

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #3

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Insurance Commissioner TITLE NUMBER: 114

CITE AUTHORITY: WV Code §§33-2-10 & 33-7-9(d)(1)(C)(iii)

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 69

TITLE OF RULE BEING PROPOSED: Recognition of the 2001 CSO Mortality Table For Use In
Determining Minimum Reserve Liabilities and Nonforfeiture
Benefits

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.


Authorized Signature

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: August 26, 2004

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

LEGISLATIVE RULE TITLE: Recognition of the 2001 CSO Mortality Table for Use in Determining Minimum Reserve Liabilities and Nonforfeiture Benefits, (TITLE 114, SERIES 69)

1. Authorizing statute(s) citation:

West Virginia Code §§ 33-2-10 and 33-7-9(d)(1)(C)(iii).

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

June 30, 2004 - Comment Period.

b. What other notice, including advertising, did you give of the hearing?

None

c. Date of Public Hearing(s) or Public Comment Period ended:

Comment period ended July 30, 2004.

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received

**e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing:
(be exact)**

August 26, 2004

- f. **Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all written correspondence regarding this rule: (Please type)**

Victor A. Mullins, Associate Counsel
West Virginia Insurance Commission
Legal Division
P.O. Box 50540
Charleston, WV 25305-0540
Phone: (304) 558-0401, ext. 146

Fax: (304) 558-1362
E-mail: Victor.Mullins@wvinsurance.gov

- g. **IF DIFFERENT FROM ITEM 'f', please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)**

Not applicable

3. **If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:**

- a. **Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.**

Not applicable

- b. **Date of hearing or comment period:**

Not applicable

- c. **On what date did you file in the State Register the findings and determinations required together with the reasons therefor?**

Not applicable

- d. **Attach findings and determinations and reasons:**

Not applicable

Insurance Commissioner
Title 114, Series 69

ATTACHMENT TO QUESTION 2 (d):

Two sets of comments were received during the comment period in response to the proposed legislative rule; one from T. Randolph Cox, Attorney at Law, and one from Northwestern Mutual.

A. T. Randolph Cox - Letter dated July 30, 2004

1. Mr. Cox is council for the American Council of Life Insurers ("ACLI"). In a letter dated and received on July 30, 2004, Mr. Cox, on behalf of ACLI, comments that section 3.1 of the proposed rule be amended to state that the 2001 CSO Mortality Table may be used as the minimum standard for policies issued on or after January 1, 2005, rather than January 1, 2006 as proposed. Mr. Cox suggests that the proposed rule's January 1, 2006 effective date will significantly delay the ability of West Virginia consumers to benefit from lower premium costs, and also will have adverse tax consequences on life insurers doing business in the state. The Commissioner agrees that an effective date of January 1, 2005 would be beneficial to consumers and insurers. However, the January 1, 2005 date is problematic because such a date would occur before the rule's promulgation. Considering that a policy utilizing the 2001 CSO Mortality Table cannot be issued in West Virginia until the Table has been formally adopted, the Commissioner believes that having an effective date of January 1, 2005 would be of no practical value. Only an effective date occurring after the rule's promulgation is viable with respect to the proposed legislative rule.

2. Mr. Cox also comments that if the effective date cannot be amended to January 1, 2005 within the proposed rule, ACLI requests that the Commissioner consider issuing an emergency rule to effect this amendment. In light of the clear beneficial aspects to consumers and insurers by allowing the earlier use of the 2001 CSO Mortality Table, the Commissioner will give due consideration to the suggestion that an emergency rule be issued.

B. Northwestern Mutual - Letter dated July 23, 2004

Northwestern Mutual submitted comments by letter dated July 23, 2004 and received on July 29, 2004. Northwestern Mutual comments that it supports West Virginia's adoption of the 2001 CSO Mortality Table, but suggests that allowing for the retroactive use of the Table for all policies issued on after January 1, 2005 is in the best interest of uniformity. Northwestern Mutual notes that,

to date, over half of all jurisdictions have adopted the Table and no jurisdiction has established a date after January 1, 2005. In response to Northwestern Mutual's comments, please see responses to the comments from T. Randolph Cox above.



