

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

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WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Insurance Commission TITLE NUMBER: 114

CITE AUTHORITY: West Virginia Code Sections 33-2-10 and 33-6-31(i)

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 RULE BEING PROPOSED: 63

TITLE OF RULE BEING PROPOSED: Standard Motor Vehicle Policy Provisions

THE ABOVE PROPOSED LEGISLATIVE RULES, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE, IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.



Authorized Signature

SCANNED

114CSR63
WEST VIRGINIA LEGISLATIVE RULE
INSURANCE COMMISSIONER

SERIES 63

STANDARD MOTOR VEHICLE POLICY PROVISIONS

Section.

§114-63-1. General.

§114-63-2. Definitions.

§114-63-3. Liability Insurance Provisions.

§114-63-4. Uninsured Motor Vehicle Insurance Provisions.

§114-63-5. Underinsured Motor Vehicle Provisions.

§114-63-6. Replacement of Earlier Provisions and Future Compliance.

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WEST VIRGINIA LEGISLATIVE RULE
INSURANCE COMMISSIONER

SERIES 63

STANDARD MOTOR VEHICLE POLICY PROVISIONS

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§114-63-1. General.

1.1. Scope. -- This rule establishes the standard motor vehicle insurance policy provisions as required by W. Va. Code §33-6-31(i).

1.2. Authority. -- W. Va. Code §33-6-31(i) and §33-2-10.

1.3. Filing Date. --

1.4. Effective Date. --

§114-63-2. Definitions.

2.1. "Motor Vehicle" means a car, auto, or other synonym as such word is defined in the policy.

2.2. "Underinsured Motor Vehicle" means a motor vehicle with respect to the ownership, operation or use of which there is liability insurance applicable at the time of the accident but the limits actually available to the injured person in question are less than the total amount of damages sustained by the injured person regardless of the comparison between such liability insurance limits actually available and the underinsured motorist coverage limits.

2.3. "Uninsured Motor Vehicle" means a motor vehicle as to which there is no:

- a. Bodily injury liability insurance and property damage liability insurance, or
- b. There is such insurance, but the insurance company writing the same denies coverage thereunder; and
- c. There is no certificate of self insurance.

A motor vehicle shall be deemed to be uninsured if the owner or operator thereof be unknown. W. Va. Code §33-6-31(c). A motor vehicle shall also be deemed to be uninsured if there has been a valid bodily injury or property damage liability policy issued upon such vehicle but the

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policy is uncollectible, in whole or in part, by reason of the insurance company being insolvent or having been placed in receivership. W. Va. Code §33-6-31(j).

§114-63-3. Liability Insurance Provisions.

3.1. All motor vehicle liability policies shall contain a provision insuring the named insured and any other person responsible for the use of or using the motor vehicle with the consent, express or implied, of the named insured or his or her spouse. W. Va. Code §33-6-31(a).

3.2. All motor vehicle liability policies shall contain a provision insuring against liability for death or bodily injury sustained, or loss or damage occasioned, as a result of negligence in the ownership, maintenance or use of the vehicle. W. Va. Code §33-6-31(a).

3.3. All motor vehicle liability policies shall contain a provision providing primary coverage to the named insured and to any other person who normally operates the covered vehicle, if he or she is instead operating a motor vehicle owned by one engaged in the business of selling, repairing, leasing or servicing motor vehicles, without separate consideration, while the insured's motor vehicle is in the custody of one engaged in said business of selling, repairing, leasing or servicing motor vehicles. W. Va. Code §33-6-29.

3.4. All motor vehicle liability policies shall contain coverage for liability under the family purpose doctrine and may not exclude the liability of the owner with respect to use by a bailee for hire, restricted driver, or other permissive user. W. Va. Code §33-6-31(a).

3.5. Motor vehicle liability policies shall not contain family member exclusions.

3.6. Motor vehicle liability policies shall not contain terms for cancellation or non-renewal less favorable to the insured than those set forth in W. Va. Code §33-6A.

