

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
**KEN HECHLER**  
**ADMINISTRATIVE LAW DIVISION**

Form #3

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AUG 16 5 04 PM '93

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: Insurance Commissioner TITLE NUMBER: 114

CITE AUTHORITY West Virginia Code §§ 33-2-10; 33-6-31c

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: Series 37

TITLE OF RULE BEING PROPOSED: Substandard Motor Vehicle Insurance  
Notice Requirements

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.

*Hanley C. Clark*

Hanley C. Clark  
Insurance Commissioner

4180

**FILED**

Insurance Commissioner  
Leg. Rule 33-6-31c  
Title 114

**AUG 16 5 04 PM '93**

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**SUBSTANDARD RISK MOTOR VEHICLE INSURANCE NOTICE REQUIREMENT**

Chapter 33-6-31C, Series 37

**BRIEF SUMMARY OF RULE AND DETAILED STATEMENT  
OF CIRCUMSTANCES REQUIRING PROPOSED LEGISLATIVE RULE**

This proposed rule implements the provisions of newly enacted 33-6-31c of the West Virginia Code which was created by House Bill 2728 [effective July 1, 1993]. The rule establishes the format, style, design and approval of substandard risk insurance applications and policies.

DATE: August 16, 1993

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Office of the Insurance Commissioner

LEGISLATIVE RULE TITLE: Substandard Motor Vehicle Insurance Notice Requirements (Series 37)

1. Authorizing statute(s) citation West Virginia Code

§§ 33-2-10; 33-6-31c

2. a. Date filed in State Register with Notice of Hearing  
July 9, 1993

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

None

c. Date of Hearing(s) The public comment period ended August 9, 1993 at 4:30 p.m.

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 16, 1993

f. Name and phone number(s) of agency person(s) to contact for additional information:

Jeffrey W. VanGilder, Associate Counsel

West Virginia Insurance Commissioner

P.O. Box 50540

Charleston, WV 25305-0540; telephone (304) 558-0401

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

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b. Date of hearing: \_\_\_\_\_

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

Not applicable

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d. Attach findings and determinations and reasons:

Attached Not applicable

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114CSR37

WEST VIRGINIA LEGISLATIVE RULE  
INSURANCE COMMISSIONER

SERIES 37

SUBSTANDARD RISK MOTOR VEHICLE INSURANCE NOTICE REQUIREMENTS

Section

- 114-37-1. General.
- 114-37-2. Applicability.
- 114-37-3. Definitions.
- 114-37-4. Format of Substandard Risk Insurance Application Notice.
- 114-37-5. Format of Substandard Risk Insurance Policy Notice.
- 114-37-6. Submission of Form Filing Required.
- 114-37-7. Transitional Rules.

FILED

114CSR37

AUG 16 5 04 PM '93

WEST VIRGINIA LEGISLATIVE RULE  
INSURANCE COMMISSIONER

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

SERIES 37

SUBSTANDARD RISK MOTOR VEHICLE INSURANCE NOTICE REQUIREMENTS

§ 114-37-1. General.

1.1. Scope. -- This legislative rule implements the provisions of Chapter 33, Article 6, Section 31c of the West Virginia Code requiring a written notification on automobile insurance applications and policies written on substandard risks. This regulation sets forth the format, style, design and method for approval of substandard risk insurance applications and policies and any additional procedures required.

1.2. Authority. -- W. Va. Code § 33-6-31e; 29A-3-13.

1.3. Filing Date. -- \_\_\_\_\_, 1993.

1.4. Effective Date. -- July 1, 1993.

§ 114-37-2. Applicability.

2.1. Applicability. -- This legislative rule applies to all insurers writing motor vehicle liability insurance in this State if the rate or premium charged for the motor vehicle liability coverage reflects a greater than normal exposure to loss which is assumed by an insurer writing insurance for a substandard risk. The notification provisions apply to all motor vehicle liability policies covering substandard risks issued on or after July 1, 1993, and all motor vehicle liability insurance applications covering substandard risks taken on or after July 1, 1993.

2.2. This legislative rule applies to insurance companies writing motor vehicle liability insurance coverage through the assigned risk plan ("AIPSO")

2.3. This legislative rule applies to insurance companies that write only one tier of motor vehicle liability insurance business if the rate or premium charged for such coverage reflects the greater than normal exposure to loss which is assumed by the insurer writing insurance for a substandard risk.

2.4. The provisions of this legislative rule do not apply to insurance policies issued or applications taken for commercial automobile liability insurance.

Insurance Commissioner  
Legislative Rule  
Title 114, Series 37

§ 114-37-3. Definitions.

The following words and terms, when used in the regulation, shall have the following meanings, unless the context clearly indicates otherwise:

3.1. "Application" means a printed form used by an insurance company which includes questions about a prospective insured and the desired insurance coverage and limits. It provides the insurer's underwriter with information for accepting or rejecting the prospective insured and rating the desired policy.

