

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

Form #3

Do Not Mark In This Box

FILED

2004 AUG 26 P 2:37

OFFICE WEST VIRGINIA
SECRETARY OF STATE

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

AGENCY: Insurance Commissioner TITLE NUMBER: 114

CITE AUTHORITY: WV Code §§33-2-10, 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: _____

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.


Authorized Signature

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period, Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: August 26, 2004

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: OFFICE OF THE INSURANCE COMMISSIONER
ATTN: Legal Division
1124 Smith Street
Post Office Box 50540
Charleston, West Virginia 25305-0540

LEGISLATIVE RULE TITLE: CANCELLATION AND NONRENEWAL OF AUTOMOBILE
LIABILITY POLICIES
(TITLE 114, SERIES 3)

1. Authorizing statute(s) citation:

West Virginia Code §§ 33-2-10, 33-6A-5 and 33-6A-4a

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

June 30, 2004 - Comment Period.

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

None

c. Date of Public Hearing(s) or Public Comment Period ended:

Comment period ended July 30, 2004.

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 26, 2004

Insurance Commissioner
Title 114, Series 3

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all written correspondence regarding this rule: (Please type)**

Mary Jane Pickens, General Counsel
West Virginia Insurance Commission
Legal Division
P.O. Box 50540
Charleston, WV 25305-0540
Phone: (304) 558-0401
Fax: (304) 558-1362
E-mail: MJ.Pickens@wvinsurance.gov

- g. IF DIFFERENT FROM ITEM 'f', please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)**

Not applicable

- 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.**

Not applicable

- b. Date of hearing or comment period:**

Not applicable

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

Not applicable

- d. Attach findings and determinations and reasons:**

Not applicable

ATTACHMENT TO QUESTION 2 (d):

Two sets of comments were received during the comment period in response to the proposed legislative rule entitled “Cancellation and Nonrenewal of Automobile Liability Policies”: one sent on behalf of The West Virginia Insurance Federation (“WVIF”), and one on behalf of the American Insurance Association (“AIA”).

A. West Virginia Insurance Federation – Letter dated July 30, 2004

The WVIF offered comments on Series 3 by letter dated July 30, 2004. The WVIF’s first Comment is that because the rule was promulgated pursuant to W. Va. Code Section 33-6A-4a, the text of the rule should be clarified that it does not apply to other guidelines. In response to this comment, 114CSR3 was initially promulgated in 1967 and has always applied to both nonrenewals and cancellations. The original authority for the rule is W. Va. Code Section 33-6A-5, which directs the commissioner to promulgate rules for the implementation of Article 6A and for advising all persons of their rights and privileges under the article relating to cancellation and nonrenewal. This rule is an appropriate place to add the new requirements relating to nonrenewals given to the Commissioner by the Legislature in H.B. 4004, but the rule will continue to apply to both cancellations and nonrenewals. The Commissioner does not believe that further clarification is needed on this point.

The WVIF next offers three comments relating to section 5, relating to the filing of underwriting standards:

a. The comment is made that the terminology in the rule relating to underwriting standards should match the terminology used in W. Va. Code Section 33-6A-4a. The Commissioner agrees with this comment and the section will be changed as set forth below.

b. The comment is made that the requirement for filing underwriting standards should apply only to those insurers that have chosen to nonrenew all auto policies under W. Va. Code Section 33-6A-4a, which allows nonrenewals by such insurers of up to one percent of their books as an alternative to the required nonrenewal reasons set forth in W. Va. Code Section 33-6A-4. The Commissioner agrees with this comment and the section will be changed as set forth below.

c. The comment is made that the requirement that “all underwriting standards and modifications thereto must be specific and clear, must promote the similar treatment of risks, and must be applied consistently and uniformly” goes beyond the authority set forth in W. Va. Code Section 33-6A-4a. The example given by WVIF of a 2 year old risk and a 30 year old risk being required to be treated the same under this language, however, is not an example of what was intended because these risks are not otherwise equal. WVIF appears to be reading too much into this sentence. Nonetheless, the Commissioner agrees that these standards can be reviewed through

market conduct with appropriate administrative action as needed, and further agrees that this sentence in the rule goes beyond the Legislature's pronouncements in the Code. Therefore, the section will be changed as set forth below.

