

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION
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OFFICE OF THE SECRETARY OF STATE
WEST VIRGINIA

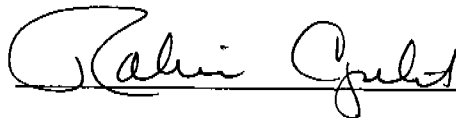
NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Insurance Commissioner TITLE NUMBER: 114
RULE TYPE: Legislative; CITE AUTHORITY W. Va. Code Section 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 NEW RULE BEING PROPOSED: _____
TITLE OF RULE BEING PROPOSED: _____

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 July 8, 1999 AT 4:30 P.M.
ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Donna S. Quesenberry
Associate Counsel
West Virginia Insurance Commission
P.O. Box 50540
Charleston, WV 25305-0540
(304) 558-0401

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



ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

\$3.80



STATE OF WEST VIRGINIA
Offices of the Insurance Commissioner

Legal Division

CECIL H. UNDERWOOD
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 42, relating to "Continuing Education for Insurance Agents."

Dated this 28th day of May, 1999.

A handwritten signature in cursive script, appearing to read "Robin Capehart", written over a horizontal line.

Robin Capehart
Secretary of Tax and Revenue

Insurance Commissioner
Legislative Rule
Title 114, Series 42

CONTINUING EDUCATION FOR INSURANCE AGENTS

Title 114, Series 42

BRIEF SUMMARY OF RULE

This rule is being amended to implement the provisions of House Bill 2836, passed during the 1999 legislative session, which amended W. Va. Code Sections 33-12-2 and 33-12-2a relating to insurance agent education requirements. The amendments to the rule provide that, pursuant to W. Va. Code Section 33-12-2a(f), any agent failing to meet the mandatory continuing education requirements shall have his or her license automatically suspended, and provide that any agent whose license has been suspended for failure to satisfy the continuing education requirements will have his or her license cancelled if the continuing education requirements are not met by the end of the following biennium. Additionally, the rule eliminates any reference to agents who are not subject to pre-licensing education if licensed on July 1, 1989 and who subsequently terminate the contractual relationship with the insurer or employing agent since that language has been stricken from the statute. Finally, the rule clarifies the intent of the rule as originally drafted and the policy of the Insurance Commissioner's Office that any agent suspended for failure to satisfy the continuing education requirements must complete the requirements of each biennium in which the suspension was in effect before having his or her suspension lifted.

Insurance Commissioner
Legislative Rule
Title 114, Series 42

CONTINUING EDUCATION FOR INSURANCE AGENTS

Title 114, Series 42

STATEMENT OF CIRCUMSTANCES

In 1999, the West Virginia Legislature passed House Bill 2836 which amended W. Va. Code Sections 33-12-2 and 33-12-2a relating to insurance agent education requirements. This rule is being amended to reflect changes in the statutes and to clarify previously established standards for continuing education requirements for insurance agents.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Continuing Education for Insurance Agents
Title 114, Series 42

Type of Rule: XX Legislative ___ Interpretive ___ Procedural

Agency: Insurance Commissioner

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

=====

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	Increase	Decrease	Current	Next	Thereafter
ESTIMATED TOTAL COST	None				
PERSONAL SERVICES	None				
CURRENT EXPENSE	None				
REPAIRS AND ALTERNATIONS	None				
EQUIPMENT	None				
OTHER	None				

2. Explanation of above estimates:

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

3. Objectives of these rules:

The objective of this rule is to set forth the standards which the Insurance Commissioner deems necessary to carry out the provisions of Section 2a, Article 12, Chapter 33 of the West Virginia Code dealing with continuing education for persons holding an approved insurance agents license.

Rule Title: Continuing Education for Insurance Agents
Title 114, Series 42

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.

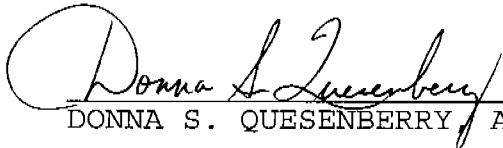
None

C. Economic Impact on Citizens/Public at Large.

None

Date: 5/27/99

Signature of Agency Head or Authorized Representative



DONNA S. QUESENBERY, ASSOCIATE COUNSEL

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.

WEST VIRGINIA LEGISLATIVE RULE
INSURANCE COMMISSIONER

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 2, 1996.~~

1.4. Effective Date. -- ~~April 2, 1996.~~

§ 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.

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

b. terminated for failure to satisfy the mandatory continuing education requirements as of the last day of the biennium 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. "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. "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.

§ 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;
- 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.

§ 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, the Commissioner will give the agent credit only for the first time that course was taken and completed.

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 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;

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

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 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 to satisfy the continuing education requirements of the following biennium.

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

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

~~6.7. Inactive agents and agents whose licenses have expired pursuant to W. Va. Code § 33-12-18 and who are exempt from pre-licensing education and examination pursuant to W. Va. Code § 33-12-2a must satisfactorily complete one-half of the continuing insurance education requirements of one biennium 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.

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

~~6.8. Inactive agents and agents whose licenses have expired pursuant to W. Va. Code § 33-12-18 and who are subject to pre-licensing education and examination are not required to complete continuing insurance education requirements for the biennium in which active status is granted.~~

~~6.9~~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.

6.106.9. The Commissioner shall recognize the continuing insurance education requirements obtained during the biennium 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 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 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) 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) 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, the Commissioner shall provide written notification to agents subject to continuing insurance education requirements advising them as to the status of their continuing 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.

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 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 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, ~~after a hearing thereon, which hearing may be waived by the agent, be subjected to suspension of all licenses issued for any kind or kinds of insurance~~ 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.

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 education requirements of W. Va. Code §33-12-2a and this rule must satisfactorily complete the continuing education requirements of each biennium 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 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, 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 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.



STATE OF WEST VIRGINIA
Offices of the Insurance Commissioner

Legal Division

CECIL H. UNDERWOOD
Governor

HANLEY C. CLARK
Insurance Commissioner

June 4, 1999

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 Comment Period on a Proposed Rule;
- 2) Consent of Tax and Revenue Cabinet Secretary to Proposed Rule;
- 3) Brief Summary of Rule;
- 4) Statement of Circumstances;
- 5) Fiscal Note;
- 6) The proposed rule entitled "Continuing Education for Insurance Agents" (Series 42).

Please contact me if further information is required.

Sincerely,

Donna S. Quesenberry
Associate Counsel

DSQ/jz
Enclosures

FILED
JUN 8 11 09 AM '99
OFFICE OF THE SECRETARY OF STATE
STATE OF WEST VIRGINIA