



OFFICE OF THE SECRETARY OF STATE
STATE OF WEST VIRGINIA

Betty Ireland
Secretary of State

FILED

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

August 18, 2006

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Insurance Commissioner

RULE: New Rule, 114CSR77, Rate Filing Requirements for Title Insurance Companies

DATE FILED AS AN EMERGENCY RULE: August 10, 2006

DECISION NO. 16-06

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
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Charleston, West Virginia 25305

EMERGENCY RULE DECISION
(ERD 16-06)

AGENCY: Insurance Commissioner
RULE: New Rule, 114CSR77, Rate Filing Requirements for Title Insurance Companies
FILED AS AN EMERGENCY RULE: August 10, 2006

- 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 August 10, 2006 and with the LRMRC August 10, 2006.
- 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 §33-20-3 reads:

§33-20-3. Ratemaking.

All rates shall be made in accordance with the following provisions:

(a) Due consideration shall be given to past and prospective loss experience within and outside this state, to catastrophe hazards, if any, to a reasonable margin for underwriting profit and contingencies, to dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers, to past and

prospective expenses both countrywide and those specially applicable to this state and to all other relevant factors within and outside this state.

(b) Rates may not be excessive, inadequate or unfairly discriminatory.

Rates for casualty and surety insurance to which this article applies shall also be subject to the following provisions:

The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the requirements of the operating methods of any such insurer or group with respect to any kind of insurance or with respect to any subdivision or combination thereof for which subdivision or combination separate expense provisions are applicable.

Risks shall be grouped by classifications and by territorial areas for the establishment of rates and minimum premiums. Classification of rates shall be modified to produce rates for individual risks in a territorial area in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses: Provided, That such standards shall include the establishment of at least seven territorial rate areas within the state: Provided, however, That such territorial rate established by any insurer or group of insurers may differ from those of other insurers or group of insurers.

(3) Due consideration shall be given to such factors as expense, management, individual experience, underwriting judgment, degree or nature of hazard or any other reasonable considerations, provided such factors apply to all risks under the same or substantially the same circumstances or conditions.

(d) Rates for fire and marine insurance to which this article applies shall also be subject to the following provisions:

(1) Manual, minimum, class rates, rating schedules or rating plans shall be made and adopted, except in the case of specific inland marine rates on risks specially rated.

(2) Due consideration shall be given to the conflagration hazard and in the case of fire insurance rates, consideration shall be given to the experience of the fire insurance business during a period of not less than the most recent five-year period for which such experience is available.

(e) Rates for title insurance to which this article applies shall also be subject to the following provisions:

(1) Title insurance rates shall be reasonable and adequate for the class of risks to which they apply. Rates may not be unfairly discriminatory between risks involving essentially the same hazards and expense elements. The rates may be fixed in an amount sufficient to furnish a reasonable margin for profit after provisions to account for: (I) Probable losses as indicated by experience within and without this state; (ii) exposure to loss under policies; (iii) allocations to reserves; (iv) costs participating insurance; (v) operating costs; and (vi) other items of expense fairly attributable to the operation of a title insurance business.

(2) (A) Policies may be grouped into classes for the establishment of rates. A title insurance policy that is unusually hazardous to the title insurance company because of an alleged defect or irregularity in the title insured or because of uncertainty regarding the proper interpretation or application of the law involved may be classified separately according to the facts of each case.

(B) Title insurance companies shall file separate rate schedules for commercial and non-commercial risks. The Insurance Commissioner shall promulgate rules regarding the

requirements of this subsection which shall give due consideration to the nature of commercial transactions and the need for greater protections for consumers in non-commercial transactions.

(3) Title insurance rates may not include charges for abstracting, record searching, certificates regarding the record title, escrow services, closing services and other related services that may be offered or furnished or the cost and expenses of examinations of titles.

(f) Except to the extent necessary to meet the provisions of subdivisions (b) and (c) of this section, uniformity among insurers in any matters within the scope of this section is neither required nor prohibited.

(g) Rates made in accordance with this section may be used subject to the provisions of this article.

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:

By statute, title companies have been exempt from the requirements of article 20, chapter 33 relating to the filing of insurance rates with the Insurance Commissioner. In the 2006 regular legislative session, SB 438 was enacted to remove this exemption and to require that such rates be filed with and approved by the Commissioner. The bill also detailed requirements particular to title insurance, such as prohibiting the inclusion in rates of charges for abstracting, escrow services, etc. WV Code §33-20-3(3). Inasmuch as the duty to file title rates commenced June 9, 2006 and there are statutorily-created distinctions between title insurance rates & rates for other forms of casualty insurance governed by WV Code §33-20-3, this proposed emergency rule is necessary in order to set forth guidelines specific to title insurance that will be used in conjunction with those statutes & rules generally applicable to other insurance filings.

- 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). . . "time limitation"
- par. 14 This decision shall be cited as Emergency Rule Decision 16-06 or ERD 16-06 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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