The next comment offered by WVIF is that subsection 4.4 of section 4 should include the Code sections identifying prohibited discriminatory reasons for issuance of a nonrenewal notice. The Commissioner declines to make this change because it is unnecessary. The law already exists in the Code. In addition, it could result in inconsistencies between the Code and rule should there be changes to the Code relating to this subject.

To reflect the changes pursuant to comments offered by WVIF relating to section 5 of this rule, the Commissioner will change this section to read as follows:

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 standards for private passenger automobile liability insurance which must comply with generally accepted underwriting principles. Any subsequent modifications to the insurer's underwriting standards must be filed with the commissioner within thirty (30) business days after the modifications have been implemented.

B. American Insurance Association – Letter dated July 30, 2004.

AIA offered comments on series 3 by letter dated July 30, 2004. Two comments offered by AIA relate to section 2 of the rule entitled "Notice of Cancellation or Nonrenewal." The first comment relates to the requirement that insurers describe in detail the reason or reasons for issuance of the notice. AIA states that this requirement is inconsistent with W. Va. Code Sections 33-6A-4 and 33-6A-4a. These Code sections require that the insurer state the specific reason or reasons for refusing to renew a policy, but do not require detail beyond stating the reasons. The intent of the detail requirement in the rule is to provide sufficient information to insureds so that they, as well as the Commissioner if a hearing is requested, will understand the reason(s) for the nonrenewal. However, the remainder of the section contains sufficient protections that the language relating to detail is not needed. AIA further comments that a sentence should be added to this section stating that nothing in the rule prevents the insurer from providing more information than what is required therein. Although this does not appear to be a necessary change, the Commissioner agrees to add this sentence. This section of the rule will therefore be changed to read as set forth below.

The next comment offered by AIA is that clarification is needed that section 2 of the rule is not meant to relate to policies that have been in effect for less than two consecutive years where the insurer has elected to issue all nonrenewal notices pursuant to W. Va. Code Section 33-6A-4, because no reason for the nonrenewal is required under those circumstances. The Commissioner does not agree with AIA's assertion that this rule does not relate to policies in effect for less than two consecutive years. The rule relates to both cancellation and nonrenewal, and reasons are statutorily

required for cancellation if the policy has been in effect for only sixty days or has been renewed. The Commissioner notes that subsection (d) of W. Va. Code Section 33-6A-4 states that a notice provided under this section must state the specific reason or reasons for nonrenewal and shall advise the insured of his or her hearing rights under W. Va. Code Section 33-6A-5. The section addresses nonrenewal of policies in effect for less than two consecutive years and for two consecutive years or more. The Commissioner interprets this provision to make the statement of reasons applicable to both pre-two consecutive year and post-two consecutive year policies. This interpretation is consistent with the Legislature's desire to know the reason(s) for nonrenewal under W. Va. Code Section 33-6A-4a even though no reason is required for nonrenewal under that section.

The Commissioner further acknowledges that as originally proposed, the amendments to the rule would treat notices of cancellation and notices of nonrenewal the same in terms of the content of the notice, which is not supported by the cancellation provisions of Article 6A. The legislative authority for series 3 in 1967 is found in W. Va. Code Section 33-6A-5, which directs the commissioner to promulgate rules for the implementation of Article 6A and for advising all persons of their rights and privileges under the article relating to cancellation and nonrenewal. That section goes on to state that if a hearing is requested by the insured the hearing will relate to the ground or grounds for the insurer's actions. Therefore the Commissioner believes that legislative authority exists for the proposed amendments to address cancellation notices as well as nonrenewal notices.

Based upon the foregoing, the Commissioner will change section 2 of series 3 to read as follows:

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

All nonrenewal notices issued by insurers pursuant to sections four and four-a, article six-a, chapter thirty-three of the West Virginia Code, shall state the specific reason or reasons for issuance of the notice and shall advise the insured that nonrenewal of the policy for any reason is subject to a hearing and review by the insurance commissioner. All cancellation notices issued pursuant to section three, article six-a, chapter thirty-three of the West Virginia Code shall specify the reason or reasons relied upon by the insurer for the cancellation or at the written request of the named insured the insurer shall specify the reason or reasons relied upon by the insurer for the cancellation. The written reason or reasons in a notice of nonrenewal or cancellation 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. Nothing in this rule will prevent the insurer from providing more information in the notice relating to the reason or reasons for nonrenewal or cancellation than is required by this section.

