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SECRETARY OF STATE

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June 30, 2009

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Offices of the Insurance Commissioner

RULE: Amendments, 114CSR80, Viatical Settlements

DATE FILED AS AN EMERGENCY RULE: June 26, 2009

DECISION NO. 9-09

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 black ink, appearing to read "Natalie E. Tennant".

NATALIE E. TENNANT
Secretary of State

EMERGENCY RULE DECISION
(ERD 9-09)

AGENCY: Offices of the Insurance Commissioner
RULE: Amendments, 114CSR80, Viatical Settlements
FILED AS AN EMERGENCY RULE: June 26, 2009

- par. 1 The Offices of the Insurance Commissioner (Commissioner) has filed the above amendments to an existing 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 26, 2009 and with the LRMRC June 26, 2009.
- 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 33-28-5b(2) 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:

This is an amendment needed to reflect legislation enacted in 2009. SB 284 amended WVC §33-13C-3(d) and changed the requirements for a viatical broker's license by permitting, as an alternative to the pre-amendment requirement of a \$250,000 surety bond, evidence of an errors and omissions policy in the amounts of \$100,000 per occurrence and \$300,000 annual limits. SB284 become effective July 6, 2009 and the emergency rule will need to be in effect on that date in order to comply with the new law.

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 9-09 or ERD 9-09 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.



NATALIE E. TENNANT
Secretary of State

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