

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #7

Do not mark in this box
Filing Date

FILED

2011 JUN 24 PM 3:45

SECRETARY OF STATE Effective Date

NOTICE OF AN EMERGENCY RULE

AGENCY: Offices of the Insurance Commissioner TITLE NUMBER: 114

CITE AUTHORITY W.Va. Code §33-2-10

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

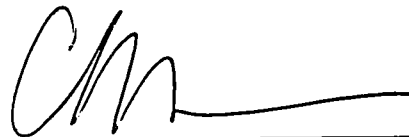
IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: 94

TITLE OF RULE BEING AMENDED: Workers' Compensation Insurance for State Agencies

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

PLEASE SEE ATTACHED



Charles O. Lorensen
Cabinet Secretary
West Virginia Department of Revenue

Use additional sheets if necessary

Insurance Commissioner
Emergency Rule
Title 114, Series 94

Title 114, Series 94 - Emergency Rule

WORKERS' COMPENSATION INSURANCE FOR STATE AGENCIES

FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY:

In 2011 the Legislature enacted HB 3163 (eff. from passage 3/12/11) giving sole responsibility to the WV Offices of the Insurance Commissioner ("OIC") "for managing the workers' compensation risks of all executive state entities and for supervising and controlling the workers' compensation programs for such entities." W. Va. Code §33-2-21a(f) mandates that OIC propose legislative rules "as are necessary to provide for implementation and enforcement of the provisions of this section." Emergency rules are also authorized. BrickStreet, as the successor to the state-run workers' compensation system, was required to and has provided coverage to state agencies since 2006. Because BrickStreet is permitted to non-renew state agencies effective July 1, 2011 (see WV Code 23-2C-15(b)), it is necessary to have a coordinated approach to prevent lapses in coverage. As a new program, this rule is necessary to clarify the OIC's authority to accept and expel program participants as well as to define terms in more detail.

Insurance Commissioner
Emergency Rule
Title 114, Series 94

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period, Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: June 24, 2011

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: WV OFFICE OF THE INSURANCE COMMISSIONER
ATTN: Legal Division
1124 Smith Street
Post Office Box 50540
Charleston, West Virginia 25305-0540

EMERGENCY RULE TITLE: Workers' Compensation Insurance for
State Agencies (Title 114, Series 94)

1. Date of Filing:

June 24, 2011.

2. Statutory authority for promulgating emergency rule:

HB 3163 (eff. from passage 3/12/11) and W. Va. Code §33-2-21a(f) mandate that OIC propose legislative rules "as are necessary to provide for implementation and enforcement of the provisions of this section" and authorize emergency rules.

3. Date of filing of proposed legislative rule:

June 24, 2011.

4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?

New language.

Insurance Commissioner
Emergency Rule
Title 114, Series 94

5. Has the same or similar emergency rule previously been filed and expired?

No.

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety and welfare.
7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.
8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to public interest.

Insurance Commissioner
Emergency Rule
Title 114, Series 94

WORKERS' COMPENSATION INSURANCE FOR STATE AGENCIES

TITLE 114, SERIES 94

BRIEF SUMMARY OF RULE

W. Va. Code §33-2-21a(f) establishes a procedure by which the Insurance Commissioner is responsible for procuring Workers' Compensation insurance for executive agencies and other state agencies. This rule includes conditions for participation by "discretionary participants" -- non-executive state agencies -- and grounds for expulsion from the program. It also provides for annual "open enrollment" period during which non-executive agencies may enroll. All participants must execute an agreement to participate.