The final comment of AIA relating to series 3 is that the rule should only apply to private passenger automobile liability insurance policies and not to commercial policies. However, there are instances where a fleet policy will provide coverage for a private vehicle. In those instances, it has historically been the Commissioner's position that the coverage provided for the private passenger automobile must be afforded the protections of Article 6A. This interpretation is based upon W. Va. Code Section 33-6A-1, which begins by stating that "no insurer once having issued or delivered a

policy providing automobile liability insurance for a private passenger automobile may...” The Commissioner has interpreted this section, and logically Article 6A, to relate to coverage for private passenger automobiles even if the coverage is afforded under a commercial policy. Therefore, no further clarification in the rule is needed.



SPILMAN THOMAS & BATTLE, PLLC

ATTORNEYS AT LAW

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July 30, 2004

BY HAND-DELIVERY

Ms. Jane Cline, Commissioner
West Virginia Division of Insurance
1124 Smith Street
Charleston, West Virginia 25301

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**LEGAL DIV.
WV INS. DEPT.**

**RE: Comments – Proposed Administrative Rules
Title 114, Series 3, 67, and 72**

Dear Commissioner Cline:

These comments to the proposed amendments to CSR 114, Series 3, 67, and 72, are submitted on behalf of the West Virginia Insurance Federation (“WVIF”), the state trade association for property and casualty insurance companies doing business in West Virginia.

**1. Title 114, Series 3 – Cancellation and nonrenewal of
automobile liability insurance policies.**

This proposed rule was ostensibly promulgated pursuant to the authority set forth in W. Va. Code § 33-6A-4a(f) (2004). Because this statute clearly applies to “nonrenewals”, rather than new business or cancellations, for example, it would be helpful if the text of the rule itself clarified that it does not apply to other guidelines.

Another general concern is that the terminology used in the rule and the statute; namely, the proposed rule’s interchangeable use of the phrases “underwriting standards,” “underwriting guidelines,” and “underwriting principles,” allows differing interpretations of the rule and its application.

West Virginia Code § 33-6A-4a(f) requires the filing of “underwriting standards” and requires the Commissioner to review such standards to ensure their consistency with “generally accepted underwriting principles.” The proposed rule, however, requires the filing of “underwriting guidelines,” which must comply with “generally accepted underwriting standards.” Thus, the term “standards” is used differently in the statute and the rule. The statute refers to the documentation that an insurer must file, while the proposed rule refers to generally accepted practices in the industry, against which an insurer’s filing will be measured.

Jane Cline, Commissioner
July 30, 2004
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Additionally, Section 33-6A-4a(f) requires only that an insurer's underwriting be consistent with generally accepted underwriting principles. It appears that the Commissioner lacks the statutory authority to regulate insurers' practices to any further degree through the use of more constrictive terminology. To the extent that there is concern that similarly-situated policyholders could be treated differently, the Commissioner already has the authority to conduct market conduct exams designed to ensure that similarly-situated policyholders are treated fairly and consistently through the application of appropriate underwriting guidelines. Further language governing this issue in the context of this proposed rule is unnecessary.

Succinctly, the proposed rule is not clear as to how these phrases will be interpreted and applied. It appears that the first term is intended to refer to general underwriting practices utilized by an individual insurer, and the second term is intended to refer to industry-wide practices. The term "guideline," however, connotes some measure of flexibility and the term "standard" suggests rules to which there are no exceptions. The WVIF is concerned that the potential for varying interpretations of these phrases will result in insurers' being forced to use specifically-defined rules-based standards, as opposed to more flexible underwriting guidelines.

The WVIF also is concerned that the proposed rule appears to create a new requirement on companies not opting into the newly-adopted one percent nonrenewal system. Article 4a, captioned "Alternative method for nonrenewal for automobile liability and physical damages insurance", establishes the alternative one percent method for nonrenewal of automobile liability and physical damage insurance. Subsections (a) through (g) of W. Va. Code § 33-6A-4a outline the process for insurers' implementation of the one percent nonrenewal alternative. Subsection 4a(a) provides that an insurer may nonrenew for any reason consistent with its underwriting standards, and Subsection 4a(f) requires the filing of such underwriting guidelines for the Commissioner's review.

The filing of underwriting guidelines was not required prior to the enactment of the alternative one percent nonrenewal method. Indeed, this is a new requirement, solely designed to provide the Commissioner with the ability to review guidelines for compliance with the alternative one percent nonrenewal requirements and the prohibitions established by W. Va. Code § 33-6A-4a.

