

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

State of West Virginia
Joe Manchin, III
Secretary of State

Telephone: (304) 558-6000
Toll Free: 1-866-SOS-VOTE
Corporations: (304) 558-8000
FAX: (304) 558-0900
www.wvsos.com

July 3, 2002

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Insurance Commissioner

RULE: New Rule, 114CSR62, Standards for Safeguarding Consumer Information

DATE FILED AS AN EMERGENCY RULE: May 29, 2002

DECISION NO. 16-02

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.

A handwritten signature in black ink, appearing to read "Joe Manchin, III".

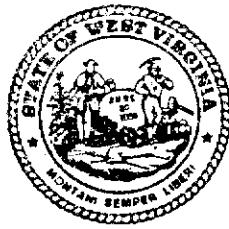
JOE MANCHIN, III
Secretary of State

SCANNED

OFFICE OF THE
SECRETARY OF STATE

2002 JUL -3 P 4:49

FILED



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

State of West Virginia
Joe Manchin, III
Secretary of State

Telephone: (304) 558-6000
Toll Free: 1-866-SOS-VOTE
Corporations: (304) 558-8000
FAX: (304) 558-0900
www.wvsos.com

EMERGENCY RULE DECISION
(ERD 16-02)

AGENCY: Insurance Commissioner
RULE: New Rule, 114CSR62, Standards for Safeguarding Consumer Information

FILED AS AN EMERGENCY RULE: May 29, 2002

- par. 1 The Insurance Commissioner (Commissioner) has filed the above amendments to an existing 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 Commissioner filed this emergency rule with supporting documents with the Secretary of State May 29, 2002 and with the LRMRC May 29, 2002.

par. 7 It is the determination of the Secretary of State that the Commissioner 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 §33-2-10 reads:

The commissioner is authorized to promulgate and adopt such rules and regulations relating to insurance as are necessary to discharge his duties and exercise his powers and to effectuate the provisions of this chapter and to protect and safeguard the interests of policyholders and the public of this state.

par. 9 It is the determination of the Secretary of State that the Commissioner 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.

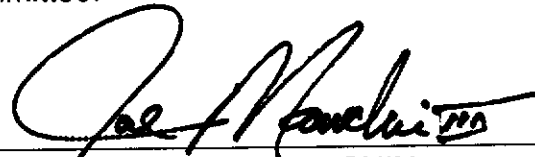
par. 12 The facts and circumstances as presented by the Commissioner are as follows:

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, & subsection 505(b) of the Gramm-Leach-Bliley Act, codified at 15 U.S.C. 6801, 6805(b) & 6807. Subsection 501(b) of the act requires the state insurance regulatory authority, with respect to persons engaged in providing insurance, to establish appropriate standards relating to administrative, technical and physical safeguards to ensure the security & 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. 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 Gram-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.

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 16-02 or ERD 16-02 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Insurance Commissioner, the Attorney General and the Legislative Rule Making Review Committee.



JOE MANCHIN, III
Secretary of State

Entered _____

FILED
2002 JUL - 3 P 4: 49
OFFICE WEST VIRGINIA
SECRETARY OF STATE