WEST VIRGINIA SECRETARY OF STATE

KRIS WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

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

AGENCY: Risk And Insurance Management TITLE-SERIES: 115-02

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: 115-02 Public Entities Insurance Program

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: W. Va. Code §29-12-5

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

In 1986 BRIM was established to provide an alternative market for coverage for political subdivisions and charitable organizations in 1986 by an executive order and through Legislation, SB 3. W.Va. Code § 29-12-5(a)(10) allows BRIM to make rules governing its functions and operations for the procurement of state insurance. Except where otherwise provided by statute, rules of the board are subject to the provisions of W.Va. Code §29A-3-1 et seq. This rule sets forth procedures and requirements supporting BRIM's liability and property insurance program for public subdivisions, charitable organizations, and emergency medical service agencies.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/2/2025

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/1/2025

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING:

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

This rule sets forth procedures and requirements supporting BRIM's liability and property insurance program for public subdivisions, charitable organizations, and emergency medical service agencies. Changes made in the proposed rule include editing for conciseness, clarifying criteria for nonrenewal and cancellation of policies, and explaining the process for applicants to request reconsideration of a Board decision to not renew or cancel coverage.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

In 1986 BRIM was established to provide an alternative market for coverage for political subdivisions and charitable organizations in 1986 by an executive order and through Legislation, SB 3. W.Va. Code § 29-12-5(a)(10) allows BRIM to make rules governing its functions and operations for the procurement of state insurance.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

Improve savings by providing the Board with discretion in providing coverage to various entities.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

Updating the rule better positions the board to adequately maintain fund levels by assessing risk of entitles and providing coverage based on risk, potentially decreasing premiums based on lower risk pools.

C. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

Providing insurance coverage to entities that employ residents, particularly ones that may not be able to obtain coverage elsewhere.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2025 Increase/Decrease (use "-")	2026 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes
Misty Peal -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 115
LEGISLATIVE RULE~~S~~
STATE BOARD OF RISK AND INSURANCE MANAGEMENT

SERIES 2
PUBLIC ENTITIES INSURANCE PROGRAM

§115-2-1. General.

1.1. Scope. -- This rule establishes the procedures for implementing and administering the public entities insurance program established pursuant to W. Va. Code §§29-12-5(b) and 29-12A-1 et seq. The purpose of the program is to provide liability insurance coverage and property insurance coverage to eligible and qualified political subdivisions, charitable or public service organizations~~,~~ and emergency medical service agencies.

1.2. Authority. -- W. Va. Code ~~§~~§29-12-5.

1.3. Filing Date. -- ~~April 19, 2021~~.

1.4. Effective Date. -- ~~May 1, 2021~~.

1.5. Sunset Provision -- This rule shall terminate and have no further force and effect on August 1, ~~2026~~ 2035.

§115-2-2. Definitions.

2.1. "Board" means the state board of risk and insurance management.

2.2. "Entity" means the political subdivisions, charitable or public service organizations and emergency medical service agencies requesting or obtaining liability or property insurance.

2.3. "Fee agreement" means the agreement between the entity and producer that designates a ~~producer as~~ producer of record for the entity and authorizes the board to pay the producer ~~of record~~ the commission established in the agreement.

2.4. "Producer" means a person licensed by the West Virginia Insurance Commissioner under the laws of West Virginia to sell, solicit, or negotiate property and casualty insurance.

§115-2-3. Designation of Producer of Record.

3.1. An entity may not procure or renew insurance through the public entities insurance program unless it ~~does so through a producer who has~~ entered into a fee agreement with the producer ~~entity~~. Failure to comply with this requirement will result in declination of the entity's application for coverage or non-renewal of existing coverage.

3.2. ~~The~~ Upon the request of an entity or producer, the board shall provide all forms, documents, and instructions necessary to apply for coverage ~~to the entity's producer~~, ~~of record upon request by the entity or the producer of record~~. The entity and its producer ~~of record~~ are jointly responsible for submitting all forms, documents, and underwriting information needed to apply for coverage in a manner and within a time period acceptable to the board.

3.3. ~~Before~~ Annually, before the end of December ~~during each fiscal year~~, the board will ~~provide notification to~~ notify producers ~~of record~~ of the due date ~~by which the~~ for the underwriting questionnaire and any other information needed for renewal of existing coverage ~~is due for the next fiscal year~~. The notification will be sent at least 45 days prior to the deadline. ~~date the underwriting questionnaire and other information is due~~. If the underwriting questionnaire or any other information needed for renewal of ~~any~~ coverage is not received by the ~~designated date~~ deadline, the board will issue a written non-renewal notice informing the entity that coverage will cease on July 1 at 12:01 ~~AM if the entity fails to take further action~~ a.m.

