WEST VIRGINIA CODE CHAPTER 33 ARTICLE 6

§33-6-1. Scope of article.

This article shall not apply to reinsurance.

§33-6-2. Insurable interest in one's own life or life of another; actions to recover benefits; insurable interests defined; requirements for charitable institutions.

(a) Any individual of competent legal capacity may procure or effect an insurance contract upon his own life or body for the benefit of any person. But no person shall procure or cause to be procured any insurance contract upon the life or body of another individual unless the benefits under such contract are payable to the individual insured or his personal representative or to a person having, at the time when such contract was made, an insurable interest in the individual insured.

(b) If the beneficiary, assignee, or other payee under any contract made in violation of this section receives from the insurer any benefits thereunder accruing upon the death, disablement, or injury of the individual insured, the individual insured or his executor or administrator, as the case may be, may maintain an action to recover such benefits from the person so receiving them.

(c) "Insurable interest" with reference to personal insurance includes only interests as follows:

(1) In the case of individuals related closely by blood or by law, a substantial interest engendered by love and affection.

(2) In the case of other persons, a lawful and substantial economic interest in having the life, health, or bodily safety of the individual insured continue, as distinguished from an interest which would arise only by, or would be enhanced in value by, the death, disablement or injury of the individual insured.

(3) An individual heretofore or hereafter party to a contract or option for the purchase or sale of an interest in a business partnership or firm, or of shares of stock of a closed corporation or of an interest in such shares, has an insurable interest in the life of each individual party to such contract and for the purposes of such contract only, in addition to any insurable interest which may otherwise exist as to the life of such individual.

(4) A charitable institution as defined under Sections 501(c)(3), 501(c)(6), 501(c)(8) and 501(c)(9) of the Internal Revenue Code of 1986, as amended.

§33-6-3. Insurable interest in property.

(a) No insurance contract on property or of any interest therein or arising therefrom shall be enforceable as to the insurance except for the benefit of persons having an insurable interest in the things insured.

(b) "Insurable interest" as used in this section means any actual, lawful, and substantial economic interest in the safety or preservation of the subject of the insurance free from loss, destruction, or pecuniary damage or impairment.

(c) The measure of an insurable interest in property is the extent to which the insured might be damnified by loss, injury, or impairment thereof.

§33-6-4. Who may contract for insurance; competency of minors.

(a) Any person of competent legal capacity may contract for insurance.

(b) A minor not less than fifteen years of age as at nearest birthday, may notwithstanding such minority, contract for life or accident and sickness insurance on his own life or body, for his own benefit or for the benefit of his father or mother, spouse, child, brother, sister or grandparents. Such a minor shall, notwithstanding such minority, be deemed competent to exercise all rights and powers with respect to or under any contract of life or accident and sickness on his own life or body, as though of full legal age, and may surrender his interest therein and give a valid discharge for any benefit accruing or money payable thereunder. The minor shall not, by reason of his minority, be entitled to rescind, avoid or repudiate the contract, nor to rescind, avoid or repudiate any exercise of a right or privilege thereunder, except that such minor, not otherwise emancipated, shall not be bound by any unperformed agreement to pay, by promissory note or otherwise, any premium on any such insurance contract.

§33-6-5. Application or consent of person insured required; exceptions.

No life or accident and sickness insurance contract upon an individual, except a contract of group life insurance or of group accident and sickness insurance, shall be made unless at the time of the making of the contract the individual insured, being of competent legal capacity to contract, applies therefor or consents thereto, except in the following cases:

(a) A spouse may procure such insurance upon the other spouse.

(b) Any person having an insurable interest in the life of a minor, or any person upon whom a minor is dependent for support and maintenance, may procure insurance upon the life of or pertaining to such minor.

§33-6-5a. Application for life or accident and sickness insurance; signatures required; exemptions; right of insured to return policy.

(a) All applications for life or accident and sickness insurance, as defined in section ten, article one of this chapter, to be issued in this state shall:

(1) If application is made by the proposed insured, include the signature of both the proposed insured and the agent;

(2) If application is made by the proposed insured, be completed by a licensed and appointed agent in the presence of the proposed insured;

(3) If application is made by a spouse upon the other spouse, include the signature of the spouse procuring the insurance and the agent; or

(4) If application is made by any person having an insurable interest in the life of a minor, or any person upon whom a minor is dependent for support and maintenance, include the signature of the person procuring the insurance and the agent.

(b) Upon the hand delivery of a policy of life or accident and sickness insurance, a delivery receipt shall be signed and dated by the insured and returned to the insurer for filing.

If the delivery of a policy of life or accident and sickness insurance is by mail, it shall either: (1) Be sent by certified mail from the insurer, return receipt requested, and the date of receipt noted on the receipt is the date of receipt for the purposes of section eleven-b of this article; or (2) the insurer shall prepare a certificate of mailing. For the purposes of this section, a certificate of mailing means a record prepared and retained in accordance with general business practices indicating the date that the policy was mailed to the insured and it is presumed that the policy was received by the insured twenty days from the date of mailing.

(c) Any amendments to the application after it is originally signed by the proposed insured shall be expressly disclosed in writing to the proposed insured and his or her signature is obtained to verify agreement with the changes: Provided, That the failure of the insurer to notify the insured of any change, or the failure of the insured to execute the signature, does not invalidate the existence of insurance coverage.

(d) The following shall be exempt from the requirements of subdivisions (1), (2), (3) and (4), subsection (a) of this section:

(1) Group life or group accident and sickness insurance applications if the insurer accepts all prospective principal insureds with no underwriting restrictions on the individual proposed insureds;

(2) Group life or group accident and sickness insurance applications if there is underwriting as to the individual proposed insureds and the applications are completed without a licensed

and appointed agent present, but the insurer verifies the information on the application by telephone with the proposed insured;

(3) Applications for life or accident and sickness insurance if the insurance is solely mass marketed and the only contact with the insured is by mail, mass media or telephone; and

(4) Applications for life or accident and sickness insurance if the insurer is an underwriter for supplemental retirement plans and additional retirement plans provided to eligible employees of the governing boards of state institutions of higher education pursuant to the provisions of section four-a, article twenty-three, chapter eighteen of this code.

(e) The taking of an application for life or accident and sickness insurance and otherwise completing a transaction electronically is exempt from the requirements of subdivision (2), subsection (a) of this section.

§33-6-6. Application for insurance as evidence.

(a) No application for the issuance of any life or accident and sickness insurance policy or contract shall be admissible in evidence in any action relative to such policy or contract, unless a true copy of the application was attached to or otherwise made a part of the policy when issued. This paragraph shall not apply to industrial life insurance policies.