As stated in the last sentence of subsection 4a(f), the Commissioner is required to promulgate legislative rules "to implement the provisions of this section." As used in that sentence, the phrase "[t]his section" refers to Chapter 33, Article 6A, *Section 4a*. Section 4a applies exclusively to the one percent nonrenewal alternative, and presumably is *not* intended to apply to insurers that have *not* selected the one percent alternative nonrenewal method.

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A legislative rule requiring filing of underwriting guidelines by all insurers, regardless of the method of nonrenewal an insurer has selected, appears to exceed the intended scope of the statute. Accordingly, insurers not selecting the alternative one percent nonrenewal alternative and continuing to use the traditional nonrenewal method should not be subject to the new filing requirements of W. Va. Code § 33-6A-4a.

Section 114-3-4.4 provides that a hearing may be called if the nonrenewal notice was issued for a discriminatory reason. The WVIF believes the rule could be made more clear by citing to specific sections of the Code that already identify prohibited types of discrimination.

Finally, Section 114-3-5 of the proposed rule, captioned "Filing of Underwriting Guidelines", appears to exceed what was intended by the Legislature's enactment of W. Va. Code § 33-6A-4a. Specifically, it states "[a]ll underwriting standards and modifications thereto must be specific and clear, must promote the similar treatment of risks, and must be applied consistently and uniformly."

Companies review each potential nonrenewal on an individual, case-by-case basis, using underwriting judgment, to make a risk retention or termination decision. This proposed rule appears to suggest that companies adopt precise underwriting rules for nonrenewing risks. For example, a company may terminate a risk it has insured for only two years with two recent chargeable accidents, but it likely would not terminate a risk it has insured for thirty years with the same record, naturally assuming the prior history was favorable. This proposed rule appears to negate companies' ability to use any sort of judgment in making these underwriting decisions.

2. Title 114, Series 67 – Rate and Form Filing Abstracts.

Proposed revisions to two forms appear to require additional, and, at times, duplicative information from insurers:

a. PCA-R-2004 P&C Insurance Rate Filing Abstract.

In 6(a), the premium effect information (annual written premium, percent change requested, and additional annual premium) is now required to be submitted by coverage along the lines of 6(b).

The certification has been reworded, now requiring insurers' name, address and telephone number for the individual signing the statement.

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b. PCA-F-2004 P&C Insurance Form Filing Abstract.

The certification has been reworded, now requiring the name, address and telephone number of the individual signing the statement.

An additional requirement has been added to the forms list for any change that broadens or restricts coverage, indicating the filing should provide further description of the impact. This would typically be part of insurers' basic filing package.

Although the WVIF does not believe these revisions are particularly problematic for insurers, there is some concern with the general direction advanced by these proposed revisions. Specifically, the NAIC has been advocating -- and more and more states are adopting -- the uniform transmittal forms, rather than each state's adopting its own version of forms required with filings. The NAIC versions include a general transmittal submitted with all filings as well as specific ones for form and for rate/rule filings.

For form filings, the information requested by the PCA-F-2004 closely tracks the NAIC form filing schedule. For rate filings, the West Virginia abstract requires additional detail; however, much of this likely represents a duplication of effort. Since most of this information is included in our basic filing package, the WVIF assumes that companies will be required to duplicate some of this same information in order that it is also included in the Rate Filing Abstract format. Given that the rate filing abstract already requires companies to include "procedural information" in the filing package, it likely would be more efficient to simplify the abstract by permitting companies to add more specific items or by adopting the NAIC version. This would provide companies with more flexibility in submitting the requisite information.

3. Title 114, Series 72 --Withdrawal plan procedures for personal private passenger automobile insurance companies.

Section 114-72-3.2 defines what constitutes a withdrawal and appears to imply that the rule covers a total withdrawal from the private passenger auto or residential property lines of business. In Section 114-72-4.1h.3., and 3.B. in particular, however, it appears that even a partial withdrawal may be considered a withdrawal. This is especially the case in 3.B. The WVIF believes there should be some clarification of this issue.

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July 30, 2004
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Section 114-72-4.2 prohibits the filing of a consolidated withdrawal plan by a group of insurers within a holding company system. This seems inefficient. It would seem that much of the information in the withdrawal plan would be duplicative among insurers in the same holding company system, such that having to file separate plans would be redundant.