3.3.1. The board may assess a $500.00 penalty against any entity that submits renewal information after the deadline provided in the non-renewal notice but before July 1. The non-renewal notice will ~~also~~ provide a ~~date~~ late submission deadline by which the underwriting questionnaire or other information will still be accepted ~~by the board as a late submission~~, and ~~will~~ state that late ~~submission of the underwriting questionnaire or other information after the late submission date but~~ submissions received before July 1 will result in an assessment of $500.00. ~~The board may assess the penalty of $500.00 against any entity that submits the needed renewal information after the late submission date provided in the non-renewal notice and before July 1.~~

3.3.2. ~~As stated in the non-renewal notice, coverage~~ Coverage will cease on July 1 at 12:01 ~~AM~~ a.m. for any entity that fails to submit the underwriting questionnaire or other necessary renewal information ~~needed for renewal~~ by June 30 or ~~and~~ pay ~~a~~ an assessed $500.00 late submission penalty. Should the entity desire to procure coverage through the public entities insurance program during the year following non-renewal it ~~will be required to~~ must apply for coverage as a new entity and pay a penalty of $500.00. ~~however, this~~ This penalty ~~shall not apply~~ may be waived if the non-renewal was due to the entity's decision to procure coverage other than through the program.

§115-2-4. Producer's Commission.

4.1. The commission received ~~of the~~ by a producer ~~of record's commission~~ is ~~a matter of~~ determined by a fee agreement between the entity and its producer ~~of record and established in the fee agreement~~. A commission is based on the premium paid by the entity for a policy year. If an entity cancels coverage during the term of the policy, the commission is based on the premium paid for the period of time the insurance was in force.

4.2. The commission may not exceed eight percent (8 %) of the earned annual premium. The board computes the earned premium ~~will be computed~~ annually, ~~on an annual basis of~~ based on premiums from July 1 ~~of each year~~ to June 30 of the following year. ~~The~~ Any difference between the maximum of eight percent and the ~~producers of record's~~ producer's commission shall be credited to the entity's account. ~~Commission is based on premium paid by the entity for the policy year. In the event that coverage is canceled during the term of the policy, the commission will be based on premium paid for the period of time the insurance was in force.~~

4.3. The entity may change its producer ~~of record~~ and/or the amount of commission to be paid to the producer by notification to the board and submission of a new fee agreement. Commission will be paid to the producer ~~of record~~ annually, ~~following the end of~~ after the policy year for which the producer ~~completed~~ submitted the underwriting questionnaire ~~for the entity~~. Should the entity change its producer ~~of record~~ during a policy year, the commission ~~for that policy year~~ will ~~only~~ be paid to the producer who completed the underwriting questionnaire for ~~the entity for~~ that policy year.

§115-2-5. Ineligible Classes.

5.1. The following classes of entities have been determined by the board to be ineligible for coverage under W. Va. Code §29-12-5(b):

5.1.1. Hospitals - except those owned and operated by political subdivisions already insured with the state program, or critical access hospitals as specified in W. Va. Code §29-12-5(b).

5.1.2. Airports and airport authorities.

5.1.3. Churches and religious organizations.

5.1.4. Country clubs.

5.1.5. Homeowners associations.

5.1.6. Lobbying organizations.

5.1.7. Political organizations.

5.1.8. Any "for profit" organizations, except emergency medical service agencies as specified in W. Va. Code §29-12-5(b). "For profit" organizations include any for profit organization ~~that may be~~ owned in full or in part by an otherwise eligible entity.

§115-2-6. Rates and Coverages.

6.1. The board shall determine and establish rates, rate programs, deductibles, and coverages as needed.

6.2. An entity ~~may procure~~ is not required to obtain property insurance ~~liability insurance~~ through the public entities insurance program to qualify for liability insurance coverage ~~without also procuring property insurance~~. However, the entity must obtain liability insurance through the public entities insurance program to qualify for property insurance coverage ~~may only be procured if the entity also procures liability insurance through the public entities insurance program~~.

6.3. The board's administrative costs associated with operation of the public entities insurance program will be included ~~in the actuarial model for determination of premium due from~~ in the calculation of premiums for insured entities.