(b) If any policy of life or accident and sickness insurance delivered in this state is reinstated or renewed, and the insured or the beneficiary or assignee of the policy makes written request, together with in the case of a beneficiary evidence of the beneficiary's vested interest in the policy, to the insurer for a copy of the application, if any, for such reinstatement or renewal, the insurer shall, within thirty days after receipt of such request at its home office or at any of its branch offices, deliver or mail to the person making such request a copy of such application. If such copy is not so delivered or mailed after having been so requested, the insurer shall be precluded from introducing the application in evidence in any action or proceeding based upon or involving the policy or its reinstatement or renewal.

(c) As to kinds of insurance other than life and accident and sickness insurance, no application for insurance signed by or on behalf of the insured shall be admissible in evidence in any action between the insured and the insurer arising out of the policy so applied for, if the insurer has failed, at expiration of thirty days after receipt by the insurer of written demand therefor by or on behalf of the insured, to furnish to the insured a copy of such application reproduced by any legible means.

§33-6-7. Representations in applications.

All statements and descriptions in any application for an insurance policy or in negotiations therefor, by or in behalf of the insured, shall be deemed to be representations and not warranties. Misrepresentations, omissions, concealments of facts, and incorrect statements shall not prevent a recovery under the policy unless:

(a) Fraudulent; or

(b) Material either to the acceptance of the risk, or to the hazard assumed by the insurer; or

(c) The insurer in good faith would either not have issued the policy, or would not have issued a policy in as large an amount, or would not have provided coverage with respect to the hazard resulting in the loss, if the true facts had been made known to the insurer as required either by the application for the policy or otherwise.

§33-6-8. Filing of forms.

(a) No insurance policy form, no group certificate form, no insurance application form where a written application is required and is to be made a part of the policy and no rider, endorsement or other form to be attached to any policy shall be delivered or issued for delivery in this state by an insurer unless it has been filed with the Commissioner and, to the extent required by subdivision (1), subsection (b) of this section, approved by the Commissioner, except that as to group insurance policies delivered outside this state, only the group certificates to be delivered or issued for delivery in this state shall be filed for approval with the Commissioner. This section does not apply to policies, riders, endorsements or forms of unique character designed for and used with relation to insurance upon a particular subject, or which relate to the manner of distribution of benefits or to the reservation of rights and benefits under life or accident and sickness insurance policies, and are used at the request of the individual policyholder, contract holder or certificate holder, nor to the surety bond forms.(b)(1) Forms for noncommercial lines shall be filed by an insurer no less than sixty days in advance of any delivery. At the expiration of the sixty-day period, unless the period was extended by the commissioner to obtain additional information from the insurer, the form is deemed to be approved unless prior thereto it was affirmatively approved or disapproved by the commissioner. Approval of any form by the commissioner constitutes a waiver of any unexpired portion of the sixty-day period.

(2) Forms for: (A) Commercial lines property and casualty risks; and (B) any mass-marketed life and/or health insurance policy offered to members of any association by the association shall be filed with the Commissioner and need not be approved by the Commissioner prior to use. The Commissioner may, within the first thirty days after receipt of the form, request information to ensure compliance with applicable statutory provisions and may disapprove forms not in compliance with the provisions of this chapter. If the Commissioner does not disapprove the form within the thirty-day period, the form is effective upon its first use after filing.

(c) When an insurer does not submit supporting information with the form filing that allows the Commissioner to determine whether the form meets all applicable statutory requirements, the Commissioner shall require the insurer to furnish supporting information. The sixty-day period for personal lines risks shall be suspended on the date the Commissioner requests additional information and shall recommence on the date the Commissioner receives the supporting information: Provided, That the Commissioner shall have no less than fifteen days from receipt of the supporting information to act. The Commissioner may request additional information after the initial sixty-day period with respect to noncommercial lines, or thirty-day period with respect to commercial lines and mass-marketed life and/or health insurance to associations, to ensure continuing compliance with applicable statutory provisions and may at any time, after notice and for cause shown, withdraw any approval or disapprove any form: Provided, however, That any disapproval by the Commissioner of any form or withdrawal of a previous approval shall state the grounds therefor and shall include a notice that the insurer may request a hearing on the denial or withdrawal of approval.

(d) The Commissioner may, by order, exempt from the requirements of this section for so long as he or she considers proper any insurance document or form or type specified in the order, to which, in his or her opinion, this section may not practicably be applied, or the filing and approval of which are, in his or her opinion, not desirable or necessary for the protection of the public.

(e) For purposes of this section:

(1) An association must have a minimum of sixty-one members at the outset of the issuance of the mass-marketed life and/or health insurance policy and shall have been organized and maintained in good faith for purposes other than that of obtaining or providing insurance. The association shall also have been in active existence for at least two years and shall have a Constitution and bylaws which provide that: (A) The association holds annual meetings to further purposes of its members; (B) except in the case of credit unions, the association collects dues or solicits contributions from members; and C) the members have voting privileges and representation on the governing board and committees that exist under the authority of the association: Provided, That upon written application by an association and for good cause shown, the Commissioner may grant an exemption to the association from the minimum member requirements of this section.

(2) "Commercial lines" means insurance for business and professional interests, except that it does not include medical malpractice insurance.

(3) "Noncommercial lines" means all insurance other than commercial lines and includes medical malpractice and insurance for personal, family and household needs.

(f) This section also applies to any form used by domestic insurers for delivery in a jurisdiction outside West Virginia if the insurance supervisory official of the jurisdiction informs the Commissioner that the form is not subject to approval or disapproval by the official and upon the Commissioner's order requiring the form to be submitted to him or her for that purpose. The same standards applicable to forms for domestic use apply to forms used by domestic insurers for delivery in a jurisdiction outside West Virginia.

§33-6-9. Grounds for disapproval of forms.

The commissioner shall disapprove any such form of policy, application, rider, or endorsement or withdraw any previous approval thereof:

(a) If it is in any respect in violation of or does not comply with this chapter.

(b) If it contains or incorporates by reference any inconsistent, ambiguous, or misleading clauses, or exceptions and conditions which deceptively affect the risk purported to be assumed in the general coverage of the contract.

(c) If it has any title, heading, or other indication of its provisions which is misleading.

(d) If the purchase of such policy is being solicited by deceptive advertising.

(e) If the benefits provided therein are unreasonable in relation to the premium charged.

(f) If the coverages provided therein are not sufficiently broad to be in the public interest.

§33-6-10. Standard provisions.