3.7. Motor vehicle liability policies shall not contain any condition, stipulation or agreement requiring the policy to be construed according to the laws of any other state or country, except as necessary to meet the requirements of the motor vehicle financial responsibility laws or compulsory disability benefit laws of such other state or country. W. Va. Code §33-6-14.

3.8. Motor vehicle liability policies shall not contain any condition, stipulation or agreement limiting the time within which a claim may be brought to less than two years from the time the cause of action accrues. W. Va. Code §33-6-14.

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3.9. Motor vehicle liability policies may contain a provision excluding coverage for the negligence of a driver operating the motor vehicle without the consent, express or implied, of the named insured (or his or her spouse).

3.10. Motor vehicle liability policies may contain a provision with respect to the negligence of any bailee for hire. W. Va. Code §33-6-31(a).

3.11. Motor vehicle liability policies may contain an exclusion for intentional torts above the minimum financial liability limits under W. Va. Code §17D-4-2.

3.12. Motor vehicle liability policies may contain a restricted named driver exclusion endorsement above the minimum financial liability limit under W. Va. Code §17D-4-2. The restricted named driver exclusion must specifically designate by name the individual or individuals to be excluded.

3.13. Motor vehicle liability policies may contain a provision, in exchange for a multi-car discount, which precludes stacking.

3.14. Motor vehicle liability policies may contain a "duty to cooperate" clause provided that before an insurance policy will be voided because of the insured's failure to cooperate, the failure must be substantial and of such nature as to prejudice the insurer's rights.

3.15. Any coverage issued under a substandard risk motor vehicle insurance policy shall contain the notice set forth in W. Va. Code §33-6-31c.

§114-63-4. Uninsured Motor Vehicle Insurance Provisions.

4.1. All motor vehicle policies shall contain a provision undertaking to pay the insured all sums which he or she shall be legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle up to the limit selected by the named insured on a properly completed form pursuant to W. Va. Code §33-6-31d.

4.2. Uninsured motor vehicle coverage shall not contain family member exclusions.

4.3. Uninsured motor vehicle coverage shall not contain a provision requiring arbitration. W. Va. Code §33-6-31(g).

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4.4. Uninsured motor vehicle coverage may contain a provision excluding the first three hundred dollars of property damage but shall not contain any other deductible or setoff up to the limits of the uninsured motorist coverage. W. Va. Code §33-6-31(b).

4.5. Uninsured motor vehicle coverage may contain a provision requiring that the insured use reasonable diligence, upon learning that the tortfeasor is uninsured, to provide notice of any potential uninsured motor vehicle claim within a reasonable period of time.

4.6. Uninsured motor vehicle coverage may contain an “owned but not insured exclusion” precluding benefits above the minimum financial responsibility limits contained in W. Va. Code §17D-4-2.

4.7. Uninsured motor vehicle coverage may contain a provision excluding benefits for injuries which result from a motor vehicle collision which occurs within the course and scope of employment but only with respect to fault of the employer or co-employee and not with regard to the fault of a third party.

4.8. With regard to uninsured motor vehicle coverage in the event of negligence by an unknown tortfeasor, the policy may contain a provision requiring a close and substantial physical nexus between the unidentified hit and run vehicle and the insured vehicle. “Close and Substantial Physical Nexus” means evidence which can be established by independent third-party testimony to the satisfaction of the trial judge and the jury that, but for the immediate evasive action of the insured, direct physical contact would have incurred between the unknown motor vehicle and the victim.

4.9. Uninsured motor vehicle coverage may contain a provision providing for the right of subrogation against the tortfeasor up to the amount paid under the uninsured motor vehicle endorsement, consistent with W. Va. Code §33-6-31(f).

4.10. Uninsured motor vehicle coverage may include an exclusion for punitive damage liability.

§114-63-5. Underinsured Motor Vehicle Provisions.

