

WEST VIRGINIA  
SECRETARY OF STATE  
KEN HECHLER  
ADMINISTRATIVE LAW DIVISION

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) SECRETARY OF STATE

Form #3

NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

AGENCY: WV Division of Banking TITLE NUMBER: 106

CITE AUTHORITY W.Va Code §§31A-4-13(i) & 31A-2-4(c)(11)

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES OF NEW RULE BEING PROPOSED: Series 2

TITLE OF RULE BEING PROPOSED: The Sale of Insurance Products by

State-Chartered Banks

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

*Sharon J. Beas*

Authorized Signature



**STATE OF WEST VIRGINIA  
DEPARTMENT OF TAX AND REVENUE**

**CECIL H. UNDERWOOD**  
GOVERNOR

**Charleston, West Virginia**  
P. O. Box 963  
Charleston, WV 25324-0963  
Ph. (304) 558-0211 - Fax (304) 558-2324

**ROBIN C. CAPEHART**  
SECRETARY

August 1, 1997

The Honorable Mike Ross  
Co-Chair  
Legislative Rule-Making Review Committee  
Building 1, Room 152  
1900 Kanawha Boulevard East  
Charleston, West Virginia 25305-0470

The Honorable Mark Hunt  
Co-Chair  
Legislative Rule-Making Review Committee  
Building 1, Room 152  
1900 Kanawha Boulevard East  
Charleston, West Virginia 25305

Dear Senator Ross and Delegate Hunt:

Enclosed please find a copy of the final agency approved proposed legislative rule of the Banking Commission identified as follows:

Title of Rule: Sale of Insurance Products by State-Chartered Banks  
Title No.: 106  
Series No.: Series 2

Along with this document are the documents and other information required by W. Va. Code § 29A-3-11.

Please let me know when this rule will be considered by your committee. If you or committee staff have any questions about this proposed rule or need any additional information, please contact me. You may also contact Sharon Bias, Commissioner of Banking, at 558-2294, or Dale Steager at 558-3356.

Very truly yours,

A handwritten signature in cursive script, reading "Robin C. Capehart".

Robin C. Capehart  
Secretary of Tax and Revenue

DATE: August 1, 1997

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: WV Division of Banking

LEGISLATIVE RULE TITLE: The Sale of Insurance Products by State-Chartered Banks

1. Authorizing statute(s) citation W. Va. Code §§ 31A-4-13(i) and 31A-2-4(c)(11).

2. a. Date filed in the State Register with Notice of ~~Hearing~~/ Comment Period.

June 30, 1997

b. What other notice, including advertising, did you give of the hearing?

Sent to each person/business on the WV Division of Banking's "Official Notification" list.

c. Date of ~~Hearing(s)~~/ Comment Period June 30, 1997 to July 31, 1997.

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached x No comments received \_\_\_\_\_

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

August 1, 1996

f. Name and phone number(s) of agency person(s) to contact for additional information:

Timothy Winslow 558-2294

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

\_\_\_\_\_ N/A \_\_\_\_\_

\_\_\_\_\_ N/A \_\_\_\_\_

b. Date of hearing: \_\_\_\_\_ N/A \_\_\_\_\_

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefore?

\_\_\_\_\_ N/A \_\_\_\_\_

d. Attach findings and determinations and reasons:

Attached \_\_\_\_\_ N/A \_\_\_\_\_



## DIVISION OF BANKING

Building #3, Room 311 • State Capitol Complex • 1900 Kanawha Blvd., East • Charleston, WV 25305-0240 • FAX: (304) 558-0442

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(304) 558-2294

### COMMISSIONER OF BANKING RULE PERTAINING TO THE SALE OF INSURANCE PRODUCTS BY STATE-CHARTERED BANKS 106 CSR 2

#### Summary of Proposed Rules

The proposed rule sets forth the regulations governing notification, policies and procedures in connection with the sale of insurance products by state-chartered banks. The rule requires that state-chartered banks provide 30 day advance written notice to the Commissioner of Banking before engaging in the proposed insurance activity. The rule also requires that state-chartered banks follow federal rules and guidelines regarding the sale of such insurance products, along with federal rules pertaining to the sharing of customer information to the extent those rules are not in conflict with state law.

The rule makes clear the ability of the Commissioner of Banking to undertake investigations to determine whether the insurance activity presents a safety and soundness problem to the bank both before the activity is begun, or anytime thereafter. It reaffirms the jurisdiction of the Insurance Commissioner over the licensing and sale of such products by banks. It further provides for penalties and enforcement of the rule including possible revocation or suspension of the authority for the bank to engage in any insurance activity. These penalties and enforcement provisions are not exclusive, but rather are cumulative with other powers and penalties provided in law.

E.E.O./AFFIRMATIVE ACTION EMPLOYER



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### COMMISSIONER OF BANKING RULE PERTAINING TO THE SALE OF INSURANCE PRODUCTS BY STATE-CHARTERED BANKS 106 CSR 2

#### Statement of Circumstances

The proposed rule is required by W. Va. Code § 31A-4-13(i) as added to the Code during the last legislative session. The rule is meant to implement the procedures by which state-chartered banks are now permitted to sell insurance products including annuities.

