

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #2

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2004 JUN 30 A 11:04

WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Insurance Commissioner TITLE NUMBER: 114

RULE TYPE: Legislative CITE AUTHORITY: WV Code §§3-2-10, 33-6A-5 & 33-6A-4a

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 3

TITLE OF RULE BEING AMENDED: Cancellation and Nonrenewal of Automobile Liability Policies

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 30, 2004 AT 4:30 PM ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

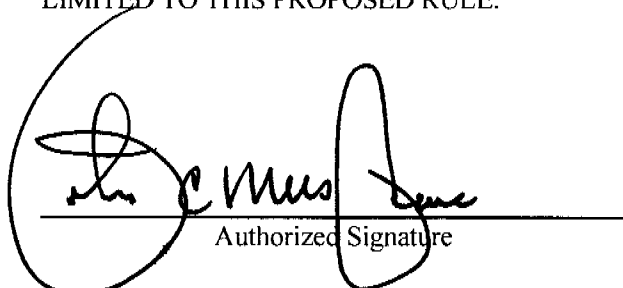
Mary Jane Pickens, General Counsel

West Virginia Insurance Commission

P.O. Box 50540

Charleston, WV 25305-0540

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL



STATE OF WEST VIRGINIA

Offices of the Insurance Commissioner

Legal Division

BOB WISE
Governor

June 30, 2004

JANE L. CLINE
Insurance Commissioner

HAND DELIVERED

Ms. Judy Cooper, Director
Administrative Law Division
Office of Secretary of State
State Capitol
Charleston, West Virginia 25305

- RE: SERIES 3 - CANCELLATION AND NONRENEWAL OF AUTOMOBILE LIABILITY POLICIES
SERIES 15 - EXAMINERS AND EXAMINATIONS
SERIES 20 - SURPLUS LINES INSURANCE
SERIES 42 - CONTINUING EDUCATION FOR INDIVIDUAL INSURANCE PRODUCERS
SERIES 67 - RATE AND FORM FILING ABSTRACTS (PROCEDURAL RULE)
SERIES 68 - VALUATION OF LIFE INSURANCE POLICES
SERIES 69 - RECOGNITION OF THE 2001 CSO MORTALITY TABLE FOR USE IN DETERMINING MINIMUM RESERVE LIABILITIES AND NONFORFEITURE BENEFITS
SERIES 70 - REBATES AND REFERRALS (INTERPRETIVE RULE)
SERIES 71 - INSURANCE FRAUD PREVENTION
SERIES 72 - PERSONAL PRIVATE PASSENGER AUTOMOBILE LIABILITY INSURANCE AND PROPERTY INSURANCE WITHDRAWAL PLAN PROCEDURES (PROCEDURAL RULE)

Dear Judy:

Please find herewith one (1) copy of the following for each of the above subject rules:

- 1) Notice Of A Comment Period On A Proposed Rule and consent of Tax and Revenue Cabinet Secretary;
- 2) Brief Summary of the Rule;
- 3) Statement of Circumstances;
- 4) Fiscal Note; and
- 5) The proposed rule.

Please contact our office if you have any questions regarding the above or if further information is required.

Sincerely,


Jane L. Cline
Insurance Commissioner

JLC/jz
Enclosures

Insurance Commissioner
Legislative Rule
Title 114, Series 3

**CANCELLATION AND NONRENEWAL OF
AUTOMOBILE LIABILITY POLICIES**

TITLE 114, SERIES 3

BRIEF SUMMARY OF RULE

The rule addresses the hearing process that is available to any person whose automobile liability insurance policy has been canceled or nonrenewed in violation of Article 6A, Chapter 33 of the West Virginia Code. The amendments to the rule will add provisions required by amendments included in H.B. 4004, which was passed by the Legislature during the regular 2004 session, as well as numerous technical amendments. The substantive amendments to the rule address the requirement that insurers provide insureds with the reason(s) for cancellation and nonrenewal of their automobile policy, set forth the scope of issues to be covered at a hearing requested by an insured, and require insurers to file with the Insurance Commissioner a copy of their underwriting guidelines.