5.1. If selected by the insured, policies must include a provision agreeing to pay the insured all sums which he or she shall be legally entitled to recover as damages from the owner or operator of an underinsured motor vehicle up to the limits selected by the insured. W. Va. Code §33-6-31(b).

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5.2. Underinsured motor vehicle coverage shall not provide for setoff for any payments made by the insured's policy or any other policy. W. Va. Code §33-6-31(b).

5.3. Underinsured motor vehicle coverage shall not contain a provision requiring arbitration. W. Va. Code §33-6-31(g).

5.4. Underinsured motor vehicle coverage may contain a provision requiring that the insured use reasonable diligence, upon learning that the tortfeasor is underinsured, to provide notice of any potential underinsured motorist claim within a reasonable period of time.

5.5. Underinsured motor vehicle coverage may contain a provision requiring notice of any settlement with the liability carrier consistent with W. Va. Code §33-6-31e.

5.6. Underinsured motor vehicle coverage may contain a provision excluding benefits for injuries which result from a motor vehicle collision which occurs within the course and scope of employment but only with respect to the fault of the employer or co-employee and not with regard to the fault of a third party.

5.7. With regard to underinsured motor vehicle coverage in the event of negligence by an unknown tortfeasor, the policy may contain a provision requiring a close and substantial physical nexus between the unidentified hit and run vehicle and the insured vehicle. "Close and Substantial Physical Nexus" means evidence which can be established by independent third party testimony to the satisfaction of the trial judge and the jury that, but for the immediate evasive action of the insured, direct physical contact would have incurred between the unknown vehicle and the victim.

5.8. Underinsured motor vehicle coverage may contain a provision providing for the right of subrogation against the tortfeasor, up to the amount paid under the underinsured motor vehicle endorsement, consistent with W. Va. Code §33-6-31(f).

5.9. Underinsured motor vehicle coverage may contain family member or similar exclusion precluding a guest passenger from collecting such benefits with respect to the negligence of the driver of the motor vehicle in which he or she is riding but such guest passenger may not be precluded from recovery of underinsured benefits with respect to the negligence of a third party.

5.10. Underinsured motor vehicle coverage may contain a provision precluding intra-policy stacking and inter-policy stacking.

5.11. Underinsured motor vehicle coverage may contain a family use exclusion to be applied when a passenger family member receives payment under the liability provisions with respect to the

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negligence of his or her driver thereby preventing the underinsured coverage from being converted into additional liability coverage.

5.12. Underinsured motor vehicle coverage may include a provision precluding recovery of underinsured benefits if the liability coverage of the tortfeasor with respect to whose negligence benefits are sought has not been exhausted.

5.13. Underinsured motor vehicle coverage may include a provision precluding benefits if the claimant is in an owned but not insured motor vehicle.

5.14. Underinsured motor vehicle coverage may include an exclusion for punitive damage liability.

§114-63-6. Replacement of Earlier Provisions and Future Compliance.

6.1. This rule shall completely replace Informational Letters two, revised, and two-a, and all contrary policy provisions approved by the Insurance Commission before the effective date of this rule. Thereafter all policy provisions must be in compliance with this rule.



STATE OF WEST VIRGINIA

Offices of the Insurance Commissioner

Legal Division

BOB WISE
Governor

JANE L. CLINE
Insurance Commissioner

November 4, 2002

HAND DELIVERED

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

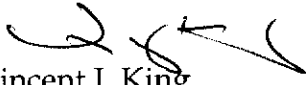
Dear Ms. Cooper:

Please find attached one (1) copy of the following for filing:

- 1) Notice of a Rule Modification of a Proposed Rule and Consent of Tax and Revenue Cabinet Secretary to Proposed Rule; and
- 2) The proposed rule entitled "Standard Motor Vehicle Policy Provisions" (Series 63).

Please contact me if further information is required.

Sincerely,


Vincent J. King
General Counsel

VJK/jz
Attachment