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**APPENDIX B**

**FISCAL NOTE FOR PROPOSED RULES**

**Rule Title:** The Sale of Insurance Products by State-Chartered Banks  
[106 CSR 2]

**Type of Rule:**  **Legislative**     **Interpretive**     **Procedural**

**Agency:** West Virginia Division of Banking

**Address:** State Capitol Complex

Building 3, Room 311

Charleston, West Virginia 25305-0240

**1. Effect of Proposed Rule:**

	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
PERSONAL SERVICES	0	0	0	0	0
CURRENT EXPENSES	0	0	0	0	0
REPAIRS & ALTERATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	0	0
OTHER	0	0	0	0	0

**2. Explanation of above estimates:**

The rule merely tracks language which previously appeared in a Decision of Authorization allowing for the sale of insurance products by state-chartered banks which was implemented by the Division of Banking in 1996. The procedures set forth thus conform to current practices, and hence contain no additional costs.

**3. Objectives of these rules:**

To set forth the rules governing notification, policies and procedures in connection with the sale of insurance products by state-chartered banks as required by pursuant to W. Va. Code §31A-4-13(f) and (g).

Rule Title: Sale of Insurance Products by State-Chartered Banks  
[106 CSR 2]

**4. Explanation of Overall Economic Impact of Proposed Rule.**

**A. Economic Impact on State Government:**

None.

**B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:**

None.

**C. Economic Impact on Citizens / Public at Large:**

None.

Date: Aug. 7, 1997

Signature of Agency Head or Authorized Representative:

Sharon L. Reib

TITLE 106  
LEGISLATIVE RULE  
WEST VIRGINIA DIVISION OF BANKING

SERIES 2  
THE SALE OF INSURANCE PRODUCTS BY  
STATE-CHARTERED BANKS

**FILED**  
AUG 1 1 55 PM '97  
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SECRETARY OF STATE

**§106-2-1. General.**

1.1. Scope. -- This rule relates to notification, policies and procedures in connection with the sale of insurance products by state-chartered banks pursuant to W. Va. Code §31A-4-13(f) and (g).

1.2. Authority. -- W. Va. Code §§31A-4-13(i) and 31A-2-4(c)(11).

1.3. Filing Date. --

1.4. Effective Date. --

**§106-2-2. Notice and Conduct of Insurance Activities.**

2.1. Notice-- State-chartered banks shall first give the Commissioner of Banking thirty day written notice of their intent to engage in insurance product sales. If the Commissioner takes no action to prevent the bank from proceeding with the activity within the thirty day period, the bank may proceed with and engage in the activity. The Commissioner in his or her discretion at any time prior to the end of the thirty day period, may signify his or her assent to the activity, and the bank may proceed upon such assent. The notice and assent may apply to all products considered insurance under the laws of this state, unless otherwise limited by the Commissioner.

2.2. Federal Guidelines on Noninsured Products-- State-chartered banks shall adhere to all federal rules, regulations and general policies and guidelines regarding the sale of non-federally insured products by or at their banks, including those relating to the clear disclosure that such products are not insured by the Federal Deposit Insurance Corporation.

2.3. Insurance Commissioner Jurisdiction-- State chartered banks shall adhere to any and all requirements imposed by the West Virginia Commissioner of Insurance as to the sale of such products, the distribution of fees associated with insurance and annuity sales, and as to the licensing of agents for such sales, to the same extent those

requirements are applied to other corporations and national banks.

2.4. Sharing of Customer Information-- State chartered banks shall establish and adhere to written policies governing the use and sharing of their bank customer information in conformity with applicable state law. Unless contrary to applicable state law these policies shall conform to federal rules and guidelines involving the sale of nondeposit investment or insurance products.

**§106-2-3. Safety and Soundness.**

3.1. Investigation-- The Commissioner of Banking in his or her discretion may undertake investigation on the matter of safety and soundness, if he or she believes that any insurance activity or proposed insurance activity might impair the safety and soundness of the bank. If the Commissioner finds the activity contrary to the safety and soundness of the bank, the authority of the bank to engage in the insurance activity or proposed activity may be denied, modified or prohibited.

**§106-2-4. Enforcement and Penalties.**

4.1. Enforcement-- Nothing in this rule shall limit or prevent the Commissioner of Banking from exercising his or her lawful authority to regulate the conduct of banks and bank holding companies under the provisions of Chapter 31A of the West Virginia Code.

4.2. Penalties-- Violation of this rule may result in the revocation or suspension of the non-complying state-chartered banking institution's authorization to engage in insurance activity or a particular insurance activity when the Commissioner or the West Virginia Board of Banking and Financial Institutions finds that the nature of the violation warrants such revocation or suspension. Violation of this rule or any order to enforce this rule may also result in any other penalties provided by Chapter 31A of the West Virginia Code.