3.2. "Code" means the West Virginia Code.

3.3. "Commissioner" means the Insurance Commissioner of the State of West Virginia.

3.4. "Contrasting Color" means a color strikingly dissimilar to the color of the other text and background as to produce an intensified effect that is easily readable and draws the attention of the reader. For example, a red or blue printed substandard notice would be considered printed in a contrasting color, an application printed on white paper with black type for the main text.

3.5. "Form Filing" means a filing of the application and first page of the policy bearing the imprint of the specified statement submitted to the Insurance Commissioner for prior approval in accordance with Code 33-6-8 Filing and Approval of Forms and Informational Letter No. 29 relating to Form and Rate Filing Abstracts for Casualty Filings.

3.6. "Policy" is the form setting forth the automobile insurance declarations, insuring agreements, conditions and exceptions, often bound by a policy jacket.

3.7. "State" means the State of West Virginia.

3.8. "Substandard Risk Insurance Application Notice" means the written notice required by Code § 33-6-31c(b).

3.9. "Substandard Risk Insurance Policy Notice" means the written notice required by Code § 33-6-31c(c).

3.10. "Substandard Risk" means an applicant for insurance who presents a greater exposure to loss than that contemplated by commonly used rate classifications, as evidenced by one or more

**Insurance Commissioner  
Legislative Rule  
Title 114, Series 37**

of the following conditions: (A) Record of traffic accidents; (B) Record of traffic law violations; (C) Undesirable occupational circumstances; (D) Undesirable moral characteristics.

3.11. "Substandard Risk Rate" means a rate or premium charge that reflects the greater than normal exposure to loss which is assumed by an insurer writing insurance for a substandard risk.

**§ 114-37-4. Format of Substandard Risk Insurance Application Notice.**

4.1. The Application for a motor vehicle insurance policy to be issued in this State and written on the basis of a substandard risk rate schedule shall be printed directly thereon in a minimum 10-point bold-faced type in a contrasting color the statement appearing on the front page of the Application reading substantially as follows: **THE POLICY FOR WHICH YOU ARE APPLYING HAS BEEN RATED IN ACCORDANCE WITH A SPECIAL RATING SCHEDULE FILED WITH THE COMMISSIONER OF INSURANCE PROVIDING FOR HIGHER PREMIUM CHARGES THAN THOSE GENERALLY APPLICABLE FOR AVERAGE RISKS. IF THE COVERAGE OR PREMIUM IS NOT SATISFACTORY, YOU MAY BE ELIGIBLE FOR OTHER INSURANCE.**

4.2. The Substandard Risk Application Notice shall be clear, and conspicuous on the face of the Substandard Risk Application.

4.3. The Substandard Risk Application Notice may not be printed on a separate sheet of paper, on a sticker attached to the Application, on an overlay sheet or by using white text in a black box.

**§ 114-37-5. Format of Substandard Risk Insurance Policy Notice.**

5.1. A motor vehicle insurance policy issued in this state and written on the basis of a substandard risk rate schedule shall have printed directly thereon, in a minimum 10 point bold-faced type in a contrasting color, a statement appearing on the policy jacket or the first page of the policy reading substantially as follows: **THIS POLICY HAS BEEN RATED IN ACCORDANCE WITH A SPECIAL RATING SCHEDULE FILED WITH THE COMMISSIONER OF INSURANCE PROVIDING FOR HIGHER PREMIUM CHARGES THAN THOSE GENERALLY APPLICABLE FOR AVERAGE RISKS. IF THE COVERAGE OR PREMIUM IS NOT SATISFACTORY, YOU MAY BE ELIGIBLE FOR OTHER INSURANCE.**

**Insurance Commissioner  
Legislative Rule  
Title 114, Series 37**

5.2. The Substandard Risk Policy Notice shall be clear and conspicuous on the Substandard Risk Policy .

5.3. The Substandard Risk Policy Notice may not be printed on a separate sheet of paper, on a sticker attached to the Policy, on an overlay sheet or by using white text in a black box.

**§ 114-37-6. Submission of Form Filing Required.**

6.1. The Form Filing to comply with W. Va. Code 33-6-31c must be submitted to the Rates and Forms Division of the West Virginia Insurance Department to become effective upon approval by the Commissioner.

6.2. The Form Filing shall include: Two (2) Cover Letters informing that this filing is submitted to comply with House Bill 2728; a Form Filing Abstract (PCA-F-81); a copy of the properly imprinted Application; a copy of the properly imprinted Policy Form; an amendment to the manual page stating that these imprinted forms are to be used with every automobile insurance policy written on a substandard risk in the State; and the appropriate filing fee required by law.

**§ 114-37-7. Transitional Rules.**

7.1. The Substandard Notice may be stamped, in a contrasting color, on an Application or Policy covering a Substandard Risk instead of printed directly thereon during the period July 1, 1993 through December 31, 1993.

