

Attachment to Form #8.

Facts and Circumstances Constituting the Emergency Amendment:

On April 10, 2002, the National Association of Insurance Commissioners ("NAIC") adopted the Standards for Safeguarding Customer Information Model Regulation, and urged all states to immediately promulgate the model as a rule. This rule is being promulgated as an emergency rule because, in the absence of state regulation, a state insurance department will be unable to override the insurance customer protection regulations prescribed by a federal banking agency under section 305 of the Gramm-Leach-Bliley Act ("GLBA"). Section 305 of the GLBA requires that federal banking agencies adopt consumer protection regulations relating to insurance sales by banks. The right to override these regulations, and regulate banks that sell insurance, will be lost at the state level by failing to adopt this emergency rule. Therefore it is necessary to promulgate this emergency rule to insure that the Insurance Commission has regulatory control over all insurance being transacted in the state, and that consumers can be protected by the state agency that is specifically charged with regulation of those entities transacting insurance in West Virginia.

The amendments to the emergency rule are needed in order to make the emergency rule consistent with changes to the proposed legislative rule that are the result of public comments. As originally proposed, the emergency rule and the legislative rule required licensees to implement data security standards with regard to "consumer" information. In response to comments received, the Insurance Commissioner has proposed changes that will limit the security standards to "customer" information, but the definition of "customer information" will now include applications for insurance coverage submitted by consumers regardless of whether the consumer ultimately purchases the insurance. It is necessary that the emergency rule not be more restrictive than what is now proposed as a legislative rule, since licensees will be required to develop and implement standards pursuant to the emergency rule that will one day be replaced by the legislative rule standards. For this reason, the amendments to the emergency rule are being proposed.

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: July 26, 2002

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: STANDARDS FOR SAFEGUARDING CUSTOMER INFORMATION (Title 114, Series 62)

1. Date of filing:

July 26, 2002

2. Statutory authority for promulgating emergency:

West Virginia Code Sections 33-2-10 and 33-6FB-1.

3. Date of filing of proposed legislative rule:

May 29, 2002

4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?

The emergency rule adds a new series, Series 62, to the Insurance Commission rules (Title 114 of the Code of State Rules). The rule is new.

5. Has the same or similar emergency rule previously been filed and expired?

No.

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.

See response to Question #8.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code of federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

See response to Question #8.

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

On April 10, 2002, the National Association of Insurance Commissioners ("NAIC") adopted the Standards for Safeguarding Customer Information Model Regulation, and urged all states to immediately promulgate the model as a rule. This rule is being promulgated as an emergency rule because, in the absence of state regulation, a state insurance department will be unable to override the insurance customer protection regulations prescribed by a federal banking agency under section 305 of the Gramm-Leach-Bliley Act ("GLBA"). Section 305 of the GLBA requires that federal banking agencies adopt consumer protection regulations relating to insurance sales by banks. The right to override these regulations, and regulate banks that sell insurance, will be lost at the state level by failing to adopt this emergency rule. Therefore it is necessary to promulgate this emergency rule to insure that the Insurance Commission has regulatory control over all insurance being transacted in the state, and that consumers can be protected by the state agency that is specifically charged with regulation of those entities transacting insurance in the state.

This rule establishes standards for developing and implementing administrative, technical and physical safeguards to protect the security, confidentiality and integrity of customer information, pursuant to sections 501 and 507, and subsection 505(b) of the Gramm-Leach-Bliley Act, codified at 15 U.S.C. 6801, 6805(b) and 6807. Subsection 501(b) of the act requires the state insurance regulatory authorities, with respect to persons engaged in providing insurance, to establish appropriate standards relating to administrative, technical and physical safeguards to ensure the security and confidentiality of customer records and information; to protect against any anticipated threats or hazards to the security or integrity of such records; and to protect against unauthorized access to or use of records or information that could result in substantial harm or inconvenience to a customer. Subsection 503(a) of the act requires each financial institution to develop policies for protecting the non-public personal information of consumers and to make those policies available in written form. This emergency rule will bring the state into compliance with these directives.