§115-2-7. Cancellation ~~and Nonrenewal~~ Provisions.

7.1. The board may cancel ~~or non-renew~~ an entity's insurance coverage for any of the following reasons:

7.1.1. The entity's failure to make a premium payment within thirty (30) days of the premium due date or failure to make payment of the liability insurance deductible within thirty (30) days;

7.1.2. Fraud or substantial misrepresentation by the entity or a representative of the entity ~~procuring or renewing the insurance coverage or in presenting a claim under the insurance coverage~~;

7.1.3. A substantial increase in the risk of loss to which the public entity insurance program is exposed under the policy, including, but not limited to, the following:

7.1.3.a. The conviction of the entity or any officer, employee, or volunteer of the entity of any crime having as one of its necessary elements an act increasing any hazard insured against;

7.1.3.b. Discovery of willful or reckless acts or omissions on the part of any officer, employee, or volunteer of the entity which substantially increases any hazard insured against;

7.1.3.c. The occurrence of a change in the risk which substantially increases any hazard insured against after insurance coverage has been issued or renewed;

7.1.3.d. The entity has a loss ratio exceeding one hundred percent in at least three of the past five years in the program;

7.1.3.e. The entity's violation of any local fire, health, safety, building or construction regulation, or ordinance with respect to any insured property or the occupancy thereof which substantially increases any hazard insured against;

7.1.3.f. Public entities insured within the board's insurance program who fail to follow the board's or vendor loss prevention recommendations with an acceptable corrective action plan; or

7.1.3.g. Public entities whose annual premiums total more than $100,000 that fail to participate in BRIM's Standards of Participation Program.

7.1.4. The entity violates any of the material terms or conditions of the insurance coverage or the public entity insurance program; or

7.1.5. The entity no longer qualifies for participation in the public entity insurance ~~programs~~ program administered by the board.

7.2. The board ~~shall give an entity~~ must provide the entity with at least a thirty (30) day notice of cancellation of coverage. ~~by~~ The notice must be written, ~~notice to the entity by~~ sent by certified mail, return receipt requested~~.~~, ~~The notice shall~~ and comply with the requirements of ~~section 7.4 of these rules~~ this rule.

~~7.3. The board shall renew an entity's insurance coverage, unless at least sixty (60) days prior to the date of the expiration provided in of the certificate of coverage, the board provides the entity with a written notice, by certified mail, return receipt requested, of its intention not to renew the insurance coverage beyond the expiration date. The notice shall comply with section 7.4 of these rules this rule unless the entity is insured elsewhere, has accepted replacement coverage, or has requested or agreed to the nonrenewal.~~

~~7.4. In every instance in which insurance coverage is cancelled or is not renewed, the board shall cite within the written notice of the action, the reason or reasons set forth in section 7.1 of this rule for which the action was taken and shall state, with specificity the circumstances giving rise to the board's action The notice shall further state that the entity has a right to appeal the determination pursuant to section 7.5 of this rule, and the right to be represented by counsel during such appeal.~~

§115-2-8. Nonrenewal Provisions.

8.1. The board may non-renew an entity's insurance coverage for any change in the risk of loss to which the public entity insurance program is exposed under the policy.

8.2. When the board elects to not renew coverage beyond the expiration date on the certificate of coverage, it must provide a nonrenewal notice.

8.2.1. A nonrenewal notice must be written, express the board's intention to not renew the coverage, and include an explanation of the specific circumstances giving rise to the board's action.

8.2.2. The board must mail the nonrenewal notice via certified mail, return receipt requested, at least sixty (60) days before the expiration of the coverage. However, the board is not required to provide sixty (60) day notice if the entity is insured elsewhere, accepted replacement coverage, requested the nonrenewal, or agreed to the nonrenewal.

§115-2-9. Request for Reconsiderations

9.1. The entity may request the board reconsider a decision to cancel or nonrenew coverage.

9.1.1. The board must inform the entity of its opportunity to request reconsideration of the determination in the notice for nonrenewal or cancellation.

9.1.2. The entity must notify the board of its request for reconsideration in writing within fifteen (15) calendar days of receiving a notice of cancellation or nonrenewal.

9.1.2.a. When submitting a request for reconsideration, the entity must include any documentation, information, findings, or data the board should consider when making a redetermination decision.

9.1.3. The board must provide the entity with a redetermination decision notice within fifteen (15) days of receiving a request for reconsideration. The notice must be in writing and sent certified mail, return receipt requested.