(a) Insurance contracts shall contain such standard provisions as are required by the applicable provisions of this chapter pertaining to contracts of particular kinds of insurance. The commissioner may waive the required use of a particular standard provision in a particular insurance policy form, if he finds such provision unnecessary for the protection of the insured and inconsistent with the purposes of the policy, and the policy is otherwise approved by him

(b) No policy shall contain any provision inconsistent with or contradictory to any standard provision used or required to be used, but the commissioner may approve any substitute provision which is, in his opinion, not less favorable in any particular to the insured or beneficiary than the standard provisions or optional standard provisions, otherwise required. This section shall not apply to the standard fire insurance policy.

(c) On or after October 1, 1996, the insurer shall provide to all prospective purchasers of individual life insurance policies with a face value of $25,000 or less a notice upon a form prescribed by the commissioner to such prospective policyholder that the total premiums paid by the purchaser at some point in the future may exceed the death benefit. For purposes of calculating whether or at what point premiums paid by the policyholder will exceed the death benefit, the insurer shall use the annual premium for the life insurance death benefit. All other costs, including, but not limited to, costs for benefits provided pursuant to a policy rider, and costs associated with the exercise of any option permitted by the policy, shall be excluded from the calculation. This notice shall be provided at the time of delivery of the policy. This subsection does not apply to mass market life insurance products as defined in section thirty-five of this article, to life insurance policies used exclusively to fund preneed burial contracts under article fourteen, chapter forty-seven of this code or to life insurance policies for which the total premiums paid by the purchaser will not at any time exceed the death benefit.

§33-6-11. Contents of policy.

Every policy, except surety and group policies, shall specify the names of the parties to the contract, the insurer's name, the subject of the insurance, the risks insured against, the time the insurance coverage becomes effective and the term during which such coverage continues, the premium (or if the exact amount of premium is determinable only at stated intervals or termination, a statement of the basis and rates upon which the premium is to be determined), and the conditions pertaining to the insurance.

§33-6-11a. Right to return Medicare supplement policy, certificate or contract.

Medicare supplement or limited benefit Medicare supplement policies, certificates or contracts (as such terms are defined by regulations issued by the commissioner) issued to persons eligible for Medicare by reason of age, other than those issued pursuant to direct response solicitation, shall have a notice prominently printed on the first page of the policy, certificate or contract, attached thereto stating in substance that the insured person shall have the right to return the policy, and to have the premium refunded if, after examination of the policy, certificate or contract, the insured person is not satisfied for any reason. Policies, certificates or contracts issued pursuant to a direct response solicitation to persons eligible for Medicare by reason of age shall have a notice prominently printed on the first page or attached thereto, stating in substance that the policyholder, certificate holder or contract holder shall have the right to return the policy, certificate or contract within thirty days of its delivery and to have the premium refunded if after examination the insured person is not satisfied for any reason.

§33-6-11b. Right to return life or accident and sickness insurance policy, certificate or contract.

All life or sickness and accident insurance policies, certificates or contracts issued to persons in this state shall have a notice prominently printed on the first page of the policy, certificate or contract stating in substance that the insured person or person obtaining the policy shall have the right to return the policy, certificate or contract within ten days of its receipt and to have the premium refunded if, after examination of the policy, certificate or contract, the person obtaining the insurance is not satisfied for any reason: Provided, That this section does not apply to group annuity policies, contracts or certificates issued in connection with a pension or profit-sharing plan qualified or exempt under sections 401, 403, 408, 457 or 501 of the Internal Revenue Code.

§33-6-12. Additional contents of policy.

A policy may contain additional provisions not inconsistent with this chapter and which are:

(a) Required to be inserted by the laws of the insurer's domicile;

(b) Necessary, because of the manner in which the insurer is constituted or operated, in order to state the rights and obligations of the parties; or

(c) Desired by the insurer and not prohibited by law nor in conflict with any provisions required to be included therein and which are considered reasonable and just.

§33-6-13. Policy provisions as to charter, bylaws, or other documents.

No policy shall contain any provision purporting to make any portion of the charter, bylaws or other constituent document of the insurer a part of the contract unless such portion is set forth in full in the policy. Any policy provision in violation of this section shall be invalid. This section shall not apply to the subscriber's agreement or power of attorney of a reciprocal insurer.

§33-6-14. Certain policy conditions, etc., voided.

No policy delivered or issued for delivery in West Virginia and covering a subject of insurance resident, located, or to be performed in West Virginia, shall contain any condition, stipulation or agreement requiring such 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, or preventing the bringing of an action against any such insurer for more than six months after the cause of action accrues, or limiting the time within which an action may be brought to a period of less than two years from the time the cause of action accrues in connection with all insurances other than marine insurances; in marine policies such time shall not be limited to less than one year from the date of occurrence of the event resulting in the loss. Any such condition, stipulation or agreement shall be void, but such voidance shall not affect the validity of the other provisions of the policy. This section shall not apply to the standard fire insurance policy.

§33-6-14a. Public liability insurance policies issued to charitable associations to contain provision for waiving of charitable immunity defense.

Any policy or contract of public liability insurance providing coverage for public liability sold, issued, or delivered in this state to any religious or charitable corporation or association, either directly or to the trustees of such associations, shall be read so as to contain a provision of endorsement whereby the company issuing such policy waives, or agrees not to assert as a defense, on behalf of the policyholder or any beneficiary thereof, to any claim covered by the terms of such policy within the policy limits, the immunity from liability of the insured by reason of such insured's charitable status, unless such provision or endorsement is rejected in writing by the named insured.

§33-6-15. Execution of policies.

Every insurance policy shall be executed in the name of and on behalf of the insurer by its officer, attorney-in-fact, employee, or representative duly authorized by the insurer. A facsimile signature of any such executing individual may be used in lieu of an original signature, except that in all policies other than those approved for machine vending the countersignature shall be in original handwriting. No insurance contract heretofore or hereafter issued and which is otherwise valid shall be rendered invalid by reason of the apparent execution thereof on behalf of the insurer by the imprinted facsimile signature of an individual not authorized so to execute as of the date of the policy.

§33-6-15a. Notation of consumer cost savings.

Each policy issued following enactment of this provision during the two thousand five regular session, during the year following the effective date, shall display in a prominent location on the policy itself or on an insert included with each policy and provided to each policyholder, statements as following:

(1) "YOUR COSTS FOR THIS POLICY (HAVE/HAVE NOT) BEEN REDUCED BY (insert savings amount here) BECAUSE OF CIVIL JUSTICE REFORMS ENACTED BY THE WEST VIRGINIA LEGISLATURE IN 2005 AND SIGNED INTO LAW BY THE GOVERNOR"; and

(2) "YOUR COST FOR THIS POLICY HAS BEEN REDUCED BY (insert savings amount here) BECAUSE OF PREMIUM SURCHARGE REDUCTIONS ENACTED BY THE WEST VIRGINIA LEGISLATURE IN 2005 AND SIGNED INTO LAW BY THE GOVERNOR".

