



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Motor Vehicles

RULE TYPE: Legislative

TITLE-SERIES: 91-13

RULE NAME: COMPULSORY MOTOR VEHICLE
LIABILITY INSURANCE

CITE AUTHORITY: W. Va. Code §§17A-2-9 and 17D-2A-8

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.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Ronald David Johnson Jr Mba -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 91
LEGISLATIVE RULE
DIVISION OF MOTOR VEHICLES

SERIES 13
COMPULSORY MOTOR VEHICLE LIABILITY INSURANCE

§91-13-1. General.

1.1. Scope. – This rule establishes guidelines and forms for insurers and insureds with respect to motor vehicle liability insurance required under the provisions of W. Va. Code §§17A-3-3 and Chapter 17D of the W. Va. Code, 17D-1 et seq.

1.2. Authority. – W. Va. Code §§17A-2-9 and 17D-2A-8.

1.3. Filing Date. – ~~April 25, 2012.~~

1.4. Effective Date. – ~~July 1, 2012.~~

1.5. ~~Repeal of Former Rule. – This legislative rule repeals and replaces Compulsory Motor Vehicle Liability Insurance 91CSR13 filed May 12, 1997 April 25, 2012 and effective May 13, 1997 July 1, 2012.~~
Sunset Provision. – This rule shall terminate and have no further force or effect upon the expiration of 5 years from its effective date.

1.6. Application and Enforcement. – This legislative rule applies to all owners and operators of motor vehicles subject to registration and subject to the mandatory security upon motor vehicles provisions of Chapter 17D of the W. Va. Code §17D-1 et seq. This legislative rule also applies to insurance companies and their agents authorized to issue motor vehicle liability insurance in this state. Enforcement of this rule is vested with the Commissioner of Motor Vehicles and the Insurance Commissioner or their lawful designees.

~~1.7 Repeal of Former Rule. – This legislative rule repeals and replaces Compulsory Motor Vehicle Liability Insurance 91CSR13 filed May 12, 1997 April 25, 2012 and effective May 13, 1997 July 1, 2012.~~

§91-13-2. Definitions.

2.1. Abstract of Conviction – Means the report of conviction or findings required to be submitted to the Division pursuant to the provisions of W. Va. Code §§17B-3-4 and 17D-2A-6.

2.2. Certificate of Insurance – Means a form issued in duplicate by an insurer to an insured which meets the requirements of W. Va. Code §17D-2A-4 and as specified in Appendix A, which has been approved by the Commissioner.

2.3. Commercial Auto Coverage – Means motor vehicle liability coverage extended to a vehicle owner under a commercial coverage form and rated from a commercial manual approved by the Insurance Commissioner.

2.4. Commissioner – Means the chief executive officer of the Division of Motor Vehicles appointed in accordance with the provisions of W. Va. Code §17A-2-2.

2.5. Crash Report – Means the crash report completed by the investigating officer in accordance with W. Va. Code §17C-4-7.

2.6. Division – Means the Division of Motor Vehicles.

~~2.7. Firmed Up – Means when the thirty day notice required by W.Va. Code §33-6A-1 and any additional notice period provided by the insurer to the insured has expired and the policy will not be continued or reinstated to maintain coverage continuously in force.~~

~~2.78. Hearing – Means the administrative procedures conducted by the Office of Administrative hearings pursuant to W. Va. Code §17C-5C-1 et seq. and this rule Division arising out of the enforcement of administrative driver's license suspensions and motor vehicles registration revocations provided for in W. Va. Code §§17A-3-3 and Chapter 17D of the W. Va. Code 17D-1 et seq.~~

~~2.9. Insurance Company Notice of Cancellation – Means the notice submitted to the Division either on paper or electronically when an insurance company issues a cancellation of coverage pursuant to the requirements of W.Va. Code §§17D-2A-5 and 33-6A-1 as specified in Appendix B which has been approved by the Commissioner.~~

~~2.810. Liability Insurance – Means an insurance policy or contract as provided in W. Va. Code §17D-2A-3 and Chapter 33 of the W. Va. Code 33-1 et seq. providing liability coverage for a motor vehicle.~~

~~2.911. NAIC Number – Means the number issued by the National Association of Insurance Commissioners to identify insurance companies.~~

~~2.12. OAH – Means the Office of Administrative Hearings, a separate agency within the Department of Transportation responsible for hearing and determining statutorily authorized appeals from decisions or orders issued by the Commissioner of the Division of Motor Vehicles.~~