Insurance Commissioner
Emergency Rule
Title 114, Series 62

STANDARDS FOR SAFEGUARDING CUSTOMER INFORMATION

TITLE 114, SERIES 62

BRIEF SUMMARY OF EMERGENCY RULE

Subsection 501(a) of the Gramm-Leach-Bliley Act, 15 U.S.C. 6801, provides that it is the policy of the congress that each financial institution has an affirmative and continuing obligation to respect the privacy of its customers and to protect the security and confidentiality of those customers' nonpublic personal information. This rule, which was adopted by the National Association of Insurance Commissioners as a model regulation on April 10, 2002, establishes standards for developing and implementing administrative, technical and physical safeguards to protect the security, confidentiality and integrity of customer information, pursuant to sections 501 and 507, and subsection 505(b) of the Gramm-Leach-Bliley Act, codified at 15 U.S.C. 6801, 6805(b) and 6807. Subsection 501(b) of the act requires the state insurance regulatory authorities, with respect to persons engaged in providing insurance, to establish appropriate standards relating to administrative, technical and physical safeguards to ensure the security and confidentiality of customer records and information; to protect against any anticipated threats or hazards to the security or integrity of such records; and to protect against unauthorized access to or use of records or information that could result in substantial harm or inconvenience to a customer. This rule will bring the state into compliance with these directives. The rule will also make applications submitted by consumers for insurance products, regardless of whether the products are ultimately purchased, subject to the data security standards required by the rule.

Insurance Commissioner
Emergency Rule
Title 114, Series 62

STANDARDS FOR SAFEGUARDING CUSTOMER INFORMATION

TITLE 114, SERIES 62

STATEMENT OF CIRCUMSTANCES

On April 10, 2002, the National Association of Insurance Commissioners ("NAIC") adopted the Standards for Safeguarding Customer Information Model Regulation, and urged all states to immediately promulgate the model as a rule. This rule establishes standards for developing and implementing administrative, technical and physical safeguards to protect the security, confidentiality and integrity of customer information, pursuant to sections 501 and 507, and subsection 505(b) of the Gramm-Leach-Bliley Act, codified at 15 U.S.C. 6801, 6805(b) and 6807. Subsection 503(a) of the act requires each financial institution to develop policies for protecting the non-public personal information of consumers and to make those policies available in written form. Subsection 501(b) of the act requires the state insurance regulatory authorities, with respect to persons engaged in providing insurance, to establish appropriate standards relating to administrative, technical and physical safeguards to ensure the security and confidentiality of customer records and information; to protect against any anticipated threats or hazards to the security or integrity of such records; and to protect against unauthorized access to or use of records or information that could result in substantial harm or inconvenience to a customer. This rule will bring the state into compliance with these directives. The rule will also make applications submitted by consumers for insurance products, regardless of whether the products are ultimately purchased, subject to the data security standards required by the rule. This rule is being promulgated as an emergency rule because, in the absence of state regulation, a state insurance department will be unable to override the insurance customer protection regulations prescribed by a federal banking agency under section 305 of the Gramm-Leach-Bliley Act. Section 305 of the Act requires that federal banking agencies adopt consumer protection regulations relating to insurance sales by banks. The right to override these regulations, and regulate banks that sell insurance, will be lost at the state level by failing to adopt this emergency rule. Therefore it is necessary to promulgate this emergency rule to insure that the Insurance Commission has regulatory control over all insurance being transacted in the state.

APPENDIX B

FISCAL NOTE FOR PROPOSED EMERGENCY RULES

Rule Title: Standards for Safeguarding Customer Information
 Title 114, Series 62
 EMERGENCY

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

1. Effect of Proposed Emergency 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 emergency rules:

Subsection 501(a) of the Gramm-Leach-Bliley Act, 15 U.S.C. 6801, provides that it is the policy of the congress that each financial institution has an affirmative and continuing obligation to respect the privacy of its customers and to

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protect the security and confidentiality of those customers' nonpublic personal information. The objective of this rule is to establish standards for developing and implementing administrative, technical and physical safeguards to protect the security, confidentiality and integrity of customer information, pursuant to sections 501 and 507, and subsection 505(b) of the Gramm-Leach-Bliley Act, codified at 15 U.S.C. 6801, 6805(b) and 6807. The rule is being filed as an emergency rule because states that have not promulgated rules will be unable to override, pursuant to section 47(g)(2)(B)(iii) of the Federal Deposit Insurance Act, the insurance customer protection regulations prescribed by a federal banking agency under section 47(a) of that Act. Although the Gramm-Leach-Bliley Act does not set a specific implementation schedule for state action, the failure of a state to promulgate a rule will limit the state's enforcement capabilities in this subject matter. All states are being urged by the National Association of Insurance Commissioners to promulgate this rule as quickly as possible.