Finally, Section 114-72-5.4a appears to imply that the transfer of a line of business from one affiliated insurer within a holding company system to another insurer within the same holding company system requires the filing of a withdrawal plan. Companies prefer not to fill a plan in these situations. Accordingly, the WVIF respectfully requests that the definition of what constitutes a withdrawal be clarified.

Thank you for the opportunity to provide these comments. Naturally, please do not hesitate to contact me if you have any questions.

Very truly yours,


Jill C. Bentz



SPILMAN THOMAS & BATTLE, PLLC
ATTORNEYS AT LAW

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LEGAL DIV.
WV INS. DEPT.

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July 30, 2004

HAND-DELIVERY

Mary Jane Pickens, Counsel
West Virginia Insurance Commission
1124 Smith Street
P. O. Box 50540
Charleston, West Virginia 25305-0540

Re: Comments to Series 3, Series 71, Series 72

Dear Ms. Pickens:

These comments are submitted on behalf of American Insurance Association ("AIA") to Series 3, 71 and 72. AIA is the country's leading property and casualty insurance trade organization, representing more than 450 insurers that write more than \$115 billion in premiums each year and who annually insure a substantial amount of automobile liability insurance in West Virginia.

SERIES 3

With regard to the proposed rules on cancellation and nonrenewal of automobile liability policies, Title 114, Series 3, AIA's members ask for certain points of clarification.

First, section 114-3-2, "Notice of Cancellation or Nonrenewal," provides that insurers "shall describe in detail the reason or reasons for issuance of the notice . . ." This is seemingly inconsistent with 33-6A-4(d) and 33-6A-4a(e) which state that the notice "shall state the specific reason or reasons . . ." So, while the statute requires a precise definition, the proposed regulation seemingly requires a broad "detail." Thus, AIA's members believe this aspect of the regulation may be at odds with the statute. Perhaps something specific, yet non-exclusive about what would be sufficient as "detail" may avoid future problems, though we would have to await review of any proposed language to make a final determination.

Second, AIA believes that Section 114-3-2 should end with language such as "Nothing in this regulation prevents the insurer from providing more information than what is required herein." Here, we have in mind that insurers may want flexibility to provide more information.

Mary Jane Pickens, Counsel
West Virginia Insurance Commission
July 30, 2004
Page 2

Third, the Series 3 proposed regulations deal with the "Cancellation and Nonrenewal of Automobile Liability Policies." 114-3-2 provides that an insurer shall include the reason or reasons for the issuance of nonrenewal notice to an insured. Under existing law, a policy of insurance which has been in effect for less than two consecutive years is not subject to nonrenewal criteria and may be nonrenewed by an insurer for any reason. It is only after a policy has been in existence for two consecutive years or longer that an insurer is required to state a specific reason for nonrenewal. See, W. Va. Code § 33-6A-4(b). The proposed regulations do not appear to address the nonrenewal of a policy that has been in effect for less than one year and is non-renewed by the insurer who has not elected the alternative method of nonrenewal contained in Section 4(a).

Finally, these regulations should make clear that they only apply to private passenger automobile liability insurance policies and not commercial policies.

SERIES 71

Proposed Series 71 are entitled "Insurance Fraud Prevention." The proposed regulations reference the NAIC model Fraud Reporting Form (114-71-3.5). The current form is not attached to the regulations. For purposes of convenience, it might be helpful if the current form is attached to this regulation and/or information where the current forms may be found, i.e., website, are included in this regulation.

SERIES 72

The proposed rule, Title 114, Series 72, provides very broad authority to the regulator to establish rules on withdrawal and AIA has concerns this may be more than that contemplated in the statute. The statute provides, at 33-2-20(a), that the commissioner may authorize "an insurer to withdraw from the line of automobile liability insurance for personal, private passenger automobiles." Nonetheless, the definition of the "withdrawal" under the proposed rule appears to limit the standard of "withdrawal from the line." Under the proposal, "Withdrawal" means "the termination, cancellation, or nonrenewal of personal private passenger automobile liability or physical damage insurance. . . or policies of property insurance." See 114-72-2-2.3. In the absence of "line of" language, this regulation could arguably apply to each instance of termination, cancellation or nonrenewal.

The amendments to Article 6A in the 2004 legislation made reference to automobile liability or physical damages insurance. Article 6A only applies to private passenger automobile insurance and not commercial insurance policies. As a matter of clarification, these regulations

Mary Jane Pickens, Counsel
West Virginia Insurance Commission
July 30, 2004
Page 3

only apply to personal and not commercial lines, private passenger automobile insurance, and the regulations should so provide.