~~2.1013. On-line Insurance Verification Program or Electronic Insurance Verification Program – Means the electronic insurance verification of continuous liability insurance coverage while a vehicle has a valid registration. This program may be used by law enforcement at the time of a traffic stop or crash investigation, by the Division for registration events and continued coverage and by the judicial system.~~

~~2.1114. Owner – Means the person or persons who hold the legal title of a motor vehicle as reflected in the records of the division.~~

~~2.15. Owner's Notice of Insurance Cancellation – Means the form, designated as WV-4C, used by the vehicle owner to provide notice to the Division that the required liability insurance upon a registered vehicle as required by W. Va. Code §17D-2A-1 et. seq. has been dropped and that the vehicle will not be operated upon the roads and highways of West Virginia until liability insurance has been obtained. The owner's notice of insurance cancellation must include the surrender of the registration plate.~~

~~2.1216. Owner's Notice of Non-Plate Surrender – Means the form, designated as WV-4S, used by the vehicle owner or owners to provide notice to the Division that a registration plate has been lost or destroyed and therefore could not be surrendered as required by W. Va. Code §17D-2A-1 et. seq.~~

2.1347. Owner's Statement of Insurance – Means the form prescribed by the Commissioner pursuant to W. Va. Code §17A-3-3 which includes the insurance company name, insurance agent, the NAIC number, policy number and the policy effective date.

2.1418. Owner's Statement of Seasonal Insurance – Means the form, designated as WV-4B, used to provide notice to the Division that the vehicle is used seasonally as required by W. Va. §17D-2A-1 et seq. In addition, the owner or owners shall certify that the liability insurance is in effect during the portion of the year in which the vehicle is in actual use on the road. An owner is not required to surrender the registration plate under seasonal or periodic use circumstances.

2.1549. Proof of Insurance – Means a certificate of insurance, an insurance policy, ~~or~~ a certificate of self-insurance or an image displayed on a wireless communication device.

2.16. Resolve Active Registration – Means to bring a motor vehicle with an active title and active registration into compliance with Chapter 17D of the W. Va. Code. If an owner cannot or will not provide current liability insurance on the motor vehicle, they may resolve the active registration by surrendering the registration plate, by providing proof to the Division that they are no longer the owner, or by providing proof to the Division that the motor vehicle has been titled more recently in another state.

2.17. Seasonal or Periodic Use Vehicle – Means a recreational vehicle, antique motor vehicle, motorcycle or other motor vehicle which is stored part of the year and used seasonally.

2.1820. Self-Insurer – Means a motor vehicle owner meeting the requirements of W. Va. Code §17D-6-2.

2.1924. Verification of Insurance – Means the process by which the Division or an agent of the Division verifies insurance information online electronically or by any other means available as authorized by statute, with an insurance company to determine whether or not the vehicle is or was covered by a liability policy at a certain time.

§91-13-3. Verification of Insurance.

3.1. Electronic Insurance Verification Program – In accordance with the provisions of W. Va. Code §17D-2A-6a, the Division ~~will develop and implement~~ maintains an electronic insurance verification program for motor vehicles. Pursuant to W. Va. Code §17D-2A-2, commercial motor vehicles covered under a commercial policy are excluded from the electronic insurance verification program.

3.2. Insurance Verification – The Division ~~will~~ may verify insurance coverage by any means available including electronic access. The electronic verification ~~will~~ may be conducted by using various criteria or established key elements that meet the standards and specifications of the Insurance Industry Committee on Motor Vehicle Administration (IICMVA) model. The Division shall randomly select vehicles with an active title and active registration to verify current liability insurance status. This sample shall be conducted on a weekly basis.

3.3. ~~Vehicle Owner and Driver Resolution. The Division or its agent shall provide an opportunity for any motor vehicle registrant or driver to correct any false reports of no insurance.~~

3.3. Notice of Insurance Request – When the electronic insurance database cannot verify current liability insurance coverage, the Division shall issue a thirty (30) day notice by regular mail to the vehicle owner or owners. This notice will request current liability insurance on the vehicle listed in the notice.

3.4. Certified Notice of Insurance Request – When the owner or owners fail to respond to the Notice of Insurance Request, fail to provide current liability insurance or fail to resolve the active registration of the vehicle listed, the Division shall issue a thirty (30) day notice by certified mail. This notice will request current insurance on the vehicle listed in the notice.