4. Explanation of Overall Economic Impact of Proposed Emergency Rule.

A. Economic Impact on State Government.

None

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

This emergency rule will establish standards for developing and implementing administrative, technical and physical safeguards to protect the security, confidentiality and integrity of customer information. The rule will have an economic impact on licensees subject to the rule and subject to the Insurance Commissioner's rule on Privacy of Consumer Financial and Health Information. Licensees will be required to undertake steps to implement the protections, which may include such things as identifying risks or threats to the security of customer information, designing an information security program to control those risks, staff training, regular monitoring of the program, and changes in methods of selecting and monitoring service providers. There will be costs involved with compliance by licensees. In addition to information about customers, the rule also requires that applications for insurance products submitted by consumers be subject to the data security standards. This consumer information

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is not included in the model rule, and may require licensees to design their standards to meet this requirement which may not exist in other states that have adopted the model rule verbatim. There should be no economic impact on political subdivisions or any specific groups of citizens.

C. Economic Impact on Citizens/Public at Large.

There is no anticipated economic impact on citizens or the public at large as a result of the promulgation of this emergency rule.

Date: July 26, 2002

Signature of Agency Head or Authorized Representative



JANE L. CLINE, INSURANCE COMMISSIONER

114CSR62
WEST VIRGINIA EMERGENCY RULE
INSURANCE COMMISSIONER

SERIES 62
STANDARDS FOR SAFEGUARDING ~~CONSUMER~~ CUSTOMER INFORMATION

Section

- 114-62-1. General.
- 114-62-2. Definitions.
- 114-62-3. Information Security Program.
- 114-62-4. Objectives of Information Security Program.
- 114-62-5. Methods of Development and Implementation.
- 114-62-6. Violation.

114CSR62
WEST VIRGINIA EMERGENCY RULE
INSURANCE COMMISSIONER

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SERIES 62
STANDARDS FOR SAFEGUARDING ~~CONSUMER~~ CUSTOMER INFORMATION

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§114-62-1. General.

1.1. Scope. -- This rule establishes standards for developing and implementing administrative, technical and physical safeguards to protect the security, confidentiality and integrity of ~~consumer~~ customer information, pursuant to sections 501 and 507, and subsection 505(b) of the Gramm-Leach-Bliley Act, codified at 15 U.S.C. 6801, 6807 and 6805(b). Section 507 of the act provides, among other things, that a state regulation may afford persons greater privacy protections than those provided by subtitle A of Title V of the Gramm-Leach-Bliley Act. This rule requires that the safeguards established pursuant to this rule shall apply to nonpublic personal information, including nonpublic personal financial information and nonpublic personal health information.

1.2. Authority. -- W.Va. Code §§33-6F-1 and 33-2-10.

a. Subsection 501(a) of the Gramm-Leach-Bliley Act, 15 U.S.C. 6801, provides that it is the policy of the congress that each financial institution has an affirmative and continuing obligation to respect the privacy of its customers and to protect the security and confidentiality of those customers' nonpublic personal information.

b. Subsection 501(b) of the act requires the state insurance regulatory authorities to establish appropriate standards relating to administrative, technical and physical safeguards:

1. To ensure the security and confidentiality of customer records and information;

2. To protect against any anticipated threats or hazards to the security or integrity of such records; and

3. To protect against unauthorized access to or use of records or information that could result in substantial harm or inconvenience to a customer.

c. Paragraph 505(b)(2) of the Gramm-Leach-Bliley Act, 15 U.S.C. 6805(b), calls on state insurance regulatory authorities to implement the standards prescribed under subsection 501(b) by regulation with respect to persons engaged in providing insurance.

d. Paragraph 503(a)(3) of the Gramm-Leach Bliley Act, codified at 15 U.S.C. section 6803(a)(3), requires each financial institution to develop policies for protecting the non-public personal information of consumers and to make those policies available in written form.

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1.3. Filing Date. --

1.4. Effective Date. --

§114-62-2. Definitions.

2.1. "~~Consumer~~" "Customer" means a ~~consumer~~ customer of the licensee as the term is defined in subsection ~~2.6~~ 2.9 of the insurance commissioner's rule on privacy of consumer financial and health information, 114CSR57.

2.2. "~~Consumer information~~" "Customer information" means any nonpublic personal information as defined in subsection 2.19 of the insurance commissioner's rule on privacy of consumer financial and health information, 114CSR57, about a ~~consumer~~ customer, whether in paper, electronic or other form, that is maintained by or on behalf of the licensee. For purposes of this rule, customer information shall also include applications for an insurance product submitted to a licensee by a consumer, regardless of whether the insurance product is ultimately purchased by the consumer.

2.3. "~~Consumer information systems~~" "Customer information systems" means the electronic or physical methods used to access, collect, store, use, transmit, protect or dispose of ~~consumer~~ customer information.