SPILMAN THOMAS & BATTLE, PLLC
ATTORNEYS AT LAW

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**LEGAL DIV.
WV INS. DEPT**

(304) 340-3829
tcox@spilmanlaw.com

July 30, 2004

HAND-DELIVERY

Mary Jane Pickens, Counsel
West Virginia Insurance Commission
1124 Smith Street
P. O. Box 50540
Charleston, West Virginia 25305-0540

Re: Comments to Series 68 and 69

Dear Ms. Pickens:

This letter is submitted on behalf of the American Council of Life Insurers (ACLI), a national life insurance trade association whose 368 life insurance company members account for approximately 70% of the life insurance sold in the state of West Virginia. We appreciate the opportunity to comment on the above-captioned proposed regulations.

SERIES 69

The series 69 regulations would recognize the 2001 CSO Mortality Table for Use in Determining Minimum Reserve Liabilities and Nonforfeiture Benefits. Under federal income tax law, the 2001 CSO Table can be used to determine life insurance company reserve deductions once a minimum of 26 states have adopted them.

Because 26 states have now adopted the 2001 CSO Table, the Internal Revenue Service will authorize its use commencing January 1, 2005. Operating under the 2001 CSO Table will allow life insurers to establish lower reserves than would have been required under the 1980 CSO Table, which in turn will permit them to reduce the premium costs consumers will pay for their life insurance. Accordingly, the proposed rule's January 1, 2006 effective date will significantly delay the ability of West Virginia consumers to benefit from lower premium costs, and also will have adverse tax consequences on life insurers doing business in the state.

ACLI therefore respectfully requests that section 3.1 of the proposed rule be amended to provide that the 2001 CSO Table may be used as the minimum standard for policies issued on or after January 1, 2005, rather than January 1, 2006 as proposed. In the alternative, ACLI would request that the Commissioner consider issuing an emergency rule to effect this amendment.

 SPILMAN THOMAS & BATTLE, PLLC
ATTORNEYS AT LAW

Mary Jane Pickens
West Virginia Insurance Commission
July 30, 2004
Page 2

SERIES 68

ACLI supports the adoption of Series 68 – “New rules regarding the valuation of life insurance policies.”

ACLI greatly appreciates the consideration of its comments. If you have any questions, please do not hesitate to contact me.

Sincerely yours,



T. Randolph Cox
Counsel, ACLI

TRC/lb;317411.2

cc: Bruce Ferguson



James R. Lodermeier, F.S.A.
Senior Actuary

720 East Wisconsin Avenue
Milwaukee, WI 53202-4797
414 665 4374 office
414 665 2021 fax
jimlodermeier@northwesternmutual.com

July 23, 2004

Victor A. Mullins, Associate Counsel
West Virginia Insurance Commission
P. O. Box 50540
Charleston, WV 25305-0540

Dear Mr. Mullins:

Thank you for the opportunity to submit comments on behalf of Northwestern Mutual regarding **West Virginia Proposed Rule Title 114, Series 69 Recognition of the 2001 CSO Mortality Table for Use in Determining Minimum Reserve Liabilities and Nonforfeiture Benefits** (the Proposal).

We support the adoption of the 2001 CSO Mortality Table in West Virginia, however we favor allowing its use for all policies issued on or after January 1, 2005. As a result, we do not support §114-69-3 and §114-69-6 which only allow the use of the 2001 CSO Mortality Table for policies issued on or after January 1, 2006.

Use of the 2001 CSO Mortality Table will allow companies to establish reserves which are more appropriate relative to the risks underlying life insurance policies, so allowing for earlier use of the table will result in more appropriate reserves. To date, over half of all jurisdictions have adopted the 2001 CSO Mortality Table and no jurisdiction has established a date after January 1, 2005 as a permitted use date. Northwestern Mutual is considering the introduction of a new term insurance product prior to January 1, 2006, so allowing for the earlier use of the 2001 CSO Mortality Table will allow for all policies on this form to be valued on the same basis. We believe other companies are also actively developing products based on the 2001 CSO Mortality Table and would also benefit from the uniformity of a January 1, 2005 date.

Additionally, even if the Proposal is eventually enacted after January 1, 2005, we believe that allowing for the retroactive use of the 2001 CSO Mortality Table to policies issued on or after January 1, 2005 is acceptable and in the best interest of uniformity.

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Thank you again for the opportunity to comment on this important issue. We hope you give our suggestion serious consideration. If you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "James R. Lodermeier".