3.5. Failure to Respond or Resolve Notices – Failure to resolve the certified notice requirement will result in the suspension of the owner's driver's license on the suspension effective date listed on the certified notice. If the Commissioner cannot determine there is current liability insurance in effect, the Division shall suspend the driver's license of the owner of the motor vehicle for a period of thirty (30) days.

3.6. If the Division determines that the owner of the vehicle has been previously suspended for failing to maintain insurance on a motor vehicle or knowingly operating a vehicle without insurance, and this is a second (2nd) or subsequent offense within five (5) years, the period of the driver's license suspension is ninety (90) days. The Division shall also suspend the registration of the motor vehicle.

3.7. Reinstatements of driver's licenses or driving privileges and vehicle registration are contingent upon payment of all fees assessed by the Division of Motor Vehicles. In addition, the owner must provide proof of current liability insurance on the motor vehicle or resolve the active registration, unless the registration plate has expired or the title is no longer in an active status.

§91-13-4. Owner Cancellation of Insurance Registration Plate Surrender.

~~4.1. Notice Required – When the owner of a motor vehicle with a valid registration cancels insurance for any reason other than for reasons of seasonal or periodic use, the owner must immediately surrender to the Division the registration plate and registration card assigned to the vehicle. The owner shall also complete the prescribed form, WV-4C, or provide a written statement concerning the cancellation to accompany the surrendered registration plate and registration card. The Owner's notice of cancellation must include a statement that the liability insurance on the motor vehicle in question was canceled and that the motor vehicle will not be operated upon the roads or highways of this state.~~

~~4.2. Plate Lost or Destroyed – The notice of owner's cancellation of insurance shall not be considered complete unless the actual registration plate is surrendered. However in In the event that the a registration plate must be surrendered and it has been is lost or destroyed, the owner or owners must complete a WV-4S form and indicate certify the disposition of the registration plate to accompany the notice of owner's cancellation of insurance. The Division shall only consider the fact that the registration plate was lost or destroyed as valid reasons for failure to surrender the actual registration plate at the time of the owner's notice of insurance cancellation.~~

4.3. Seasonal or Periodic Use – Pursuant to W. Va. Code §17D-2A-1 et seq., the owner of a seasonal or periodic use vehicle is required to maintain liability insurance on the vehicle only for the portion of the year the vehicle is in actual use. The owner or owners may retain the valid registration plate while the vehicle is in storage.

4.3.1. The owner or owners must submit a completed WV-4B form notifying the Division of the dates during which the vehicle is in storage and will not be operated. In addition, the owner or owners shall certify that liability insurance is in effect during the portion of the year in which the vehicle is in actual use on the road.

4.3.2. If the owner or owners apply for registration during such time as the vehicle is certified to be in storage, the seasonal status will be removed from the vehicle. A new owner's statement of insurance must be submitted with the application for registration as required by W. Va. Code §17A-3-3. If the owner wishes to then place the motor vehicle back in a seasonal status, the owner or owners must submit a new completed WV4-B form to the Division.

4.3.3. A seasonal or periodic use vehicle is subject to the mandatory security upon motor vehicles provisions of Chapter 17D of the W. Va. Code any time it is being operated. If the vehicle is operated during such time as the vehicle is certified to be in storage, the owner must first contact the Division to have the seasonal status removed. The Division will require verification of current liability insurance prior to removing the seasonal status from the vehicle. If, after operation, the owner wishes to then place the motor vehicle back in a seasonal status, the owner or owners must submit a new completed WV4-B form to the Division.

4.3.4. A seasonal or periodic use vehicle with an active title and active registration that has not been placed in a seasonal status with the Division or has had the seasonal status removed is subject to verification of insurance and the provisions of section three of this article.

§91-13-5. Traffic Crash Reports.

5.1. Upon receipt of a West Virginia Uniform Traffic Crash Report, the Division shall review the report to determine if the law enforcement officer investigating the crash was able to determine if the motor vehicle or motor vehicles involved in the traffic crash were covered by an insurance policy.

5.2. If the Commissioner determines there was no liability insurance at the time of the crash, the Division shall issue notices of suspension by certified mail to the ~~driver and~~ owner or owners of the vehicle in question. The notice shall allow a 30-day notice period before the suspension effective date. Proof of insurance must be provided to the Division and confirmed for the date and time of the crash.