2.4. "Licensee" means a licensee as that term is defined in subsection 2.17 of the insurance commissioner's rule on privacy of consumer financial and health information, 114CSR57, except that "licensee" shall not include:

a. A purchasing group; or

b. An unauthorized insurer in regard to the excess line business conducted pursuant to article twelve-c, chapter thirty-three of the West Virginia Code.

2.5. "Service provider" means a person that maintains, processes or otherwise is permitted access to ~~consumer~~ customer information through its provision of services directly to the licensee.

§114-62-3. Information Security Program.

3.1. By February 1, 2003, Each each licensee shall implement a comprehensive written information security program that includes administrative, technical and physical safeguards for the protection of ~~consumer~~ customer information. The administrative, technical and physical safeguards

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included in the information security program shall be appropriate to the size and complexity of the licensee and the nature and scope of its activities.

~~3.2. If a licensee is domiciled in another jurisdiction and the statutes and regulations administered by its domiciliary regulator establish standards for protecting the security of consumer information which are substantially similar to those established by this rule, then good faith compliance with those standards to the satisfaction of the licensee's primary regulator shall constitute compliance with this rule. A law shall not be considered dissimilar because it references "customers" rather than "consumers," as long as the licensee is not implementing its information security program in a manner that causes demonstrable harm to consumers who are not present or former customers.~~

§114-62-4. Objectives of Information Security Program.

- 4.1. A licensee's information security program shall be designed to:
- a. Ensure the security and confidentiality of ~~consumer~~ customer information;
 - b. Protect against any anticipated threats or hazards to the security or integrity of the information; and
 - c. Protect against unauthorized access to or use of the information that could result in substantial harm or inconvenience to any ~~consumer~~ customer.

§114-62-5. Methods of Development and Implementation.

5.1. The actions and procedures set forth in this section are non-exclusive examples of methods a licensee may use to implement the requirements of sections three and four of this rule. ~~They are non-exclusive, and a licensee may use other methods of implementation if they will provide the same level of security and confidentiality of consumer information as the examples in this section.~~

- 5.2 The licensee ~~shall~~ assesses risk by:
- a. Identifying reasonably foreseeable internal or external threats that could result in unauthorized disclosure, misuse, alteration or destruction of ~~consumer~~ customer information or ~~consumer~~ customer information systems;
 - b. Assessing the likelihood and potential damage of these threats, taking into consideration the sensitivity of ~~consumer~~ customer information; and

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c. Assessing the sufficiency of policies, procedures, ~~consumer~~ customer information systems and other safeguards in place to control risks.

5.3. The licensee ~~shall~~ manages and controls risk by:

a. Designing its information security program to control the identified risks, commensurate with the sensitivity of the information and the complexity and scope of the licensee's activities;

b. Training staff, as appropriate, to implement the licensee's information security program; and

c. Regularly testing or otherwise regularly monitoring the key controls, systems and procedures of the information security program. The frequency and nature of these tests or other monitoring practices shall be determined by the licensee's risk assessment.

5.4. The licensee ~~shall~~ oversees service provider arrangements by:

a. Exercising appropriate due diligence in selecting its service providers; and

b. Requiring its service providers to implement appropriate measures designed to meet the objectives of this rule, and, where indicated by the licensee's risk assessment, taking appropriate steps to confirm that its service providers have satisfied these obligations.

5.5. The licensee ~~shall~~ monitors, evaluates and adjusts, as appropriate, its information security program in light of any relevant changes in technology, the sensitivity of its ~~consumer~~ customer information, internal or external threats to information, and the licensee's own changing business arrangements, such as mergers and acquisitions, alliances and joint ventures, outsourcing arrangements, and changes to ~~consumer~~ customer information systems.

§114-62-6. Violation.

6.1 Violations of this rule are subject to the provisions of W. Va. Code §§33-3-11: and 33-12-24.



STATE OF WEST VIRGINIA

Offices of the Insurance Commissioner

Legal Division

BOB WISE
Governor

JANE L. CLINE
Insurance Commissioner

July 26, 2002

HAND DELIVERED

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

Dear Ms. Cooper:

Please find herewith, fourteen (14) copies of the following for filing:

- 1) Notice of an Emergency Amendment to an Emergency Rule and Consent of Tax and Revenue Cabinet Secretary;
- 2) Legislative Rule-Making Review Committee Emergency Rule Questionnaire;
- 3) Brief Summary of Rule;
- 4) Statement of Circumstances;
- 5) Fiscal Note; and
- 6) The amended Emergency Rule entitled "Standards for Safeguarding Consumer Information" (Series 62).

Please contact me if further information is required.

Sincerely,


Jane L. Cline
Insurance Commissioner

JLC/jz
Attachments