If the insurer did not offer the type of insurance provided by the policy in two thousand four, the requirement for these statements do not apply.

This section was amended twice.

This version passed subsequent to the additional enactment.

§33-6-15a. Notation of consumer cost savings.

Each policy issued following enactment of this provision during the two thousand five regular session, during the year following the effective date, shall display in a prominent location on the policy itself or on an insert included with each policy and provided to each policyholder, statements as following:

(1) "YOUR COSTS FOR THIS POLICY (HAVE/HAVE NOT) BEEN REDUCED BY (insert savings amount here) BECAUSE OF INSURANCE LAW REFORMS ENACTED BY THE WEST VIRGINIA LEGISLATURE IN 2005 AND SIGNED INTO LAW BY THE GOVERNOR".

If the insurer did not offer the type of insurance provided by the policy in two thousand four, the requirement for these statements do not apply.

§33-6-16. Underwriters' and combination policies.

(a) Two or more licensed insurers may jointly issue, and shall be jointly and severally liable on, an underwriters' policy bearing their names. Any one insurer may issue policies in the name of an underwriter's department and such policy shall plainly show the true name of the insurer.

(b) Two or more insurers may, with the approval of the commissioner, issue a combination policy which shall contain provisions substantially as follows:

(1) That the insurers executing the policy shall be severally liable for the full amount of any loss or damage, according to the terms of the policy, or for specified percentages or amounts thereof, aggregating the full amount of insurance under the policy, and

(2) That service of process, or of any notice or proof of loss required by such policy, upon any of the insurers executing the policy, shall constitute service upon all such insurers.

(c) This section shall not apply to cosurety obligations.

§33-6-17. Validity of noncomplying forms.

Any insurance policy, rider, or endorsement hereafter issued and otherwise valid which contains any condition or provision not in compliance with the requirements of this chapter, shall not be thereby rendered invalid but shall be construed and applied in accordance with such conditions and provisions as would have applied had such policy, rider, or endorsement been in full compliance with this chapter.

§33-6-18. Binders.

(a) Binders or other contracts for temporary insurance may be made orally or in writing, and shall be deemed to include all the usual terms of the policy as to which the binder was given together with such applicable endorsements as are designated in the binder, except as superseded by the clear and express terms of the binder.

(b) No binder shall be valid beyond the issuance of the policy with respect to which it was given, and no agent or insurer shall issue a binder covering a period in excess of ninety days from its effective date.

(c) If the policy has not been issued a binder may be extended or renewed beyond such ninety days with the written approval of the commissioner, or in accordance with such rules and regulations relative thereto as the commissioner may promulgate.

(d) This section shall not apply to conditional receipts issued by life and accident and sickness insurers, nor to policies of group insurance.

§33-6-19. Renewal of policy by certificate or endorsement.

Any insurance policy terminating by its terms at a specified expiration date and not otherwise renewable, may be renewed or extended at the option of the insurer and upon a currently authorized policy form and at the premium rate then required therefor for a specific additional period or periods by certificate or by endorsement of the policy, and without requiring the issuance of a new policy when such certificate and its use for such purpose have been approved by the commissioner.

§33-6-20. Assignment of policies.

Whenever the insured in a policy owned by him has reserved to himself the right to change the beneficiary thereunder, the insured shall have the right to and may assign said policy to the extent permitted by the terms thereof as collateral security for a loan or loans, or for any other purpose without any beneficiary thereunder joining therein or assenting thereto, and such assignment shall subordinate the rights and interests of any beneficiary in the proceeds of the policy to the rights and interests of the assignee as created and defined by such assignment.

§33-6-21. Annulment of liability policies.

No insurance policy insuring against loss or damage through legal liability for the bodily injury or death by accident of any individual, or for damage to the property of any person, shall be retroactively annulled by any agreement between the insurer and the insured after the occurrence of any such injury, death, or damage for which the insured may be liable, and any such attempted annulment shall be void.

§33-6-22. Payment discharges insurer.

Whenever the proceeds of or payments under a life or accident and sickness policy or annuity contract heretofore or hereafter issued become payable in accordance with the terms of such policy or contract, or the exercise of any right or privilege thereunder, and the insurer makes payment thereof in accordance with the terms of the policy or contract or in accordance with any written assignment thereof, the person then designated in the policy or contract or by such assignment as being entitled thereto shall be entitled to receive such proceeds or payments and to give full release therefor, and such payments shall fully discharge the insurer from all claims under the policy or contract unless, before payment is made, the insurer has received at its home office written notice by or on behalf of some other person that such other person claims to be entitled to such payment or some interest in the policy or contract.

§33-6-23.

Repealed.

Acts, 1993 Reg. Sess., Ch. 69.

§33-6-24. Simultaneous deaths.

Where the individual insured or the annuitant and the beneficiary designated in a life policy or policy insuring against accidental death or in an annuity contract have died and there is not sufficient evidence that they have died otherwise than simultaneously, the proceeds of the policy or contract shall be distributed as if the insured or annuitant had survived the beneficiary, unless otherwise specifically provided in the policy or contract.

§33-6-25. Proof of loss forms.

An insurer shall furnish, upon written request of any person claiming to have a loss under an insurance contract issued by such insurer, forms of proof of loss for completion by such person.

§33-6-26. Acts of insurer not constituting waiver of policy provisions or defenses thereunder.

Without limitation of any right or defense of an insurer otherwise, none of the following acts by or on behalf of an insurer shall be deemed to constitute a waiver of any provision of a policy or of any defense of the insurer thereunder:

(a) Acknowledgment of the receipt of notice of loss or claim under the policy.

(b) Furnishing forms for reporting a loss or claim, for giving information relative thereto, or for making proof of loss, or receiving or acknowledging receipt of any such forms or proofs completed or uncompleted.

(c) Investigating any loss or claim under any policy or engaging in negotiations looking toward a possible settlement of any such loss or claim.

§33-6-27. Life insurance proceeds exempt from creditors.

(a) If a policy of insurance, whether heretofore or hereafter issued, is effected by any person on his own life or on another life, in favor of a person other than himself or, except in cases of transfer with intent to defraud creditors, if a policy of life insurance is assigned or in any way made payable to any such person, the lawful beneficiary or assignee thereof, other than the insured or the person so effecting such insurance or executors or administrators of such insured or the person so effecting such insurance, shall be entitled to its proceeds and avails against the creditors and representatives of the insured and of the person effecting the same, whether or not the right to change the beneficiary is reserved or permitted, and whether or not the policy is made payable to the person whose life is insured if the beneficiary or assignee shall predecease such person.