5.3. If liability insurance coverage cannot be confirmed for the date and time of the crash, the Division shall suspend the driver's license of the ~~driver and~~ owner or owners of the motor vehicle for a period of thirty (30) days. ~~The Division shall also suspend the registration of the motor vehicle until current proof of insurance is received.~~

5.4. If the Division determines that the owner ~~or driver~~ of the vehicle has been previously suspended for an offense described in W. Va. Code §17D-2A-1 et seq, and this is a second (2nd) or subsequent offense within five (5) years, the period of the driver's license suspension is ninety (90) days. The Division shall also suspend the registration of the motor vehicle.

5.5. Reinstatements of driver's licenses or driving privileges and vehicle registration are contingent upon payment of all fees assessed by the Division of Motor Vehicles. In addition, the owner must provide proof of current liability insurance on the motor vehicle or resolve the active registration, unless the registration plate has expired or the title is no longer in an active status.

5.6. The provisions of section seven of this rule apply to first (1st) time offenders.

§91-13-6. Traffic Citations.

6.1. Upon receipt of a citation for no insurance, the Division shall issue notices of suspension by certified mail to the ~~driver and~~ owner or owners of the vehicle in question. The notice shall allow a 30-day notice period before the suspension effective date. Proof of liability insurance must be provided to the Division and confirmed for the date and time of the citation. If the driver is not the owner of the vehicle, the driver shall have the conviction for no insurance placed on his or her driver's license record.

6.2. If the Commissioner determines there was no liability insurance, the Division shall suspend the driver's license of the ~~driver and~~ owner or owners of the motor vehicle for a period of thirty (30) days, ~~and shall revoke the registration of the motor vehicle until current proof of insurance is received.~~

6.3. If the Division determines that the ~~owner~~ ~~owners~~ or ~~driver~~ of the vehicle has been previously suspended for failing to maintain insurance on a motor vehicle or knowingly operating a vehicle without insurance, and this is a second (2nd) or subsequent offense within five (5) years, the period of the driver's license suspension is ninety (90) days. The Division shall also suspend the registration of the motor vehicle.

6.4. Reinstatements of driver's licenses or driving privileges and vehicle registration are contingent upon payment of all fees assessed by the Division of Motor Vehicles. In addition, the owner must provide proof of current liability insurance on the motor vehicle or resolve the active registration, unless the registration plate has expired or the title is no longer in an active status.

6.5. The provisions of section seven of this rule apply to first (1st) time offenders.

§91-13-7. Driver's License Suspension.

7.1. ~~Pursuant to the provisions of W. Va. Code §17D-2A-7, the driver and owner may choose to pay a penalty fee in~~ In lieu of the driver's license suspension requirement for a first (1st) offense of no insurance for an offense committed on or after June 11, 2010-, the owner may choose to pay a \$200.00 penalty fee pursuant to the provisions of W. Va. Code §17D-2A-7(a)(1). In addition, the owner must provide proof of current liability insurance on the motor vehicle or resolve the active registration, unless the registration plate has expired or the title is no longer in an active status. The offender must pay a \$200.00 penalty fee and provide current proof of insurance for any registered vehicles before the suspension effective date. This option applies to any suspension action pursuant to W. Va. Code §§17A-3-3 or 17D-2A-1 et seq.

~~7.2 A second (2nd) offense for no insurance within five (5) years requires a 30-day driver's license suspension if the first (1st) offense waiver was taken.~~

~~7.23. A second (2nd) third (3rd) or subsequent offense for no insurance within five (5) years requires a 90-day driver's license suspension if the first (1st) offense waiver was taken. Any subsequent offenses require a 90-day suspension of the driving privileges. The Division shall also suspend the registration of the motor vehicle.~~

7.34. In the case of multiple owners, the Division shall suspend the driver's license of only one owner unless the offense involves false or fraudulent documents.

7.4. Reinstatements of driver's licenses or driving privileges and vehicle registration are contingent upon payment of all fees assessed by the Division of Motor Vehicles. In addition, the owner must provide proof of current liability insurance on the motor vehicle or resolve the active registration, unless the registration plate has expired or the title is no longer in an active status.

§91-13-8. Company Forms and Procedures.