Insurance Commissioner
Emergency Rule
Title 114, Series 94

WORKERS' COMPENSATION INSURANCE FOR STATE AGENCIES

TITLE 114, SERIES 94

STATEMENT OF CIRCUMSTANCES

HB 3163 (eff. from passage 3/12/11) and W. Va. Code §33-2-21a(f) mandates that OIC propose legislative rules "as are necessary to provide for implementation and enforcement of the provisions of this section." Emergency rules are also authorized. BrickStreet, as the successor to the state-run workers' compensation system, was required to and has provided coverage to state agencies since 2006. Because BrickStreet is permitted to non-renew state agencies effective July 1, 2011, it is necessary to have a coordinated approach to prevent lapses in coverage.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Workers' Compensation Insurance for State Agencies (114-94)
 Type of Rule: Legislative Interpretive Procedural Emergency
 Agency: WV Offices of the Insurance Commissioner
 Address: Post Office Box 50540
1124 Smith Street, Greenbrooke Building
Charleston, West Virginia 25305-0540
 Phone Number: (304) 558-0401 Email: Timothy.Murphy@wvinsurance.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The fiscal impact on the revenues and costs of state government is ultimately determined by the appropriate risk control and risk financing techniques implemented. Insurer proposals for program structure and premium quotes are needed to project savings; however, it is reasonable to believe that the state will obtain costs savings and efficiencies through the centralized procurement of the services using a single policy as opposed to each agency obtaining stand alone coverage for themselves. The estimated savings for state government is projected at 5% to 10% or \$1M to \$2M per year; however, many variables will contribute to what actual results are achieved. The capturing of increasing long-term savings is primarily dependent upon the degree of acceptance of risk control within the culture of state agencies.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	300,000	150,000
Personal Services	0	100,000	100,000
Current Expenses	0	0	0
Repairs & Alterations	0	0	0
Assets	0	0	0
Equipment	0	0	0
Other	0	200,000	50,000
2. Estimated Total Revenues	0	(\$1M)	(\$1M)

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

Personnel expense is for a program director. Total revenues are estimated savings from centralized procurement of insurance. "Other" is for consultant fees involved in implementation of program.

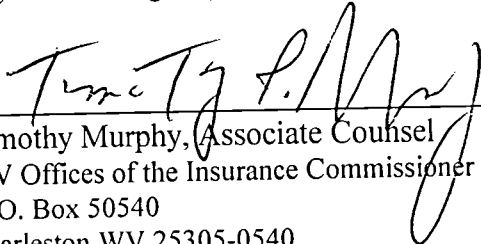
MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

N/A

Date: 6-24-11

Signature of Agency Head or Authorized Representative



Timothy Murphy, Associate Counsel
WV Offices of the Insurance Commissioner
P. O. Box 50540
Charleston WV 25305-0540
Timothy.Murphy@wvinsurance.gov

**TITLE 114
EMERGENCY RULE
INSURANCE COMMISSIONER**

**SERIES 94
WORKERS' COMPENSATION INSURANCE
FOR STATE AGENCIES**

Sections

- 114-94-1. General.
- 114-94-2. Definitions.
- 114-94-3. Participation in SAWC; Agreement; Involuntary Removal.
- 114-94-4. Dispute Resolution Process.

**TITLE 114
EMERGENCY RULE
INSURANCE COMMISSIONER**

FILED
2011 JUN 24 PM 3:45

**SERIES 94
WORKERS' COMPENSATION INSURANCE
FOR STATE AGENCIES**

OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATE

§114-94-1. General.

1.1. Scope. -- The purpose of this rule is to establish the procedure by which the Insurance Commissioner will procure workers' compensation coverage for various state agencies and boards.

1.2. Authority. -- W. Va. Code §§33-2-10 and 33-2-21a(f).

1.3. Filing Date. --

1.4. Effective Date. --

§114-94-2. Definitions.

2.1. "Commissioner" means the West Virginia Insurance Commissioner.

2.2. "Discretionary participant" means the Parkways Authority; State Police; the offices of the State Auditor, State Treasurer, Secretary of State, Attorney General and Department of Agriculture; the State Senate and House of Delegates and their related entities; the Supreme Court of Appeals; and any other spending unit of the state that is required by W. Va. Code §11B-2-12 to provide a detailed expenditure schedule to the Secretary of Revenue.

2.3. "Executive state entity" means the Governor's Office, including the Governor's Mansion, Office of Economic Opportunity, Commission for National and Community Service, Equal Employment Opportunity Office and the Governor's Office of Health Enhancement and Lifestyle Planning; the Bureau of Senior Services; and any other entity transferred to and incorporated in one of the executive departments created in W. Va. Code §5F-1-2 and which is required to provide a detailed expenditure schedule to the Secretary of Revenue pursuant to W. Va. Code §11B-2-12.

2.4. "Experience rating" means a statistical procedure utilizing past risk experience to produce a prospective premium credit, debit or unity modification.

2.5. "Loss costs" are incurred losses on an accrual basis per \$100 of payroll for the period under measurement.