(b) Subject to the statute of limitations, the amount of any premiums for such insurance paid in fraud of creditors, with interest thereon, shall inure to their benefit from the proceeds of the policy, but the insurer issuing the policy shall be discharged of all liability thereon by payment of the proceeds in accordance with its terms, unless before such payment the insurer received written notice by or in behalf of some creditor, with specification of the amount claimed, claiming to recover for certain premiums paid in fraud of creditors.

(c) For the purposes of paragraph (a), above, a policy shall also be deemed to be payable to a person other than the insured if and to the extent that a facility-of-payment clause or similar clause in the policy permits the insurer to discharge its obligations after the death of the individual insured by paying the death benefits to a person as permitted by such clause.

§33-6-28. Group life insurance proceeds exempt from creditors.

(a) A policy of group life insurance or the proceeds thereof payable to the individual insured or to the beneficiary thereunder, shall not be liable, either before or after payment, to be applied by any legal or equitable process to pay any liability of any person having a right under the policy.

(b) This section shall not apply to group life insurance issued to a creditor covering his debtors, to the extent that such proceeds are applied to payment of the obligation for the purpose for which the insurance was so issued.

§33-6-29. Motor vehicle policy; injuries to guest passengers; coverage for loaned or leased motor vehicles; exceptions.

(a) An insurer may not issue any policy of bodily injury or property damage liability insurance which excludes coverage to the owner or operator of a motor vehicle on account of bodily injury or property damage to any guest or invitee who is a passenger in such motor vehicle.

(b) Every policy or contract of liability insurance which insures a motor vehicle licensed in this state with collision, comprehensive, property or bodily injury coverage shall extend these coverages to cover the insured individual while operating a motor vehicle which he or she is permitted to use by a person, firm or corporation that owns the vehicle and is engaged in the business of selling, repairing, leasing or servicing motor vehicles. Coverage under any motor vehicle insurance policy available to such insured individual shall be primary, and any collision, comprehensive, property or bodily injury insurance coverage owned or obtained by a person, firm or corporation that owns the motor vehicle and is engaged in the business of selling, repairing, leasing or servicing motor vehicles shall be secondary. Recovery under the motor vehicle owner's insurance policy shall not be permitted until the insured individual has exhausted the limits of all other insurance policies available to him or her: Provided, That the following conditions are met: (1) No separate consideration is paid by or on behalf of the insured individual at the time of his or her use of the vehicle; and (2) the insured individual is operating the vehicle with the business owner's permission as a replacement vehicle provided to the insured individual while his or her vehicle is out of use because it is being repaired or serviced by the business owner or another person with the permission of the business owner.

(c) Notwithstanding any provision of this section to the contrary, any insurance coverage available to the insured individual as described in subsection (b) of this section shall be secondary to any motor vehicle liability insurance owned or obtained by the person, firm or corporation engaged in the business of selling, repairing, leasing or servicing motor vehicles, if the insured individual is an employee of the business owner and is operating the motor vehicle with the permission of the business owner while acting within the scope of his or her employment or the insured individual is testing the vehicle for possible purchase or for a lease with more than a thirty-day term.

(d) Notwithstanding any provision of this code to the contrary, security maintained as required by section three, article two-a and section two, article four, chapter seventeen-d of this code on any motor vehicle owned by any person, firm or corporation engaged in the business of renting or leasing the motor vehicle is secondary to coverage under any motor vehicle liability insurance or other form of security meeting or exceeding the requirements in chapter seventeen-d of this code that is available and in effect for an individual with respect to the renting, leasing, operation, maintenance, or use of the motor vehicle: Provided, That any liability insurance purchased for additional consideration from the rental or leasing company shall be primary to other available insurance.

§33-6-30. Construction of policies.

(a) Every insurance contract shall be construed according to the entirety of its terms and conditions as set forth in the policy and as amplified, extended or modified by any rider, endorsement or application attached to and made a part of the policy: Provided, That the word "physician" when used in any accident and sickness policy or other contract providing for the payment of surgical procedures shall be construed to include a physician, dentist or chiropodist-podiatrist performing surgical procedures or chiropractor performing other health care services within the scope of his or her professional license: Provided, however, That any policy of insurance or medical or health service contract providing for payment or reimbursement for any professional services pertaining to eye examination, refractions or the fitting of corrective lenses shall be construed to include payment or reimbursement for professional services rendered by either a duly licensed physician or a duly licensed optometrist, within the scope of their respective professional licenses, and that the insured or subscriber have freedom of choice to select either a physician or an optometrist to render or perform professional services.

(b) The Legislature finds:

(1) That consumers and insurers both benefit from the legislative mandate that the Insurance Commissioner approve the forms used and the rates charged by insurance companies in this state;

(2) That certain classes of persons are seeking refunds of insurance premiums and seeking to void exclusions and other policy provisions on the basis that insurance companies allegedly failed to provide or demonstrate a reduction in premiums charged in relation to certain terms or exclusions incorporated into policies of insurance;

(3) That historically, as a prerequisite to a rate or form being approved, neither the Legislature nor the Insurance Commissioner has ever required that the insurer demonstrate that there was a specific premium reduction for certain exclusions incorporated into policies of insurance;

(4) That the provisions of this chapter were enacted with the intent of requiring the filing of all rates and forms with the Insurance Commissioner to enable the Insurance Commissioner to review and regulate rates and forms in a fair and consistent manner;

(5) That the provisions of this chapter do not provide and were not intended to provide the basis for monetary damages in the form of premium refunds or partial premium refunds when the form used and the rates charged by the insurance company have been approved by the Insurance Commissioner;

(6) That actions seeking premium refunds or partial premium refunds have a severe and negative impact upon insurers operating in this state by imposing unexpected liabilities when insurers have relied upon the Insurance Commissioner's approval of the forms used

and the rates charged insureds; and

(7) That it is in the best interest of the citizens of this state to ensure a stable insurance market.

(c) Nothing in this chapter may be construed as requiring specific line item premium discounts or rate adjustments corresponding to any exclusion, condition, definition, term or limitation in any policy of insurance, including policies incorporating statutorily mandated benefits or optional benefits which as a matter of law must be offered. Where any insurance policy form, including any endorsement thereto, has been approved by the commissioner, and the corresponding rate has been approved by the commissioner, there is a presumption that the policy forms and rate structure are in full compliance with the requirements of this chapter. It is the intent of the Legislature that the amendments in this section enacted during the regular session of two thousand two are: (1) A clarification of existing law as previously enacted by the Legislature, including, but not limited to, the provisions of subsection (k), section thirty-one of this article; and, (2) specifically intended to clarify the law and correct a misinterpretation and misapplication of the law that was expressed in the holding of the Supreme Court of Appeals of West Virginia in the case of Mitchell v. Broadnax, 537 S.E.2d 882 (W.Va. 2000). These amendments are a clarification of the existing law as previously enacted by this Legislature.

