OFFICE OF THE SECRETARY OF STATE
STATE OF WEST VIRGINIA

Betty Ireland
Secretary of State

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

April 3, 2007

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Insurance Commission

RULE: New, 114CSR69A, Recognition Of Preferred Mortality Tables For Use In Determining Minimum Reserve Liabilities

DATE FILED AS AN EMERGENCY RULE: March 22, 2007

DECISION NO. 1-07

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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EMERGENCY RULE DECISION
(ERD 1/07)

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AGENCY: Insurance Commission
RULE: New, 114CSR69A, Recognition Of Preferred Mortality Tables For Use In Determining Minimum Reserve Liabilities
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par. 1 The Insurance Commission has filed the above new 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 Insurance Commission filed this emergency rule with supporting documents with the Secretary of State March 22, 2007 and with the LRMRC March 22, 2007.

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

§33-2-10. Rules and regulations.
(a) The commissioner is authorized to promulgate and adopt rules relating to insurance as are necessary to discharge his or her duties and exercise his or her powers and to effectuate the provisions of this chapter, protect and safeguard the interests of policyholders and the public of this state.
(b) The commissioner is authorized to promulgate rules necessary to discharge his or her duties relating to workers' compensation insurance as set forth in chapter twenty-three of

this code, which shall be exempt from the provisions of chapter twenty-nine-a, article three of this code, except that these rules shall be filed with the Secretary of State's Office.
(c) Prior to assuming regulatory authority over workers' compensation insurance pursuant to article two-c, chapter twenty-three of this code, the commissioner shall review and revise all applicable rules to reflect the assumption of this new regulatory authority: Provided, That all such revisions shall be exempt from the provisions of chapter twenty-nine-a, article three, except that the amended rules shall be filed with the Secretary of State's Office.

par. 9 W. Va. Code §33-7-9(d)(1)(C)(iii) further reads:

(iii) Any ordinary mortality table adopted after the year one thousand nine hundred eighty by the national association of insurance commissioners that is approved by rule promulgated by the commissioner for use in determining the minimum standard of valuation for the policies.

par. 10 It is the determination of the Secretary of State that the Insurance Commission has not exceeded its statutory authority in promulgating this emergency rule.

par. 11 (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. 12 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. 13 The facts and circumstances as presented by the Insurance Commission are as follows:

The real emergency circumstance of the rule is based in the nature and timing of the passage of the rule by the National Association of Insurance Commissioners (NAIC). As a bit of history, the NAIC is a national association of all state insurance commissioners that acts as a unified voice for state insurance commissioner with regard to many national insurance issues. In the course of their functions, they will adopt rules, voted upon by the commissioners, to be adopted by the various states to promote uniformity of insurance policies and practices among the states.

The current rule is one of these uniformity rules that applies a use of a uniform and updated mortality table to be used by insurance companies in costing their insurance premiums and which was adopted unanimously by the various state insurance commissioners. The crux of the emergency is really a timing issue brought about by the late adoption of the new table by NAIC which occurred in September 2006 and intended to be effective January 1,2007. As such, under our rule procedures, it was too late to enact regular legislative rules which would be effective Jan. 1, 2007. Consequently, in order to have rule effective in a timely fashion, it needed to filed as an emergency rule.

par. 14 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 public interest.

par. 15 This decision shall be cited as Emergency Rule Decision 1-07 or ERD 1-07 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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BETTY IRELAND
Secretary of State

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