James R. Lodermeier, FSA, MAAA
Senior Actuary

cc: Bruce Ferguson, ACLI
Steve Radke

Insurance Commissioner
Legislative Rule
Title 114, Series 69

**RECOGNITION OF THE 2001 CSO MORTALITY TABLE
FOR USE IN DETERMINING MINIMUM RESERVE
LIABILITIES AND NONFORFEITURE BENEFITS**

TITLE 114, SERIES 69

BRIEF SUMMARY OF RULE

This rule is to recognize, permit and prescribe the use of the 2001 Commissioners Standard Ordinary (CSO) Mortality Table in accordance with W. Va. Code §§33-9-7(d)(1)(C)(iii) and 33-13-30(4c)(h)(vii) and subsections 4.1 and 4.2 of WV 114CSR68. This rule, adopted by the National Association of Insurance Commissioners as a model regulation in 2002, permits insurance companies to use the 2001 CSO Mortality Table in determining minimum reserve liabilities and nonforfeiture benefits with respect to life insurance policies. The CSO Mortality Table, which estimates how long people will live and is used to set life insurance premiums, was last revised in 1980. Because people have a longer life expectancy than they did three decades ago due to healthier lifestyles and medical advances, the 1980 CSO Mortality Table is now considered to be out-dated. A longer life expectancy should equate to lower insurance rates, potentially allowing for consumers to afford greater amounts of insurance. Accordingly, West Virginia consumers could benefit from the promulgation of this rule.

Insurance Commissioner
Legislative Rule
Title 114, Series 69

**RECOGNITION OF THE 2001 CSO MORTALITY TABLE
FOR USE IN DETERMINING MINIMUM RESERVE
LIABILITIES AND NONFORFEITURE BENEFITS**

TITLE 114, SERIES 69

STATEMENT OF CIRCUMSTANCES

A mortality table is a key factor in determining how much consumers pay for life insurance. The longer policyholders live, the longer the insurance companies get to hold onto premium dollars. As a result, insurers can afford to charge less in premiums. In 2002, the National Association of Insurance Commissioners adopted, through a model regulation, the 2001 Commissioners Standard Ordinary (CSO) Mortality Table. The CSO Mortality Table was last revised in 1980. Because people have a longer life expectancy than they did three decades ago due to healthier lifestyles and medical advances, the 1980 CSO Mortality Table is now considered to be out-dated. The proposed rule permits insurers to use the updated CSO Mortality Table in calculating reserve levels with respect to life insurance policies.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Recognition of the 2001 CSO Mortality Table for Use in Determining Minimum Reserve Liabilities and Nonforfeiture Benefits Title 114, Series 69

Type of Rule: X 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

Table with 6 columns: Category, Annual Increase, Annual Decrease, Current, Next, Thereafter. Rows include ESTIMATED TOTAL COST, PERSONAL SERVICES, CURRENT EXPENSE, REPAIRS AND ALTERNATIONS, EQUIPMENT, and OTHER. All values are '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:

These rules are intended to recognize, permit and prescribe the use of the 2001 Commissioners Standard Ordinary (CSO) Mortality Table in accordance with W. Va. Code §§33-9-7(d)(1)(C)(iii) and 33-13-30(4c)(h)(vii) and subsections 4.1 and 4.2 of WV 114CSR68. This rule, adopted by the National Association of Insurance

Rule Title: Recognition of the 2001 CSO Mortality Table for Use
in Determining Minimum Reserve Liabilities and
Nonforfeiture Benefits
Title 114, Series 69

Commissioners as a model regulation in 2002, permits insurance companies to use the 2001 CSO Mortality Table in determining minimum reserve liabilities and nonforfeiture benefits with respect to life insurance policies.

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.

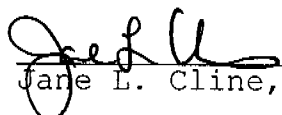
This rule should have no economic impact on political subdivisions. It will only have an economic impact on certain insurance companies or their customers to the extent that the rule provides the use of a revised mortality table with respect to the valuation of life insurance policy reserves. The rule will have no economic impact on specific groups of citizens.

C. Economic Impact on Citizens/Public at Large.

There could be an economic impact to citizens or the public at large as a result of the promulgation of this rule, to the extent that it allows insurance companies to use a revised mortality table with respect to the valuation of life insurance policy reserves. Life insurance premiums charged to citizens may be affected by the use of this revised table.