§33-6-31. Motor vehicle policy; omnibus clause; uninsured and underinsured motorists' coverage; conditions for recovery under endorsement; rights and liabilities of insurer.

(a) No policy or contract of bodily injury liability insurance, or of property damage liability insurance, covering liability arising from the ownership, maintenance or use of any motor vehicle, may be issued or delivered in this state to the owner of such vehicle, or may be issued or delivered by any insurer licensed in this state upon any motor vehicle for which a certificate of title has been issued by the Division of Motor Vehicles of this state, unless it contains a provision insuring the named insured and any other person, except a bailee for hire and any persons specifically excluded by any restrictive endorsement attached to the policy, responsible for the use of or using the motor vehicle with the consent, expressed or implied, of the named insured or his or her spouse against liability for death or bodily injury sustained or loss or damage occasioned within the coverage of the policy or contract as a result of negligence in the operation or use of such vehicle by the named insured or by such person: Provided, That in any such automobile liability insurance policy or contract, or endorsement thereto, if coverage resulting from the use of a nonowned automobile is conditioned upon the consent of the owner of such motor vehicle, the word "owner" shall be construed to include the custodian of such nonowned motor vehicles. Notwithstanding any other provision of this code, if the owner of a policy receives a notice of cancellation pursuant to article six-a of this chapter and the reason for the cancellation is a violation of law by a person insured under the policy, said owner may by restrictive endorsement specifically exclude the person who violated the law and the restrictive endorsement shall be effective in regard to the total liability coverage provided under the policy, including coverage provided pursuant to the mandatory liability requirements of section two, article four, chapter seventeen-d of this code, but nothing in such restrictive endorsement may be construed to abrogate the "family purpose doctrine".

(b) Nor may any such policy or contract be so issued or delivered unless it contains an endorsement or provisions undertaking to pay the insured all sums which he or she is legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle, within limits which shall be no less than the requirements of section two, article four, chapter seventeen-d of this code, as amended from time to time: Provided, That such policy or contract shall provide an option to the insured with appropriately adjusted premiums 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 an amount of $100,000 because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, in the amount of $300,000 because of bodily injury to or death of two or more persons in any one accident and in the amount of $50,000 because of injury to or destruction of property of others in any one accident: Provided, however, That such endorsement or provisions may exclude the first $300 of property damage resulting from the negligence of an uninsured motorist: Provided further, That such policy or contract shall provide an option to the insured with appropriately adjusted premiums to pay the insured all sums which he or she is legally entitled to recover as damages from the owner or operator of an uninsured or

underinsured motor vehicle up to an amount not less than limits of bodily injury liability insurance and property damage liability insurance purchased by the insured without set off against the insured's policy or any other policy. Regardless of whether motor vehicle coverage is offered and provided to an insured through a multiple vehicle insurance policy or contract, or in separate single vehicle insurance policies or contracts, no insurer or insurance company providing a bargained for discount for multiple motor vehicles with respect to underinsured motor vehicle coverage may be treated differently from any other insurer or insurance company utilizing a single insurance policy or contract for multiple covered vehicles for purposes of determining the total amount of coverage available to an insured. "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 of that insurance are either: (i) Less than limits the insured carried for underinsured motorists' coverage; or (ii) has been reduced by payments to others injured in the accident to limits less than limits the insured carried for underinsured motorists' coverage. No sums payable as a result of underinsured motorists' coverage may be reduced by payments made under the insured's policy or any other policy.

(c) As used in this section, the term "bodily injury" includes death resulting therefrom and the term "named insured" means the person named as such in the declarations of the policy or contract and also includes such person's spouse if a resident of the same household and the term "insured" means the named insured and, while resident of the same household, the spouse of any such named insured and relatives of either, while in a motor vehicle or otherwise, and any person, except a bailee for hire, who uses, with the consent, expressed or implied, of the named insured, the motor vehicle to which the policy applies or the personal representative of any of the above; and the term "uninsured motor vehicle" means a motor vehicle as to which there is no: (i) Bodily injury liability insurance and property damage liability insurance both in the amounts specified by section two, article four, chapter seventeen-d of this code, as amended from time to time; (ii) there is such insurance, but the insurance company writing the same denies coverage thereunder; or (iii) there is no certificate of self-insurance issued in accordance with the provisions of said section. A motor vehicle shall be deemed to be uninsured if the owner or operator thereof be unknown: Provided, That recovery under the endorsement or provisions is subject to the conditions hereinafter set forth.

(d) Any insured intending to rely on the coverage required by subsection (b) of this section shall, if any action be instituted against the owner or operator of an uninsured or underinsured motor vehicle, cause a copy of the summons and a copy of the complaint to be served upon the insurance company issuing the policy, in the manner prescribed by law, as though such insurance company were a named party defendant; such company shall thereafter have the right to file pleadings and to take other action allowable by law in the name of the owner, or operator, or both, of the uninsured or underinsured motor vehicle or in its own name.

Nothing in this subsection prevents such owner or operator from employing counsel of his or her own choice and taking any action in his or her own interest in connection with such

proceeding.

(e) If the owner or operator of any motor vehicle which causes bodily injury or property damage to the insured is unknown, the insured, or someone in his or her behalf, in order for the insured to recover under the uninsured motorist endorsement or provision, shall:

(1) Within twenty-four hours after the insured discover, and being physically able to report the occurrence of such accident, the insured, or someone in his or her behalf, reports the accident to a police, peace or to a judicial officer, unless the accident has already been investigated by a police officer;

(2) Notify the insurance company, within sixty days after such accident, that the insured or his or her legal representative has a cause or causes of action arising out of such accident for damages against a person or persons whose identity is unknown and setting forth the facts in support thereof; and, upon written request of the insurance company communicated to the insured not later than five days after receipt of such statement, make available for inspection the motor vehicle which the insured was occupying at the time of the accident; and

(3) Upon trial establish that the motor vehicle, which caused the bodily injury or property damage, whose operator is unknown, was a "hit and run" motor vehicle, meaning a motor vehicle which causes damage to the property of the insured arising out of physical contact of such motor vehicle therewith, or which causes bodily injury to the insured arising out of physical contact of such motor vehicle with the insured or with a motor vehicle which the insured was occupying at the time of the accident. If the owner or operator of any motor vehicle causing bodily injury or property damage be unknown, an action may be instituted against the unknown defendant as "John Doe", in the county in which the accident took place or in any other county in which such action would be proper under the provisions of article one, chapter fifty-six of this code; service of process may be made by delivery of a copy of the complaint and summons or other pleadings to the clerk of the court in which the action is brought, and service upon the insurance company issuing the policy shall be made as prescribed by law as though such insurance company were a party defendant. The insurance company has the right to file pleadings and take other action allowable by law in the name of John Doe.

