WEST VIRGINIA SECRETARY OF STATE

KRIS WARNER

ADMINISTRATIVE LAW DIVISION

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3/27/2026 3:32:20 PM

Office of West Virginia Secretary Of State

NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE

AGENCY: Risk And Insurance Management

TITLE-SERIES: 115-02

RULE TYPE: Legislative

Amendment to Existing Rule: Yes

Repeal of existing rule: No

RULE NAME: PUBLIC ENTITIES INSURANCE PROGRAM

CITE STATUTORY AUTHORITY: W. Va. Code §29-12-05

The above rule has been authorized by the West Virginia Legislature.

Authorization is cited in (house or senate bill number) SB251

Section §64-2-3(b) Passed On 2/25/2026 12:00:00 AM

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

April 1, 2026

This rule shall terminate and have no further force or effect from the following date:

August 01, 2035

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. -- March 27, 2026.

1.4. Effective Date. -- April 1, 2026.

1.5. Sunset Provision -- This rule shall terminate and have no further force and effect on August 1, 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 designating the producer as producer of record for the entity and authorizing 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 entered into a fee agreement with the producer. 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. Upon the request of an entity or producer, the board shall provide all forms, documents, and instructions necessary to apply for coverage. The entity and its producer 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. Annually, before the end of December, the board will notify producers of the due date for the underwriting questionnaire and any other information needed for renewal of existing coverage. The notification will be sent at least forty-five (45) calendar days prior to the deadline. If the underwriting questionnaire or any other information needed for renewal of coverage is not received by the deadline, the board will issue a written non-renewal notice informing the entity that coverage will cease on July 1 at 12:01 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 provide a late submission deadline by which the underwriting questionnaire or other information will still be accepted, and state that late submissions received before July 1 will result in an assessment of $500.00.

3.3.2. Coverage will cease on July 1 at 12:01 a.m. for any entity that fails to submit the underwriting questionnaire or other necessary renewal information by June 30 or pay 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 must apply for coverage as a new entity and pay a penalty of $500.00. This penalty 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 by a producer is determined by a fee agreement between the entity and its producer. 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 annually, based on premiums from July 1 to June 30 of the following year. Any difference between the maximum of eight percent and the producer's commission shall be credited to the entity's account.

4.3. The entity may change its producer 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 annually, after the policy year for which the producer submitted the underwriting questionnaire. Should the entity change its producer during a policy year, the commission will be paid to the producer who completed the underwriting questionnaire 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 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 is not required to obtain property insurance through the public entities insurance program to qualify for liability insurance coverage. However, the entity must obtain liability insurance through the public entities insurance program to qualify for property insurance coverage.

6.3. The board’s administrative costs associated with operation of the public entities insurance program will be included in the calculation of premiums for insured entities.

§115-2-7. Cancellation Provisions.

7.1. The board may cancel 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) calendar days of the premium due date or failure to make payment of the liability insurance deductible within thirty (30) calendar days;

7.1.2. Fraud or substantial misrepresentation by the entity or a representative of the entity;

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 program administered by the board.

7.2. The board must provide the entity with at least a thirty (30) calendar day notice of cancellation of coverage. The notice must be written, sent by certified mail, return receipt requested and comply with the requirements of this rule.

§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) calendar days before the expiration of the coverage. However, the board is not required to provide a 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 twenty (20) 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 twenty (20) calendar days of receiving a request for reconsideration. The notice must be in writing and sent certified mail, return receipt requested.