Date: August 26, 2004

Signature of Agency Head or Authorized Representative



Jane L. Cline, Insurance Commissioner

114CSR69

**LEGISLATIVE RULE
INSURANCE COMMISSIONER**

**SERIES 69
RECOGNITION OF THE 2001 CSO MORTALITY TABLE
FOR USE IN DETERMINING MINIMUM RESERVE
LIABILITIES AND NONFORFEITURE BENEFITS**

Section

- 114-69-1. General.
- 114-69-2. Definitions.
- 114-69-3. 2001 CSO Mortality Table.
- 114-69-4. Conditions.
- 114-69-5. Applicability of the 2001 CSO Mortality Table to WV 114CSR68.
- 114-69-6. Gender-Blended Tables.
- 114-69-7. Separability.

114CSR69

LEGISLATIVE RULE
INSURANCE COMMISSIONER

SERIES 69
RECOGNITION OF THE 2001 CSO MORTALITY TABLE
FOR USE IN DETERMINING MINIMUM RESERVE
LIABILITIES AND NONFORFEITURE BENEFITS

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

§114-69-1. General.

1.1. Scope. -- The purpose of this rule is to recognize, permit and prescribe the use of the 2001 Commissioners Standard Ordinary (CSO) Mortality Table in accordance with W. Va. Code §§33-9-7(d)(1)(C)(iii) and 33-13-30(4c)(h)(vii) and subsections 4.1 and 4.2 of WV 114CSR68.

1.2. Authority. -- This rule is promulgated pursuant to the authority of W. Va. Code §§33-2-10 and 33-7-9(d)(1)(C)(iii).

1.3. Filing Date. --

1.4. Effective Date. --

§114-69-2. Definitions.

2.1. "2001 CSO Mortality Table" means that mortality table, consisting of separate rates of mortality for male and female lives, developed by the American Academy of Actuaries CSO Task Force from the Valuation Basic Mortality Table developed by the Society of Actuaries Individual Life Insurance Valuation Mortality Task Force, and adopted by the National Association of Insurance Commissioners (NAIC) in December 2002. The 2001 CSO Mortality Table is included in the *Proceedings of the NAIC (2nd Quarter 2002)*. Unless the context indicates otherwise, the "2001 CSO Mortality Table" includes both the ultimate form of that table and the select and ultimate form of that table and includes both the smoker and nonsmoker mortality tables and the composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality tables.

2.2. "2001 CSO Mortality Table (F)" means that mortality table consisting of the rates of mortality for female lives from the 2001 CSO Mortality Table.

2.3. "2001 CSO Mortality Table (M)" means that mortality table consisting of the rates of mortality for male lives from the 2001 CSO Mortality Table.

**Insurance Commissioner
Legislative Rule
Title 114, Series 69**

2.4. "Composite mortality tables" means mortality tables with rates of mortality that do not distinguish between smokers and nonsmokers.

2.5. "Smoker and nonsmoker mortality tables" means mortality tables with separate rates of mortality for smokers and nonsmokers.

§114-69-3. 2001 CSO Mortality Table.

3.1. At the election of the company for any one or more specified plans of insurance and subject to the conditions stated in this rule, the 2001 CSO Mortality Table may be used as the minimum standard for policies issued on or after January 1, 2006 and before the date specified in subsection 3.2 of this rule to which W. Va. Code §§33-9-7(d)(1)(C)(iii) and 33-13-30(4c)(h)(vii) and subsections 4.1 and 4.2 of WV 114CSR68 are applicable. If the company elects to use the 2001 CSO Mortality Table, it shall do so for both valuation and nonforfeiture purposes.

3.2. Subject to the conditions stated in this rule, the 2001 CSO Mortality Table shall be used in determining minimum standards for policies issued on and after January 1, 2009, to which W. Va. Code §§33-9-7(d)(1)(C)(iii) and 33-13-30(4c)(h)(vii) and subsections 4.1 and 4.2 of WV 114CSR68 are applicable.

§114-69-4. Conditions.

4.1. For each plan of insurance with separate rates for smokers and nonsmokers an insurer may use:

a. Composite mortality tables to determine minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits;

b. Smoker and nonsmoker mortality tables to determine the valuation net premiums and additional minimum reserves, if any, required by W. Va. Code §33-9-7(k) and use composite mortality tables to determine the basic minimum reserves, minimum cash surrender values and amounts of paid-up nonforfeiture benefits; or

c. Smoker and nonsmoker mortality to determine minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits.

4.2. For plans of insurance without separate rates for smokers and nonsmokers the composite mortality tables shall be used.