8.1. Certificate of Insurance – The form designated by the Commissioner as WV-1B when printed as specified and completed in full, or such other form approved by the Commissioner, meets the requirements of W. Va. Code §17D-2A-4 for issuance by the insurer to the insured. The certificate shall be accepted by the Commissioner and all law enforcement agencies as proof of insurance however, all forms of insurance information are subject to the electronic insurance verification program. The insurance company shall provide the certificate of insurance to the insured in duplicate for each policy term or upon request by the insured for each motor vehicle covered by a liability insurance policy. In cases of commercial motor vehicles, the word fleet may be used on each certificate in lieu of a motor vehicle description. The insurance company shall list the effective dates of the policy term by including the commencement date and the expiration date of the policy term, the certificate issue date and the NAIC number. In cases where the vehicle owner is different from the policy holder, the company shall list both the policy holder and the vehicle owner. Motor vehicles bearing dealer registration, financial institution registration, or commercial vehicles registered through the Public Service Commission are not required to carry a certificate of insurance.

~~8.2 Notice of Cancellation. The form designated by the Commissioner as WV-2B when printed as specified and completed in full, meets the requirements of W. Va. Code '17D-2A-5 for issuance by the insurance company to notify the Division of company cancellations which are issued under the provisions of W. VA. Code "33-6A-1(b), (c), (d), or E when the cancellation has been firmed up by the insurance company. The insurance company shall list the notice date, cancellation date, company name, the NAIC number, the year, make, model and vehicle identification number of vehicle, type of cancellation and all drivers license numbers listed on the policy. In cases where the vehicle owner is different from the policy holder, the company shall list both the policy holder and the vehicle owner. An insurance company may submit notification through an electronic format to the division or its agent.~~

~~§91-13-9. Company Cancellation of Insurance.~~

~~9.1. Notice of Cancellation of Policy — An insurance company shall provide the form designated by the Commissioner as WV-2B in accordance with the provisions of W. Va. Code "33-6A-1 (b-e).~~

~~9.2 The Division shall notify the owners or owners of the notice of insurance cancellation by certified mail. The notice shall provide the owner(s) with a 30 day notice period to:~~

~~9.2.a Surrender the registration plate or provide current insurance and a copy of registration transfer if applicable.~~

~~9.3 Failure to comply will result in the Division suspending the owner(s) driver's license for a thirty (30) day period and the registration plate until current insurance is provided.~~

~~9.4 If the Division determines the owner has been previously suspended for no insurance, the period of the driver's license suspension will be ninety (90) days.~~

~~9.5 All reinstatements of driving privileges and registration plates are contingent upon payments of all fees assessed by the Division of Motor Vehicles.~~

§91-13-~~240~~. Administrative Due Process.

~~240.1.~~ Any person adversely affected by an order made and entered by the Commissioner in accordance with the provisions of W. Va. Code §17A-3-3 or Chapter 17D of the W. Va. Code §17D-1 et seq. and this legislative rule, may request a hearing if specifically allowed by Chapter 17D of the W. Va. Code §17D-1 et seq., by filing a written notice with the Office of Administrative Hearings (OAH) Division in person, or by certified mail, return receipt requested. The person must request a hearing within ten (10) days from the date on which the registered or certified mail receipt for the order of revocation was signed. However, in cases when the registered or certified mail is not signed for, the provisions of W. Va. Code §17A-2-19 apply which provide that the giving of notice is complete upon expiration of four (4) days after deposit of the notice in the United States mail.

~~240.2.~~ The notice requesting a hearing ~~shall~~ must contain a description of the order upon which a hearing is requested, and the grounds upon which it is asserted that the order should be vacated or modified. The scope of the hearing is limited to questions of identity or whether there was the required liability insurance upon the vehicle on the date and time in question.

9.2.1. Hearing requests that assert grounds outside the scope of the hearing designated in subdivision 2 shall be denied by the Division.

9.2.2. If the request for a hearing is denied, the Division will notify the person requesting the hearing at the address of record. If the return address provided on the request is different from the address of record, the Division will also notify the person at that return address.

~~240.3.~~ The motor vehicle owner has the burden of showing that liability insurance coverage was in effect at the time in question and therefore, shall make the initial presentation of evidence. At the conclusion of the vehicle owner's presentation, the Division shall have an opportunity to present evidence. All parties have the right to cross-examine witnesses.

9.4. Any party adversely affected by the final order of the Commissioner may petition the appropriate circuit court for judicial review in accordance with W. Va. Code §29A-5-4.