



*State of West Virginia*  
*Joe Manchin, III*  
*Secretary of State*

Secretary of State's Office  
Building 1, Suite 157-K  
1900 Kanawha Blvd., East  
Charleston, WV 25305-0770

Telephone: (304) 558-6000  
Corporations: (304) 558-8000  
FAX: (304) 558-0900  
wvsos@secretary.state.wv.us  
www.state.wv.us/sos/

June 29, 2001

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Insurance Commission

RULE: New Rule, 114CSR57, Privacy of Consumer Financial and Health Information

DATE FILED AS AN EMERGENCY RULE: May 25, 2001

DECISION NO. 2-01

Following review under W. Va. Code §29A-3-15a, it is the decision of the Secretary of State that the above emergency rule is **approved**. A copy of the complete decision with required findings is available from this office.

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SECRETARY OF STATE

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EMERGENCY RULE DECISION  
(ERD 2-01)

AGENCY: Insurance Commission  
RULE: New Rule, 114CSR57, Privacy of Consumer Financial & Health  
Information  
FILED AS AN EMERGENCY RULE: May 25, 2001

- par. 1 The Insurance Commission (Commission) has filed the above new rule as an emergency rule.
- par. 2 W. Va. Code 29A-3-15a 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-3-15a].
- par. 4 (A) Procedural Compliance: W. Va. 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 forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.
- par. 6 The Commission filed this emergency rule with supporting documents with the Secretary of State May 25, 2001 and with the LRMRC May 25, 2001.

par. 7 It is the determination of the Secretary of State that the Commission has complied with the procedural requirements of W. Va. Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- W. Va. Code §33-6F-1 reads:

***§33-6F-1. Privacy; rules.***

***(a) No person shall disclose any nonpublic personal information contrary to the provisions of Title V of the Gramm-Leach-Bliley Act, Pub. L. 106-102 (1999).***

***(b) On or before the first day of July, two thousand one, the commissioner shall propose rules for legislative approval in accordance with article twenty, chapter twenty-nine-a of this code necessary to carry out the provisions of Title V of the Gramm-Leach-Bliley Act, Pub. L. 106-102 (1999) and this article.***

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

par. 10 (C) Emergency -- W. Va. Code §29A-3-15(f) defines "emergency" as follows:

***(f) 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 Commission are as follows:

This proposed emergency rule adopts the model regulation covering privacy of consumer financial and health information adopted by the NAIC on September 26, 2000. This rule establishes policies and procedures necessary to comply with Title V of the Gramm-Leach-Bliley Act ("GLBA") (15 U.S.C. 6801, et seq.) Pursuant to Section 6801 of the GLBA, state insurance authorities must establish appropriate standards for insurers relating to safeguards to insure the security of customer information and to protect against unauthorized access to or use of such information. Pursuant to Subsection (c) of Section 6805 of the GLBA, a State insurance authority that fails to adopt rules or regulations to carry out the provisions limiting disclosure of nonpublic personal information will not be eligible to override Federal banking agency consumer protection regulations that relate to insurance sales by banks. In order to ensure that the West Virginia Insurance Commission can protect the privacy of consumers' information obtained by banks that sell insurance products, this rule must be promulgated as an emergency.

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(f). . . "to prevent substantial harm to the public interest"

par. 14 This decision shall be cited as Emergency Rule Decision 2-01 or ERD 2-01 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Insurance Commission, the Attorney General and the Legislative Rule Making Review Committee.



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JOE MANCHIN, III  
Secretary of State

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