virginia during the suspension period.

c. Any agent who does not satisfy the mandatory continuing education requirements as of the last day of the biennium following his or her voluntary suspension shall have his or her license automatically cancelled pursuant to the provisions of W. Va. Code §33-12-2a(h).

8.4. Any agent failing to meet continuing insurance education requirements and who has not been granted an extension of time within which to comply, or who has submitted to the Commissioner a false or fraudulent certificate of compliance shall have his or her license automatically suspended until such time as the agent has demonstrated to the satisfaction of the Commissioner that he or she has complied with all the requirements of this rule and all other applicable laws.

a. "Suspension of all licenses issued for any kind or kinds of insurance" shall be interpreted to mean those licenses for which continuing insurance education is required pursuant to this rule and W. Va. Code §33-12-1 et seq.

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b. The burden of proving successful completion of continuing insurance education courses is at all times upon the individual subject to the continuing insurance education requirements.

c. Any person whose license has been suspended for failure to meet the continuing insurance education requirements of W. Va. Code §33-12-2a and this rule must satisfactorily complete the continuing insurance education requirements of each biennium reporting period in which the suspension was in effect before the suspension can be lifted.

d. Any agent who does not satisfy the mandatory continuing education requirements as of the last day of the biennium reporting period following his or her suspension shall have his or her license automatically cancelled pursuant to the provisions of W. Va. Code §33-12-2a(h).

8.5. Upon suspension of an agent's license for failure to comply with the mandatory continuing insurance education requirements for the biennium reporting period, the Commissioner shall:

a. Give notice of the suspension to the insurer(s) or employing agent with whom the agent has a contractual relationship; and

b. Cancel all appointments of the agent subject to disciplinary action.

8.6. An insurer or employing agent shall not renew or issue new appointments subject to continuing insurance education requirements to an agent whose license has been suspended for failure to comply with mandatory continuing insurance education requirements until such time as the agent's license has been reinstated and an application and appropriate fee ~~has~~ have been submitted to and approved by the Commissioner.

8.7. Neither cancellation of a license nor any disciplinary action levied as a result of non-compliance with continuing insurance education requirements shall prohibit an individual from receiving commissions which were vested and earned while that individual maintained an approved license.

~~§ 114-42-9. Severability.~~

~~9.1. If any provision of this rule or the application of this rule to any person or circumstances is for any reason held to be invalid, the remainder of the rule and the application of the provisions to other persons or circumstances shall not be affected by the holding.~~