(f) An insurer paying a claim under the endorsement or provisions required by subsection (b) of this section issubrogated to the rights of the insured to whom such claim was paid against the person causing such injury, death or damage to the extent that payment was made. The bringing of an action against the unknown owner or operator as John Doe or the conclusion of such an action does not constitute a bar to the insured, if the identity of the owner or operator who caused the injury or damages complained of, becomes known, from bringing an action against the owner or operator theretofore proceeded against as John Doe. Any recovery against such owner or operator shall be paid to the insurance company to the extent that such insurance company has paid the insured in the action brought against such owner or operator as John Doe, except that such insurance company shall pay its

proportionate part of any reasonable costs and expenses incurred in connection therewith, including reasonable attorney's fees. Nothing in an endorsement or provision made under this subsection, nor any other provision of law, operates to prevent the joining, in an action against John Doe, of the owner or operator of the motor vehicle causing injury as a party defendant, and such joinder is hereby specifically authorized.

(g) No such endorsement or provisions may contain any provision requiring arbitration of any claim arising under any such endorsement or provision, nor may anything be required of the insured except the establishment of legal liability, nor may the insured be restricted or prevented in any manner from employing legal counsel or instituting legal proceedings.

(h) The provisions of subsections (a) and (b) of this section do not apply to any policy of insurance to the extent that it covers the liability of an employer to his or her employees under any workers' compensation law.

(i) The commissioner of insurance shall formulate and require the use of standard policy provisions for the insurance required by this section, but use of such standard policy provisions may be waived by the commissioner in the circumstances set forth in section ten of this article.

(j) A motor vehicle is uninsured within the meaning of this section, if there has been a valid bodily injury or property damage liability policy issued upon such vehicle, but which policy is uncollectible, in whole or in part, by reason of the insurance company issuing such policy upon such vehicle being insolvent or having been placed in receivership. The right of subrogation granted insurers under the provisions of subsection (f) of this section does not apply as against any person or persons who is or becomes an uninsured motorist for the reasons set forth in this subsection.

(k) Nothing contained herein prevents any insurer from also offering benefits and limits other than those prescribed herein, nor does this section prevent any insurer from incorporating in such terms, conditions and exclusions as may be consistent with the premium charged.

(l) The Insurance Commissioner shall review on an annual basis the rate structure for uninsured and underinsured motorists' coverage as set forth in subsection (b) of this section and shall report to the Legislature on said rate structure on or before January 15, 1983, and on or before January 15, of each of the next two succeeding years.

(m) For insurance policies in effect on December 31, 2015, including motor vehicle insurance policies and liability policies that are of an excess or umbrella type that cover automobile liability, insurers are not required to make a new offer of uninsured and underinsured motor vehicle coverage upon the renewal if the liability coverage is increased solely to meet the requirements of the increased minimum required financial responsibility limits set forth in subdivision (b), section two, article four, chapter seventeen-d of this code. Those insurers that have issued policies that carry limits of coverage below the minimum

required financial responsibility limits in effect on December 31, 2015 shall increase such limits to an amount equal to or above the new minimum required financial responsibility limits when the policy is renewed but not later than December 31, 2016.

§33-6-31a. Rates charged for uninsured motorist coverage.

Rates charged by insurers for the minimum uninsured motorist coverage required under the provisions of section thirty-one, of this article, shall be separate from the rates charged by an insurer for the optional limits afforded the policyholder under said section.

§33-6-31b. Nondiscriminatory automobile insurance rates for handicapped persons.

No insurer, in determining rates to be charged for a policy or contract of bodily injury liability insurance or of property damage liability insurance, covering liability arising from the ownership, maintenance or use of a motor vehicle, may discriminate in any manner on the basis of an insured's or potential insured's physical handicap.

§33-6-31c. Substandard risk motor vehicle insurance policies; definitions; required notices and provisions; promulgation of rules; effective date; money penalty for failure to give required notice.

(a) For purposes of this section, the following definitions apply:

(1) A "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 of the following conditions:

(A) A record of traffic accidents;

(B) A record of traffic law violations;

(C) Undesirable occupational circumstances; or

(D) Any other valid underwriting consideration.

(2) "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.

(b) Every 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 have printed on the application, in bold-faced type in a contrasting color or in reverse print, a statement 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. IF THIS COVERAGE OR PREMIUM IS SATISFACTORY, YOU MAY BE ELIGIBLE FOR COVERAGE UNDER A STANDARD OR PREFERRED POLICY IF DURING THE NEXT THREE YEARS YOU HAVE NO TRAFFIC VIOLATIONS OR ACCIDENTS AND YOU MAINTAIN CONTINUOUS INSURANCE COVERAGE.

(c) Every motor vehicle insurance policy issued in this state and written on the basis of a substandard risk rate schedule shall have printed on the policy, in bold-faced type in a contrasting color or in reverse print, a statement 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. IF THIS COVERAGE OR PREMIUM IS SATISFACTORY, YOU MAY BE ELIGIBLE FOR COVERAGE UNDER A STANDARD OR PREFERRED POLICY IF DURING THE NEXT THREE YEARS YOU HAVE NO TRAFFIC VIOLATIONS OR ACCIDENTS AND

YOU MAINTAIN CONTINUOUS INSURANCE COVERAGE.

(d) All insurers licensed or registered in this state to market or sell substandard risk motor vehicle insurance policies shall submit all applications and policies for substandard risk insurance to the commissioner of insurance for approval prior to being used by the insurer.

(e) All insurers selling or which have in force substandard risk motor vehicle insurance policies shall provide a one-time notice in writing to the policyholders who have maintained continuous insurance coverage for three years, have not been convicted of any moving traffic violations and had no at fault accidents that they may be eligible for coverage under a standard or preferred policy. The commissioner may levy an administrative penalty not to exceed $1,000 for each incidence where an insurer fails to give notice in accordance with the provisions in this subsection.

(f) The commissioner shall promulgate rules in accordance with the provisions of article three, chapter twenty-nine-a of this code regarding the format, style, design and approval of substandard risk insurance applications, notices and policies and any other procedures that are required by this section.

(g) This section, as amended in the year 2002, shall take effect on July 1, 2002.

§33-6-31d. Form for making offer of optional uninsured and underinsured coverage.

