



OFFICE OF THE SECRETARY OF STATE
STATE OF WEST VIRGINIA

Betty Ireland
Secretary of State

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SECRETARY OF STATE

June 9, 2006

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Insurance Commissioner

RULE: New Rule, 114CSR80, Special Provisions Regarding Workers' Compensation Rules

DATE FILED AS AN EMERGENCY RULE: June 8, 2006

DECISION NO. 7-06

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.


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EMERGENCY RULE DECISION
(ERD 7-06)

AGENCY: Insurance Commissioner
RULE: New Rule, 114CSR80, Special Provisions Regarding Workers' Compensation Rates
FILED AS AN EMERGENCY RULE: June 8, 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 June 8, 2006 and with the LRMRC June 8, 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 §33-2-10 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 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:

BrickStreet was created in legislation enacted in 2005 to act as the sole Workers' Compensation insurer in West Virginia until the market is opened up in 2008. In October 2005, the Insurance Commissioner designated the National Council on Compensation Insurance, Inc. ("NCCI") as the rating organization for worker's compensation insurers in West Virginia. As the rating organization, NCCI established a new classification system under which job classes were expanded from 94 (used by the old Workers' Compensation Commission) to 470. BrickStreet is now in the process of sending out its first set of premium notices (for the policy period covering the second half of 2006) based on the classifications established by NCCI. Some 27,000 employers will receive these notices, and NCCI estimates that some 7,000 are going to see increases in their premiums as a result of the new classification system; most of the increases will be more than 20% over the previous premium. Due to the enormous amount of work involved in reclassifying in accordance with the new system, errors were inevitable, and in fact a preliminary review found a number of incorrect premiums based on job misclassifications. Because BrickStreet is now attempting to review all of the invoices, the notices are going out later than was expected (instead of mid-May as originally planned, the new invoices will go out June 22-29 for the policy period beginning July 1).

As required by statute (WV Code §33-22-9(b)), NCCI has a dispute resolution process that has been approved by the Commissioner. This process entails preliminary informal contact with BrickStreet, a formal grievance procedure before an internal dispute panel within NCCI, and an appeal to the Commissioner. Although no one is able to accurately predict how many of these invoices will be disputed, there is concern that the number may be quite large (a correlative concern is that the larger the number of disputes, the longer it will take the NCCI panel to reach resolutions). A potential problem is that these employers would have to pay the amount of the invoice in order to maintain coverage pending resolution by the NCCI panel. Because some of these disputes could involve large (and possibly incorrectly calculated) amounts, payment of which could impose a hardship on some employers, the Commissioner wishes to set out a one-time procedure by which an employer could pay a partial premium and also maintain coverage until the matter is resolved by NCCI. The payment required to avoid cancellation would be based on the amount(s) that the employer paid in the first half of 2006 under the old classification system.

Because the anticipated problems are expected to decrease significantly after the first round of billings based on the new classification system, the Commissioner is only proposing that this rule be in effect for 90 days. It is hoped that this will allow sufficient time for NCCI to resolve all of the disputes.

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 public interest"

par. 14 This decision shall be cited as Emergency Rule Decision 7-06 or ERD 7-06 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.



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