

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

August 2, 2005

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Insurance Commissioner

RULE: New Rule, 114CSR75, Private Passenger Automobile & Property Insurance - Biannual Rate Filing Requirements

DATE FILED AS AN EMERGENCY RULE: June 22, 2005

DECISION NO. 7-05

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 cursive script, appearing to read "Betty Ireland".

BETTY IRELAND  
Secretary of State

Building 1, Suite 157-K  
1900 Kanawha Blvd., East  
Charleston, West Virginia 25305

EMERGENCY RULE DECISION  
(ERD 7-05)

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RULE: New Rule, 114CSR75, Private Passenger Automobile and Property Insurance - Biannual Rate Filing Requirements  
FILED AS AN EMERGENCY RULE: June 22, 2005,

- par. 1 The Insurance Commissioner (Commissioner) 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 Commissioner filed this emergency rule with supporting documents with the Secretary of State June 22, 2005 and with the LRMRC June 22, 2005.
- 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 §33-20-4a reads:

*On or before the first day of July, two thousand five, the Commissioner shall promulgate legislative rules pursuant to article three, chapter twenty-nine-a of this code establishing procedures whereby each insurer providing five percent or more of insurance coverage in this state for private passenger automobile insurance and property insurance obtained for personal or family needs shall biannually submit rate filings required under this section: Provided, That the requirements under this subsection shall terminate on the first*

*day of July, two thousand nine.*

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:

Senate Bill 418 (adding W. Va. Code §33-20-4a) provides that "the [Insurance] Commissioner *shall* promulgate legislative rules" on or before July 1, 2005, to establish procedures by which certain insurers providing non-commercial automobile and property insurance are required to make biannual rate filings. This statute is a component of the sweeping insurance and civil justice reforms enacted by the 2005 Legislature that were aimed at reducing the costs of insurance to consumers, particularly auto and homeowners' insurance. These reforms were enacted largely in response to assurances by the larger companies that rate reductions would follow soon after the enactment of the reforms.

The Commissioner believes that the proposed rate-filing rule is necessary to prevent a substantial harm to the public interest to the extent that the lack of an immediate requirement that the largest companies justify their rates on an ongoing basis will allow these to reap the benefits of SB 418 and SB 30 without providing rate reductions for another year. The proposed emergency rule would allow the Commissioner to examine the rates immediately to determine if rates should be decreased now rather than next year.

In two other new sections enacted during this same legislative session, insurers were directed to *immediately* inform policyholders regarding any savings being realized as a result of the reforms. See W. Va. Code §§33-6-15a & -15b (in SB 30 & 418). As evidenced by the July 8 "promulgation" date, the Commissioner believes that the biannual rate filing requirement was also intended to have immediate effect. By requiring certain large insurers (all of which assured the legislature that immediate rate reductions would follow the reforms) to submit periodic rate filings, the obvious intent was that these companies would be forced to *immediately* justify their rates and to continue to do so for the next four years.

In keeping with the apparent legislative intent, the proposed rule would require the

four largest auto and homeowner companies to make an initial rate filing by August 1, 2005 and every 6 months thereafter. Inasmuch as a legislative rule could not be "promulgated" until the Legislature acts upon the proposed legislative rule in 2006, an emergency rule is necessarily the only means by which the legislative intent can be carried out.

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

par. 14 This decision shall be cited as Emergency Rule Decision 7-05 or ERD 7-05 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.



BETTY IRELAND  
Secretary of State

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**FILED**  
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SECRETARY OF STATE

**TITLE 14, SERIES 75  
EMERGENCY RULE**

**FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY:**

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In keeping with the apparent legislative intent, the proposed rule would require the four largest auto and homeowner companies to make an initial rate filing by August 1, 2005 and every 6 months thereafter. Inasmuch as a legislative rule could not be "promulgated" until the Legislature acts upon the proposed legislative rule in 2006, an emergency rule is necessarily the only means by which the legislative intent can be carried out.