AIA believes that court orders should also be included as instances when an insurer has not "acted on its own initiative" under 114-72-3-3.3. This is important because withdrawal plans are required when an insurer undertakes to withdraw. Since administrative orders are included in situations that are not considered acts of an insurer's own initiative, this is a straightforward and appropriate addition when one considers that court orders could result in non-voluntary acts.

AIA is concerned about the breadth of "services" insurers must reveal they will provide in the required "withdrawal plan" under 114-72-4-4.1.g. This is ambiguous and could result in substantial, even unreasonable service obligations. Without some reasonable limitation, AIA expects that this could result in unnecessary conflicts. It may be best to specifically state the services that are anticipated, so insurers may determine whether they are appropriate under the statute and proposed rule. In addition, under subsection n of the same provision, we are not sure that listing "the other programs and products the insurer will continue to "offer" is consistent with the statute's focus on "automobile liability insurance for personal, private passenger automobiles." If, as we imagine, the intent is to weigh whether withdrawal will be in the best interest of the insurer, and WV insureds, AIA is not sure how that will be accomplished given that these are different lines of insurance.

The regulations propose standards for insurers that withdraw a particular line in West Virginia. 114-72-4.1(o) provides that: "An affirmation that no new business will be solicited by the insurer in this state during or within three years subsequent to the filing of the withdrawal plan unless the commission waives this requirement." This three year requirement does not make clear that the new business is the same business which the insurer elects to nonrenew and withdraw. Second, there does not appear to be any statutory authority in either Article 17A or Article 6A to support this three year restriction, and therefore, it should be deleted.

Finally, the regulations establish other restrictions to re-entering into the market after an insurer has withdrawn. 114-72-7 provides, in pertinent part, that an insurer that has withdrawn from the state cannot resume writing that line of insurance unless it receives the "written approval of the Commissioner." The implication is that an insurer must comply with some requirement different than any other insurer if it wants to rewrite business. The standards for this "approval" are not set out in this rule, nor is this requirement established by either Article 6A or 17A. Absent the necessary statutory authority to require an insurer to meet "any different requirement" than any other insurer, this paragraph should be dropped. If it is included, the criteria or conditions for obtaining this approval should be included.

Mary Jane Pickens, Counsel
West Virginia Insurance Commission
July 30, 2004
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AIA greatly appreciates the consideration of these comments. We look forward to further dialogue as these proposals progress. In the interim, please do not hesitate to contact me us with any questions or concerns.

Sincerely yours,



T. Randolph Cox
Counsel, American Insurance Association

TRC/lb;317552

cc: R. Taylor Cosby
James J. Whittle

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.

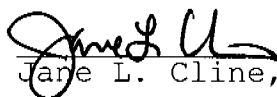
The amendments to this rule are not expected to have an economic impact on political subdivisions or specific groups of citizens. The only potential economic impact on a specific industry could be an increase in costs for insurance companies associated with preparing for and attending hearings requested 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: August 26, 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

LEGISLATIVE RULE
INSURANCE COMMISSIONER

SERIES 3
CANCELLATION AND NONRENEWAL OF AUTOMOBILE
LIABILITY POLICIES

FILED

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OFFICE 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 nonrenewal notices issued by insurers pursuant to sections four and four-a, article six-a, chapter thirty-three of the West Virginia Code, shall state the specific reason or reasons for issuance of the notice and shall advise the insured that nonrenewal of the policy for any reason is subject to a hearing and review by the insurance commissioner. All cancellation notices issued pursuant to section three, article six-a, chapter thirty-three of the West Virginia Code shall specify the reason or reasons relied upon by the insurer for the cancellation or at the written request of the named insured the insurer shall specify the reason or reasons relied upon by the insurer for the cancellation. The written reason or reasons in a notice of nonrenewal or cancellation 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. Nothing in this rule will prevent the insurer from providing more information in the notice relating to the reason or reasons for nonrenewal or cancellation than is required by this section.

§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.~~

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~~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.

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

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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.

~~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~~ 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~~ 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.~~

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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 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 standards for private passenger automobile liability insurance which must comply with generally accepted underwriting principles. Any subsequent modifications to the insurer's underwriting standards must be filed with the commissioner within thirty (30) business days after the modifications have been implemented.