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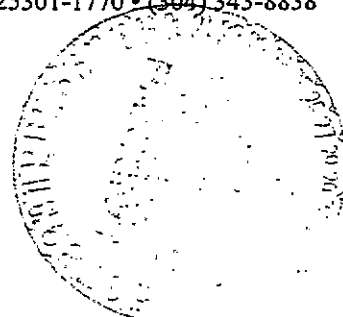
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Progressive Bank, NA, Wheeling

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# West Virginia Bankers Association, Inc.

Huntington Square • 900 Lee St. E, Suite 1212 • Charleston, WV 25301-1770 • (304) 343-8838



July 29, 1997

Sharon G. Bias, Commissioner of Banking  
West Virginia Division of Banking  
State Capitol Complex  
1800 Washington Street, East  
Building 3, Room 311A  
Charleston, WV 25305

Re: Proposed Rule - Sale of Insurance Products

Dear *Sharon* Commissioner Bias:

The West Virginia Bankers Association (the "Association") represents the majority of state and national banks and thrift institutions operating within the State of West Virginia and it is a part of its service to its members to monitor proposed regulations and provide input on matters of interest to the industry. Thank you for your consideration of these general comments on the proposed rules to Title 106 relating to West Virginia Code § 31A-4-13(f)(g). We would like to suggest three clarifying amendments to the proposed rule.

First, in § 106-2-2, we would recommend that it be clarified that no action by the Commissioner within the thirty (30) day notice shall be construed to mean that the noticing bank may proceed with the activity. Additionally, it could be desirable to obtain affirmative authorization in less than thirty (30) days. Perhaps the rule could provide for affirmative authorization in less than thirty days at the Commissioner's discretion.

Second, we recommend that the notice be a one-time notice of an intention to engage in any of the activities permitted to avoid confusion in the event of product expansion. For example, we recommend that the notice simply require an expression of an intention to engage in the activity authorized by either section, annuity sales, of any type, or insurance sales, of

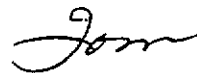
Sharon G. Bias, Commissioner of Banking  
July 29, 1997  
Page 2

any type. In other words, the notice need not specify product type nor would it be necessary to provide subsequent notice in the event of product expansion. We believe this would be consistent with the general statutory intention, since these activities are clearly authorized and notice would simply be a means by which the Commissioner and the examiners could be aware of those banks choosing to exercise the statutory power.

Third, we ask your consideration of a minor rewording of § 2.4 as the reference to State law on customer information is somewhat confusing. Much of the law relating to privacy rights is common law, and, in fact, much of that has been developed outside of West Virginia. Perhaps a more general statement that banks shall establish and adhere to written policies governing customer information in conformity with "applicable law" would avoid this potential for this confusion. The last sentence in this section could also create confusion as it implies that State law might override federal rule or guidelines, whereas, the reverse often happens. We believe a requirement of compliance with "applicable law" will also avoid confusion in this arena and, depending upon the facts and circumstances, any conflict will be resolved in accordance with the general rules applicable for doing so.

Thank you for your consideration of these comments. Please feel free to contact me if you need additional information.

Very truly yours,



Thomas A. Winner



## DIVISION OF BANKING

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### COMMISSIONER OF BANKING RULE PERTAINING TO THE SALE OF INSURANCE PRODUCTS BY STATE-CHARTERED BANKS 106 CSR 2

#### Comment Received

Only one comment was received on the proposed above-referenced rule. This comment letter is attached. Language is suggested to provide that if the Commissioner does not act within the thirty day notice period the bank may proceed with the insurance activity. Second, it is suggested that the Commissioner be clearly provided the ability to assent to the noticed activity at any time prior to the end of the thirty day period. It is further suggested that notice for engaging in insurance activity not be necessary for each new product or product expansion, but rather be permitted to be a broad and general notice for such activity. Lastly, it is noted that federal rules may preempt state law governing the sharing of customer information, and thus subsection 2.4 should be amended to reflect governance of "applicable" state law.

#### Response to Comment

The proposed rule was amended to largely reflect the comment's suggestions.

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COMMISSIONER OF BANKING  
RULE PERTAINING TO  
THE SALE OF INSURANCE PRODUCTS BY  
STATE-CHARTERED BANKS  
106 CSR 2

### Amendments Made in Response to Comment

At the end of 106 CSR § 2-2.1 three new sentences were added reading:  
*“If the Commissioner takes no action to prevent the bank from proceeding with the activity within the thirty day period, the bank may proceed with and engage in the activity. The Commissioner in his or her discretion at any time prior to the end of the thirty day period, may signify his or her assent to the activity, and the bank may proceed upon such assent. The notice and assent may apply to all products considered insurance under the laws of this state, unless otherwise limited by the Commissioner.”*

In 106 CSR § 2-4 the word “*applicable*” was added before the term “state law” in both the first and second sentences.

### Reasons for the Amendments

The amendments to 106 CSR § 2-2.1 were made to prevent unnecessary delay in handling notices for the sale of insurance products, and to clarify the effect of no adverse action being taken by the Commissioner within the thirty day notice period. The rule amendment also clarifies the effect of receiving the assent to the Commissioner prior to the close of the thirty day notice period.

The amendment to 106 CSR § 2-2.4 were made to recognize that state law may not be dispositive on the issue of the sharing of customer information, in light of certain federal rules.