Insurance Commissioner
Legislative Rule
Title 114, Series 3

**CANCELLATION AND NONRENEWAL OF
AUTOMOBILE LIABILITY POLICIES**

TITLE 114, SERIES 3

STATEMENT OF CIRCUMSTANCES

This rule has not been amended since 1967. During the regular session of 2004 the Legislature passed H.B. 4004, which amended West Virginia Code Section 33-6A-4 and added two new sections designated 33-6A-4a and 33-6A-4b. These Code sections relate to nonrenewal of automobile liability and physical damage policies. Pursuant to the amendments, insurers may employ one of two different methodologies for issuing nonrenewal notices in this State. The methodologies may either be based upon the existence of certain reasons set forth in West Virginia Code Section 33-6A-4 or based upon a limitation of 1% of all in-force policies in the state at the end of the previous calendar year under the new Section 33-6A-4a. The Legislature has also required in H.B. 4004 that insurers writing automobile insurance policies in this State file with the Insurance Commissioner a copy of their underwriting guidelines. The rule already addresses the hearing process that is available to any person whose automobile liability insurance policy has been canceled or nonrenewed in violation of Article 6A, Chapter 33 of the West Virginia Code, therefore it is an appropriate vehicle for addressing the H.B. 4004 changes to Article 6A of Chapter 33. The substantive amendments to the rule address the requirement that insurers provide insureds with the reason(s) for cancellation and nonrenewal of their automobile policy, set forth the scope of issues to be covered at a hearing requested by an insured resulting from cancellation or nonrenewal of a policy, and require insurers to file with the Insurance Commissioner a copy of their underwriting guidelines.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: CANCELLATION AND NONRENEWAL OF
AUTOMOBILE LIABILITY POLICIES
Title 114, Series 3

Type of Rule: X Legislative Interpretive Procedural

Agency: Insurance Commissioner

Address: Post Office Box 50540
1124 Smith Street, Greenbrooke Building
Charleston, West Virginia 25305-0540

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	Increase	Decrease	Current	Next	Thereafter
ESTIMATED TOTAL COST	None	None	None	None	None
PERSONAL SERVICES	None	None	None	None	None
CURRENT EXPENSE	None	None	None	None	None
REPAIRS AND ALTERNATIONS	None	None	None	None	None
EQUIPMENT	None	None	None	None	None
OTHER	None	None	None	None	None

2. Explanation of above estimates:

The rule will have no additional fiscal impact upon state government.

Rule Title: CANCELLATION AND NONRENEWAL OF
AUTOMOBILE LIABILITY POLICIES
Title 114, Series 3

3. Objectives of these rules:

The objectives of these amendments are to address the changes to automobile insurance nonrenewal methods set forth in H.B. 4004 passed by the Legislature during the regular session of 2004, as well as update the rule with technical changes. The rule will add detail to the requirement that insurers provide insureds with the reason(s) for cancellation and nonrenewal of their automobile policy, set forth the scope of issues to be covered at a hearing requested by an insured and require insurers to file with the Insurance Commissioner a copy of their underwriting guidelines.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None anticipated. The Insurance Commissioner's staff will be required to schedule and hold hearings relating to nonrenewal or cancellation of an automobile policy when requested by an insured, however that is a current duty of the Insurance Commissioner. The amendments to this rule do not place any additional measurable burden on the Insurance Commissioner.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

The amendments to this rule are not expected to have an economic impact on political subdivisions or specific groups of citizens. The only potential economic impact on a specific industry could be an increase in costs for insurance companies associated with preparing for and attending hearings requested when consumers have their auto policies nonrenewed under the new percentage limitation methodology under West Virginia Code Section 33-6A-4a. Since this is a new methodology for issuing nonrenewal notices, consumers may be more anxious to have nonrenewals issued under this new Code section reviewed by the Insurance Commissioner.

C. Economic Impact on Citizens/Public at Large.

There should be no specific economic impact on the public.

Date: June 30, 2004

Signature of Agency Head or Authorized Representative



JANE L. CLINE, INSURANCE COMMISSIONER

114CSR3

TITLE 114

LEGISLATIVE RULE
INSURANCE COMMISSIONER

SERIES 3
CANCELLATION AND NONRENEWAL OF AUTOMOBILE
LIABILITY POLICIES

Section

- 114-3-1. General.
- 114-3-2. Notice of Cancellation or Nonrenewal.
- ~~114-3-2~~ 114-3-3. Informal Procedure For Review Of Complaint Regarding Cancellation Or Nonrenewal.
- ~~114-3-3.~~ 114-3-4. Hearing Regarding Canceling And Nonrenewal.
- 114-3-5. Filing of Underwriting Guidelines.