**Insurance Commissioner
Emergency Rule
Title 114, Series 94**

2.6. "NCCI" means the National Council of Compensation Insurers, which was designated by the Commissioner as the state's rating organization in 2007 pursuant to W. Va. Code §23-2C-18a; the term also includes any successor rating organization designated by the Commissioner.

2.7. "Participation agreement" or "Agreement" means the document published on the Commissioner's website that contains the requirements to which all participants must adhere and which must be executed by the person who has the authority to legally bind that participant.

2.8. "State Agency Workers' Compensation" or "SAWC" means the procedure established by the Commissioner pursuant to W. Va. Code §33-2-21a and this rule to provide for the mandatory coverage of workers' compensation risks for, all executive state entities and those discretionary participants that have agreed to participate in SAWC under an agreement with the Commissioner.

§114-94-3. Participation in SAWC; Agreement; Involuntary Removal.

3.1. The Commissioner shall determine which entities meet the definition of executive state entity or discretionary participant and shall send to each a notice of such determination.

3.1.a. Such notice shall inform: (i) Executive state entities that they will be required to execute the Agreement and to meet their mandatory workers' compensation coverage responsibilities through SAWC as of the date set by the Commissioner; and (ii) Discretionary participants that they may apply for participation in SAWC during such periods and in such manner established by the Commissioner.

3.1.b. Any recipient of a notice sent pursuant to subdivision a of this subsection that believes it should have been classified differently, or any entity that did not receive a notice but believes it should have, may request the Commissioner to reconsider the classification decision. Pending a determination in response to such a request, the Commissioner may take such temporary measures he or she deems necessary to meet the exigencies presented by the need to prevent a lapse of that entity's workers' compensation coverage.

3.2. Acceptance of a discretionary participant into SAWC is contingent on the execution of the Agreement.

3.3. The Commissioner shall, at such times and in such manner as he or she deems necessary but no less often than once every calendar year, conduct an open enrollment period during which discretionary participants that have never before participated in SAWC or that have voluntarily withdrawn may apply for acceptance or reacceptance into SAWC.

**Insurance Commissioner
Emergency Rule
Title 114, Series 94**

3.3.a. A discretionary participant may be removed from SAWC for failure to adhere to the Agreement after notice of violation and reasonable opportunity to cure. Grounds for removal include, but are not limited to, actions that constitute an unacceptable risk to the other participants in SAWC.

3.3.b. Removal from SAWC shall be upon at least 30 days' written notice to the participant.

3.3.c. A participant removed from SAWC pursuant to subdivision a of this subsection may be excluded from participation for the latter of one year from removal or the next open enrollment period.

3.3.d. After an involuntary removal from SAWC, a former participant that owes no prior assessments arising out of its prior participation shall be readmitted upon application and re-execution of the Agreement.

3.3.e. A discretionary participant may withdraw from SAWC upon at least 30 days' written notice to the Commissioner. Any unpaid fees shall constitute a debt of the former participant and shall constitute a bar to reacceptance.

3.4. The Commissioner shall develop rates utilizing NCCI loss costs to be applied to each participant's exposure units so as to produce the funding level required. The Commissioner will utilize a rating plan for experience rating participants based on actual historical losses. Participants agree to make payments computed in accordance with the rating plan.

3.4.a. Any participant may contest the amount of any fee imposed by the Commissioner by filing a "notice of disputed charge" in the form and manner set forth on the Commissioner's website, but the filing of such notice does not stay the participant's duty to remit the assessed fee pending a final decision on the dispute unless the Commissioner expressly determines otherwise. Failure to timely remit the full amount of such fee constitutes sufficient cause for removal from SAWC regardless of the pendency of a dispute regarding such amount and regardless of the ultimate resolution of such dispute.

3.4.b. Upon the removal or voluntary withdrawal of a discretionary participant from SAWC, the Commissioner will determine what portion of the fees paid, if any, should be returned and remit that amount to the former participant.

§114-94-4. Dispute Resolution Process.

4.1. Any participant may dispute any decision by the Commissioner regarding its application to, participation in, or removal from SAWC in the manner set forth in W. Va. Code §33-2-13.

**Insurance Commissioner
Emergency Rule
Title 114, Series 94**

4.2. The Commissioner may designate another person to consider the matter under dispute, including conducting any hearing deemed necessary, and to make recommendations for resolution.