ATTACHMENT TO QUESTION 2(d):

Two comments concerning the proposed rule were received in one letter from the National Association of Independent Insurers.

After reviewing the comments, the Department determined that no amendment to the rule was required. National Association of Independent Insurers' (NAII) comment addressed the language which requires a statement to appear on every substandard risk insurance application and policy issued in this state to be printed in a "contrasting color" identifying the policy as a substandard risk. The NAII suggested that a stamp in a "different color" be used on a policy. However, West Virginia Code §33-6-31c, the statute authorizing the Insurance Commissioner to promulgate this proposed rule, requires that all affected insuring entities to have the statements printed in a contrasting color. The Insurance Commissioner regards the term "print" to mean: to have the application and policy permanently imprint with the required statements.

NAII's second suggestion was for a subsection to be added which would clarify individual risks rated at the preferred or standard rate tier. The Insurance Commissioner has addressed this issue in the Applicability section of this regulation.

National Association



of Independent Insurers

RECEIVED

2600 RIVER ROAD, DES PLAINES, ILLINOIS 60018-3286

708/297-7800 FAX: 708/297-5064

AUG 9 1993

LEGAL DIVISION  
W. VA. INS. DEPT.

August 6, 1993

Donald S. Cleasby  
COUNSEL

Mr. Jeffrey W. VanGilder  
Associate Counsel  
West Virginia Insurance Commissioner  
2019 Washington Street, East  
Charleston, W. VA. 25305

Re: Proposed regulation on substandard risk motor vehicle insurance  
notice requirements.

Dear Mr. VanGilder:

This letter provides comments of the National Association of Independent Insurers (NAII) to the above-referenced proposed regulation. I respectfully request that it be made part of the record for this proposal.

The NAII is a national property and casualty insurance trade association representing over 570 member companies. We have 37 members writing private passenger auto insurance in West Virginia.

The NAII appreciates the Department's consideration of earlier comments and questions raised by the NAII and our members to House Bill 2728 which the proposed regulation implements. We particularly thank the Department for allowing insurers to use a colored stamp for the required notice up until the end of the year. Allowing use of the stamp grants insurers essential time in which to revise systems and procedures to come into compliance with the new law.

The NAII would encourage the Department, however, to allow use of the colored stamp as a permanent means of providing the notice. Requiring insurers to actually include a different-colored notice in the application or policy form itself causes grave concern for several NAII member companies affected by the new law. Two primary difficulties of such an approach have been expressed. First, some of our members write very few policies in West Virginia that are subject to the new law. The cost of producing a two-colored form that can only be used for these few policies will be significant. Contrary to the Department's assessment that compliance with this regulation will create minimal administrative costs for insurers, some insurers are forced to purchase expensive new equipment or create a special computer program in order to comply with a law affecting only a small number of their policies. Second, other companies intend to move to a computerized application form system in which the agent will actually have a printer in his or her office that produces the application form. This process reduces administrative overhead and makes the underwriting process more efficient and cost effective. If

Jeffrey W. VanGilder

Page 2

August 6, 1993

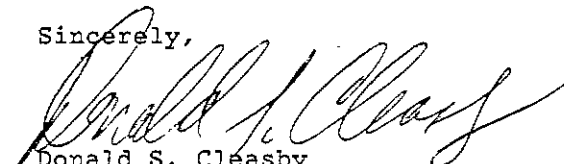
agents and/or insurers, however, are forced to purchase much more expensive equipment capable of producing two-colored documents, these savings are lost.

To avoid these undesirable costs, the NAII urges the Department to accept a different-colored stamp as compliance with the new law. The different color will assure that the intent of the legislative requirement is met--people's attention will still be drawn to the stamped-on notice. Furthermore, it falls within the letter of the new statute. The new statute requires that the mandated notice be "printed" on the application or policy form. According to Black's Law Dictionary, the word "print" means "to stamp by direct pressure as from the face of types, plates, or blocks covered with ink or pigments". Use of a stamp meets this definition. Finally, should an insurer fail to provide an application or policy form containing the stamped-on notice, it is always subject to administrative penalty from the Department and a possible court challenge from the applicant or policyholder for not providing a mandated notice.

The NAII also requests that the applicability section in the proposed regulation contain a subsection clarifying that the statute and regulation do not apply to risks rated at preferred or standard rates but for which a surcharge has been assessed for such things as at-fault accidents. Several NAII member companies expressed concern that the statute's definition of "substandard risk" and "substandard risk rate" are unclear and arguably include individual risks rated at the preferred or standard rate tier but for whom premium is increased due to surcharges. Following conversations with persons within the Insurance Department, I understand the Department does not so interpret the new statute. A section in the proposed regulation making this clear would be appreciated.

Thank you for your consideration of these comments. Please do not hesitate to contact me should you have any questions.

Sincerely,



Donald S. Cleasby  
Senior Counsel

DSC/dc

2632s

cc: Larry Swann, NAII West Virginia local counsel