114CSR34

FILED

LEGISLATIVE RULE
INSURANCE COMMISSIONER

2004 JUN 30 A 11: 05

SERIES 3
CANCELLATION AND NONRENEWAL OF AUTOMOBILE
LIABILITY POLICIES

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§114-3-1. General.

1.1. Scope. -- This regulation is to establish the procedure whereby any person whose automobile liability insurance policy has been canceled or whose policy has not been renewed in violation of article six-a, chapter thirty-three of the West Virginia Code of 1931, as amended, may appeal to the insurance commissioner for hearing and review.

1.2. Authority. -- W. Va. Code §§33-2-10, 33-6A-4a and §33-6A-5.

1.3. Filing Date. -- April 7, 1967

1.4. Effective Date. -- May 24, 1967

§114-3-2. Notice of Cancellation or Nonrenewal.

All cancellation and nonrenewal notices issued by insurers pursuant to article six-a, chapter thirty-three of the West Virginia Code shall describe in detail the reason or reasons for issuance of the notice and shall advise the insured that nonrenewal or cancellation of the policy for any reason is subject to a hearing and review by the insurance commissioner. The written reason or reasons for the insurer's actions must be sufficiently clear that a reasonable person can understand them. A statement such as "underwriting reasons," "claims," or "increase in risk" will not be considered sufficiently clear.

§114-3-2 §114-3-3. Informal Procedure For Review Of Complaint Regarding Cancellation Or Nonrenewal.

~~2.1.~~ 3.1. General. -- The procedure set forth in this section is recommended for persons filing a complaint to the insurance department with the insurance commissioner that their automobile liability insurance has been canceled or nonrenewed in violation of article six-a, chapter thirty-three of the West Virginia Code. ~~of 1931, as amended.~~

~~2.2.~~ 3.2. Complaints filed in person or in writing. -- All complaints regarding automobile liability cancellation or nonrenewal may be filed with the insurance commissioner in person or in writing.

Insurance Commissioner
Legislative Rule
Title 114, Series 3

a. Complaint filed in person. -- If the complainant desires to present the complaint in person he or she may do so by ~~calling at~~ visiting the Office of the Insurance Commissioner located in State Office Building #1, 6th Floor, 1800 Washington Street East, in Charleston, West Virginia, on any weekday ~~between the hours of eight thirty a.m. and four thirty p.m.~~ during regular business hours.

b. Complaint filed in writing. -- If the complainant desires to submit the complaint in writing he or she should direct ~~his correspondence to Cancellation Complaint Division, Insurance Commissioner, State Capitol Building, Charleston, West Virginia.~~ the written complaint to the Consumer Services Division within the Office of the Insurance Commissioner at its mailing address in Charleston, West Virginia.

~~2-3:~~ 3.3. Policies and ~~allied~~ related correspondence needed for review. -- Whether the complaint be lodged in person or in writing, the complainant should ~~present to the insurance department his~~ attach his or her insurance policy and all ~~allied~~ related papers or correspondence ~~he~~ has received from the respondent insurer regarding ~~such~~ the cancellation or nonrenewal. If the complaint is submitted in writing, a letter from the complainant, written in the narrative, should accompany the policy and ~~allied~~ related papers explaining generally the basis for the complaint.

~~2-4:~~ 3.4. Decision that favors respondent insurer. -- If, upon review of the complaint, the insurance commissioner is of the opinion that there has been no violation of the insurance laws regarding cancellation and nonrenewal, the commissioner will explain to the complainant ~~his or her~~ rights and privileges under ~~West Virginia Code,~~ article six-a, chapter thirty-three of the West Virginia Code and why the facts presented would not be a violation of article six-a.

~~2-5:~~ 3.5. Explanation by respondent insurer. -- If, upon review of the complaint, it is found by the insurance commissioner that the respondent insurer may have violated ~~West Virginia Code,~~ article six-a, chapter thirty-three of the West Virginia Code, the commissioner will contact the respondent insurer and require an explanation of ~~such termination~~ the cancellation or nonrenewal.

