

WEST VIRGINIA INFORMATIONAL LETTER

NO. 82

JULY, 1992

On July 1, 1992, Senate Bill 128 went into effect. This legislation imposes on the policyholder of any fire insurance and/or casualty insurance policy, a policy surcharge equal to one percent of the gross direct premium paid by the policyholder for each such policy. Fifty percent of the monies collected will be distributed to volunteer fire departments throughout West Virginia. The remaining fifty percent will be distributed to the State teachers retirement system to provide for certain supplemental retirement benefits.

The purpose of this informational letter is to provide Insurers with guidance and answers to some of the more frequently asked questions with respect to the implementation of Senate Bill 128.

1. Duty of Insurer to Collect Policy Surcharge from Policyholder. Every Insurer issuing any fire insurance and/or casualty insurance policy is required to collect from the insured and remit to the Commissioner the policy surcharge amounts on a quarterly basis. "Insurer" is broadly defined in the West Virginia Code as "every person engaged in the business of making contracts of insurance." West Virginia Code § 33-1-2. Any Insurer failing to collect and remit any policy surcharge is liable for a civil penalty of up to one hundred dollars (\$100.00) for each day of delinquency. The Insurance Commissioner may suspend the Insurer until all policy surcharge amounts and penalties, if any, are remitted in full.

As a general rule, the lines of Insurance that are subject to the premium tax imposed by West Virginia Code § 33-3-14d are also the lines of insurance covered by Senate Bill 128. Accordingly, Insurers making contracts of such insurance are required to collect from the policyholders and remit to the Insurance Commissioner the policy surcharge.

By law the policy surcharge is imposed directly on the policyholder. The policy surcharge is not to be considered as income or as an expense item on the Insurers financial statements. Insurers are acting solely as a conduit for the collection and

remittance of the policy surcharge. The Insurance Commissioner has no authority to allow an Insurer to directly pay the policy surcharge. Accordingly, an Insurer cannot directly pay the policy surcharge without first billing their insureds.

2. Computation of the Policy Surcharge. The policy surcharge is equal to one percent of the gross direct premiums paid by the policyholder for each fire and casualty insurance policy. The policy surcharge is not subject to premium taxes, agent commissions, or other assessments against premiums. The policy surcharge must be collected on all premiums paid under any fire and casualty insurance policy, when such premiums are paid on or after July 1, 1992.

3. Remitting the Policy Surcharge. Insurers are required to collect and remit the policy surcharge on a quarterly basis on forms to be provided by the Commissioner. All forms required by the Commissioner must be submitted under the oath of the president and secretary of the Insurer. For the first three quarters, the return [Form IC-SUR] and the policy surcharge are due on or before the twenty-fifth day of the month after the end of the quarter in which the policy surcharge is collected. For the fourth quarter, an annual reconciliation return [Form IC-SUR-R] and the policy surcharge are due and payable on or before the first day of March of the succeeding year.

The following table is a summary of the due date of the policy surcharge remittance and return:

<u>Period</u>	<u>Due Date</u>	<u>Return</u>
First Quarter (January 1--March 31, 19x1)	April 25, 19x1	IC-SUR
Second Quarter (April 1--June 30, 19x1)	July 25, 19x1	IC-SUR
Third Quarter (July 1--September 30, 19x1)	October 25, 19x1	IC-SUR
Fourth Quarter (October 1--December 31, 19x1)	March 1, 19x2	IC-SUR-R

4. Cancellation of Fire and Casualty Insurance Policy For Nonpayment of Policy Surcharge. Under certain circumstances, if a policyholder of any fire and casualty insurance policy fails to pay to the Insurer a properly billed policy surcharge, the Insurer may be able to cancel such policy for nonpayment of premiums and related charges. The payment of the policy surcharge by the policyholder is an obligation in connection with the payment of the insurance premium on any fire and casualty insurance policy for which certain policies may be cancelled. See e.g., West Virginia Code § 33-17A-3(b) (defines "nonpayment of premium"); § 33-17A-5 (permissible cancellation of homeowner policies) and West Virginia Code § 33-6-1(a) (permissible cancellation of

automobile liability policies). The Insurer must comply with the notice and other provisions of the West Virginia Code pertaining to the cancellation of such insurance policies.

5. Return of the Policy Surcharge. Each Insurer is required to remit each quarter, policy surcharges equal to one percent of the gross direct premium paid by the policyholder during the quarter. As a general rule, the policy surcharge once paid by the insured is non-refundable since it is imposed upon gross direct premiums paid and not upon net premiums. However, if a policy is cancelled, the Insurer may return to the insured the collected policy surcharge premiums if such surcharge amounts have not been remitted to the Commissioner or are not otherwise past due.

6. Mortgage Guarantee Insurance. Premiums paid on mortgage guarantee insurance, which is a form of casualty insurance, are subject to the provisions of Senate Bill 128. See e.g., West Virginia Code § 33-1-10(e)(8). Inasmuch as the policyholder is subject to the policy surcharge, the policyholder, usually the lender, would be required under Senate Bill 128 to remit the policy surcharge to the Insurer. Senate Bill 128 does not prohibit the lender, as the policyholder, from subsequently passing on the cost of the policy surcharge to the borrower.

7. Excess Lines Brokers. Under the present law, licensed West Virginia excess lines brokers are not considered "insurers" and therefore do not have a duty to collect and remit the policy surcharge.

8. Miscellaneous. Senate Bill 128 applies to fire and casualty policies issued by the FAIR Plan, policies placed under AIPSO, Flood Insurance policies, and any fire and casualty policy covering autos, motorcycles and pleasure craft.

Persons seeking additional information with respect to the policy surcharge imposed upon the policyholders of fire and casualty insurance policies by Senate Bill 128 should contact:

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