Insurance Commissioner
Legislative Rule
Title 114, Series 69

4.3. For the purpose of determining minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits, the 2001 CSO Mortality Table may, at the option of the company for each plan of insurance, be used in its ultimate or select and ultimate form, subject to the restrictions of WV 114CSR68 and section 5 of this rule relative to use of the select and ultimate form.

4.4. When the 2001 CSO Mortality Table is the minimum reserve standard for any plan for a company, the actuarial opinion in the annual statement filed with the commissioner shall be based on an asset adequacy analysis as specified in section 4 of WV 114CSR41. A commissioner may exempt a company from this requirement if it only does business in this state and in no other state.

§114-69-5. Applicability of the 2001 CSO Mortality Table to WV 114CSR68.

5.1. The 2001 CSO Mortality Table may be used in applying WV 114CSR68 in the following manner, subject to the transition dates for use of the 2001 CSO Mortality Table set forth in subsections 3.1 and 3.2 of this rule:

a. Paragraph 2, subdivision b, subsection 2.2 of WV 114CSR68: The net level reserve premium is based on the ultimate mortality rates in the 2001 CSO Mortality Table.

b. Subsection 3.2 of WV 114CSR68: All calculations are made using the 2001 CSO Mortality Rate, and, if elected, the optional minimum mortality standard for deficiency reserves stipulated in subdivision d of this subsection. The value of " $qx+k+t-1$ " is the valuation mortality rate for deficiency reserves in policy year $k+t$, but using the unmodified select mortality rates if modified select mortality rates are used in the computation of deficiency reserves.

c. Subsection 4.1 of WV 114CSR68: The 2001 CSO Mortality Table is the minimum standard for basic reserves.

d. Subsection 4.2 of WV 114CSR68: The 2001 CSO Mortality Table is the minimum standard for deficiency reserves. If select mortality rates are used, they may be multiplied by X percent for durations in the first segment, subject to the conditions specified in paragraphs 1 through 9 of subdivision c of subsection 4.2. In demonstrating compliance with those conditions, the demonstrations may not combine the results of tests that utilize the 1980 CSO Mortality Table with those tests that utilize the 2001 CSO Mortality Table, unless the combination is explicitly required by rule or necessary to be in compliance with relevant Actuarial Standards of Practice.

**Insurance Commissioner
Legislative Rule
Title 114, Series 69**

e. Subsection 5.3 of WV 114CSR68: The valuation mortality table used in determining the tabular cost of insurance shall be the ultimate mortality rates in the 2001 CSO Mortality Table.

f. Subdivision d, subsection 5.5 of WV 114CSR68: The calculations specified in subsection 5.5 shall use the ultimate mortality rates in the 2001 CSO Mortality Table.

g. Subdivision d, subsection 5.6 of WV 114CSR68: The calculations specified in subsection 5.6 shall use the ultimate mortality rates in the 2001 CSO Mortality Table.

h. Subdivision b, subsection 5.7 of WV 114CSR68: The calculations specified in subsection 5.7 shall use the ultimate mortality rates in the 2001 CSO Mortality Table.

i. Paragraph 2, subdivision a, subsection 6.1 of WV 114CSR68: The one-year valuation premium shall be calculated using the ultimate mortality rates in the 2001 CSO Mortality Table.

5.2. Nothing in this section shall be construed to expand the applicability of WV 114CSR68 to include life insurance policies exempted under subsection 2.2 of that rule.

§114-69-6. Gender-Blended Tables.

6.1. For any ordinary life insurance policy delivered or issued for delivery in this state on and after January 1, 2006, that utilizes the same premium rates and charges for male and female lives or is issued in circumstances where applicable law does not permit distinctions on the basis of gender, a mortality table that is a blend of the 2001 CSO Mortality Table (M) and the 2001 CSO Mortality Table (F) may, at the option of the company for each plan of insurance, be substituted for the 2001 CSO Mortality Table for use in determining minimum cash surrender values and amounts of paid-up nonforfeiture benefits. No change in minimum valuation standards is implied by this subsection of the rule.

6.2. The company may choose from among the blended tables developed by the American Academy of Actuaries CSO Task Force and adopted by the NAIC in December 2002.

6.3. It shall not, in and of itself, be a violation of article eleven, chapter thirty-three of the West Virginia Code (W. Va. Code §§33-11-1 et seq.) for an insurer to issue the same kind of policy of life insurance on both a sex-distinct and sex-neutral basis.

§114-69-7. Separability.

Insurance Commissioner
Legislative Rule
Title 114, Series 69

7.1. If any provision of this rule or its application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances shall not be affected.