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July 15, 2011

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Offices of the Insurance Commissioner

RULE: New Rule, 114CSR94, Workers' Compensation Insurance for State Agencies

DATE FILED AS AN EMERGENCY RULE: June 24, 2011

DECISION NO. 7-11

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.

NATALIE E. TENNANT
Secretary of State

EMERGENCY RULE DECISION
(ERD 7-11)

AGENCY: Offices of the Insurance Commissioner
RULE: New Rule, 114CSR94, Workers' Compensation Insurance for State Agencies
FILED AS AN EMERGENCY RULE: June 24, 2011

- par. 1 The Offices of 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 24, 2011 and with the LRMRC June 24, 2011.
- 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 §33-2-21a(f) reads:

(f) The commissioner may promulgate emergency rules and shall propose for legislative approval legislative rules, in accordance with the provisions of article three, chapter twenty-nine-a of this code, as are necessary to provide for implementation and enforcement of the provisions of this section.

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.

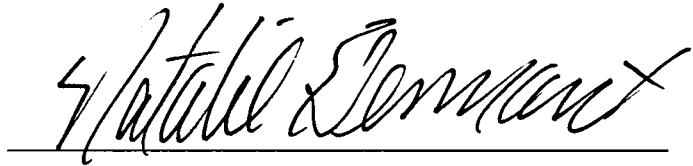
par. 12 The facts and circumstances as presented by the Commissioner are as follows:

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.

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). . . "authorized by the Legislature in HB 3163"

par. 14

This decision shall be cited as Emergency Rule Decision 7-11 or ERD 7-11 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Offices of the Insurance Commissioner, the Attorney General and the Legislative Rule Making Review Committee.



NATALIE E. TENNANT

Secretary of State

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