~~2-6:~~ 3.6. Letter of recommendation. -- If, after a review of information received from both the complainant and respondent insurer, the insurance commissioner is of the opinion that ~~West Virginia Code,~~ article six-a, chapter thirty-three of the West Virginia Code appears to have been violated by the respondent insurer, the commissioner will write ~~to said insurer~~ a letter of recommendation to the insurer. This letter of recommendation will ~~relate~~ describe in what respects the respondent's decision to ~~terminate~~ cancel or nonrenew the complainant's policy ~~would appear~~ appears to violate the provisions of West Virginia Code, article six-a, chapter thirty-three of the West Virginia Code and will contain a recommendation by the insurance commissioner that the respondent insurer fully comply with the those provisions. ~~of West Virginia Code, article six-a.~~

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~~2-7:~~ 3.7. Variance in procedure not prejudicial. -- ~~Section 2 of this regulation~~ This section is to be construed as a guideline by which an aggrieved party may file a complaint with the insurance commissioner regarding ~~termination~~ cancellation or nonrenewal of automobile liability insurance in violation of article six-a, chapter thirty-three of the West Virginia Code ~~of 1931, as amended~~; and any variance by a complainant in the procedure recommended in this section shall not prejudice any rights or privileges of the complainant ~~as are~~ set forth in any insurance law or regulation of the state of West Virginia.

~~2-8:~~ 3.8. Compliance with forty-five (45) day requirement. -- If a complainant lodges a complaint with the insurance commissioner that his or her automobile liability insurance policy has been ~~terminated~~ canceled or nonrenewed in violation of ~~West Virginia Code~~, article six-a, chapter thirty-three of the West Virginia Code, it will be construed by the insurance commissioner as an appeal for hearing and review for the purpose of satisfying the forty-five (45) day requirement within which time appeal to the insurance commissioner must be made as provided in section five, article six-a, chapter thirty-three of the West Virginia Code. ~~of 1931, as amended.~~

~~§114-3-3:~~ §114-3-4. **Hearing Regarding Canceling And Nonrenewal.**

~~3-1:~~ 4.1. Hearing at request of complainant. -- If, after review of the complaint, it is the opinion of the insurance commissioner that there has been no violation of ~~West Virginia Code~~, article six-a, chapter thirty-three of the West Virginia Code and the complainant is informed of these findings as prescribed in ~~Section subsection~~ 2.4 of this regulation rule, the complainant may demand a formal hearing before the insurance commissioner.

~~3-2:~~ 4.2. Hearing at request of respondent insurer. -- If, after review of the complaint, it is the opinion of the insurance commissioner that there has been a violation of ~~West Virginia Code~~, article six-a, chapter thirty-three of the West Virginia Code and the respondent insurer is informed of these findings as prescribed in ~~Section subsection~~ 2.6 of this regulation rule, the respondent insurer may demand a formal hearing before the insurance commissioner.

~~3-3:~~ 4.3. Hearing called by insurance commissioner. -- If, after review of the complaint, the commissioner feels a hearing will be necessary to resolve the complaint, the commissioner may call a hearing by virtue of the authority ~~vested in him~~ provided under article two, chapter thirty-three of the West Virginia Code. ~~of 1931, as amended.~~

~~3-4:~~ 4.4. Hearing. -- The ~~procedure for~~ hearing, whether it be initiated by the complainant, the respondent insurer or the insurance commissioner, shall follow the same procedure respecting notice and rights of the parties as is prescribed in article two, chapter thirty-three and chapter twenty-nine-a of the West Virginia Code. ~~of 1931, as amended.~~ If the hearing relates to a notice of cancellation or non-renewal issued pursuant to W. Va. Code §§33-6A-1 or 33-6A-4, the subject

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matter of the hearing will be the adequacy of the notice of nonrenewal or cancellation, and the ground or grounds upon which the insurer's action is based. If the hearing relates to a notice of nonrenewal issued pursuant to W. Va. Code §33-6A-4a, the subject matter of the hearing will be limited to whether the nonrenewal notice:

a. Failed to provide forty-five (45) days advance notice to the named insured of the insurer's intent to nonrenew the policy;

b. Was issued for a discriminatory reason;

c. Was based upon an underwriting standard found to be in violation of chapter thirty-three of the West Virginia Code; or

d. Causes the insurer to have issued nonrenewal notices in excess of the limitation set forth in W. Va. Code §33-6A-4a(d).

§114-3-5. Filing of Underwriting Guidelines.

Each insurer writing private passenger automobile liability insurance policies in this state shall file with the commissioner a copy of its underwriting guidelines for private passenger automobile liability insurance which must comply with generally accepted underwriting standards. Any subsequent modifications to the insurer's underwriting guidelines must be filed with the commissioner within thirty (30) business days after the modifications have been implemented. All underwriting standards and modifications thereto must be specific and clear, must promote the similar treatment of similar risks, and must be applied consistently and uniformly.