(a) Optional limits of uninsured motor vehicle coverage and underinsured motor vehicle coverage required by §33-6-31 of this code shall be made available to the named insured at the time of initial application for liability coverage and upon any request of the named insured on a form prepared and made available by the Insurance Commissioner. The contents of the form shall be prescribed by the commissioner and shall specifically inform the named insured of the coverage offered and the rate calculation for the coverage, including, but not limited to, levels and amounts of the coverage available and the number of vehicles which will be subject to the coverage. The commissioner shall provide for the use of electronic means of delivery and electronic signing when issuing the prescribed form. The form shall allow any named insured to waive any or all of the coverage offered.

(b) Any insurer who issues a motor vehicle insurance policy in this state shall provide the form to each person who applies for the issuance of a policy by delivering the form to the applicant or by mailing the form to the applicant. Insurers may deliver the form by electronic means. Delivery by "electronic means" includes delivery of the form to an electronic mail address at which an applicant or policyholder has consented to receive notices or documents, by posting on an electronic network or site accessible via the Internet, electronic device, or mobile application, at or from which the applicant or policyholder has consented to receive delivery, or by any other delivery method that has been consented to by the applicant or policyholder. Any document delivered electronically satisfies any font, size, color, spacing, or other format requirements that are established for printed documents, provided that the format in the document delivered electronically has reasonably similar proportions or emphasis for the characters relative to the rest of the electronic document. The applicant shall complete, date, and sign the form and return the form to the insurer within 30 days after receipt of the form. Any signature executed in conformity with the Uniform Electronic Transactions Act in §39A-1-1 et seq. of this code is enforceable as provided by that act. An insurer or agent of the insurer is not liable for payment of any damages applicable under any optional uninsured or underinsured coverage authorized by §33-6-31 of this code for any incident which occurs from the date the form was mailed or delivered to the applicant until the insurer receives the form and accepts payment of the appropriate premium for the coverage requested in the form from the applicant: Provided, That if prior to the insurer’s receipt of the executed form the insurer issues a policy to the applicant which provides for optional uninsured or underinsured coverage, the insurer is liable for payment of claims against the optional coverage up to the limits provided in the policy. The contents of a form described in this section which has been signed by an applicant creates a presumption that the applicant and all named insureds received an effective offer of the optional coverages described in this section and that the applicant exercised a knowing and intelligent election or rejection of the offer as specified in the form. The election or rejection is binding on all persons insured under the policy.

(c) Failure of the applicant or a named insured to return the form described in this section to the insurer as required by this section within the time periods specified in this section creates a presumption that the person received an effective offer of the optional coverages

described in this section and that the person exercised a knowing and intelligent rejection of the offer. The rejection is binding on all persons insured under the policy.

(d) The insurer shall make the forms available to any named insured who requests different coverage limits on or after the effective date of this section. An insurer is not required to make the form available or notify any person of the availability of the optional coverages authorized by this section except as required by this section.

(e) Notwithstanding any of the provisions of this article to the contrary, including §33-6-31f of this code, for insurance policies in effect on December 31, 2015, insurers are not required to offer or obtain new uninsured or underinsured motorist coverage offer forms as described in this section on any insurance policy to comply with the amount of the minimum required financial responsibility limits set forth in §17D-4-2(b) of this code. All offer forms that were executed prior to January 1, 2016, shall remain in full force and effect.

(f) If an insurer offers to place an insured with an affiliate of the insurer, the insurer shall make available a new uninsured and underinsured motorist coverage offer form, in the manner provided by and pursuant to subsections (a) and (b) of this section. A named insured shall complete, date, and sign the form as provided by subsection (b) of this section and return the form to the insurer within 30 days after receipt of the form. If an insured does not return the form within 30 days, then the last form previously signed by the insured for the insurer or any affiliate governs the amount of uninsured and underinsured motorist coverage provided by the newly issuing insurer and remains binding on all persons insured under the policy.

§33-6-31e. Notice of proposed settlement for policy limits to underinsured motorist coverage carrier; waiver of subrogation; time limits.

(a) When an automobile liability insurer indemnifying a tortfeasor offers to pay its full policy limits of coverage for bodily injury or death to a claimant in a claim involving a motor vehicle accident, conditioned upon an underinsured motorist coverage carrier waiving its rights of subrogation against the tortfeasor, then the claimant or the liability insurer indemnifying the tortfeasor may give to the underinsured motorist coverage carrier notice in writing that an offer to settle for policy limits has been made by the liability insurer indemnifying the tortfeasor.

(b) The notice shall be in writing and sent by certified mail, return receipt requested, to the underinsured motorist coverage carrier, and it shall state plainly the following information:

(1) The name and address of the underinsured motorist coverage claimant;

(2) The name and address of the person in whose name the underinsured motorist coverage is written;

(3) The policy number of the policy under which the underinsured motorist coverage is written;

(4) The name of the tortfeasor;

(5) The name of the insurance company and the policy number for the insurance policy indemnifying the tortfeasor under which an offer to settle for policy limits has been made;

(6) A statement that the company indemnifying the tortfeasor has offered to settle with the claimant for policy limits, conditioned upon the waiver by the underinsured motorist coverage carrier of its subrogation rights against the tortfeasor; and

(7) A statement that under the law the underinsured motorist coverage carrier has sixty days to preserve its subrogation rights against the tortfeasor by providing written notice of its intention to do so and by paying to the claimant an amount equal to the policy limits that have been offered to the claimant by the liability insurance company indemnifying the tortfeasor.

(c) The underinsured motorist coverage carrier is considered to have fully waived its rights of subrogation against the tortfeasor, unless within sixty days from receipt of the notice described in subsection (b) above, the underinsured motorist coverage carrier sends in writing by certified mail, return receipt requested, to the claimant and to the liability insurer indemnifying the tortfeasor written notice that it does not waive its rights of subrogation against the tortfeasor. This notice is not effective unless the notice to the claimant is accompanied by payment to the claimant of an amount equal to the policy limits which had been offered by the liability insurance company indemnifying the tortfeasor. If the underinsured motorist carrier fails to send the notice provided for in this subsection or fails

to pay the sum required by this subsection within the time specified, then the underinsured motorist coverage carrier is considered to have waived its subrogation rights against the tortfeasor, and the claimant may proceed to consummate the settlement about which notice had been provided, as set forth in subsections (a) and (b) of this section.

(d) If the underinsured motorist carrier gives notice and tenders the payment, as required in subsection (c) of this section, then the underinsured motorist carrier is and remains subrogated to the rights of the claimant as to the tortfeasor to the extent of any and all sums paid by the underinsured motorist carrier to the claimant, as provided under current law. The payment by the underinsured motorist coverage carrier of the amount equal to the policy limits offered by the liability insurer indemnifying the tortfeasor, as provided for in this section, shall not serve in any way to waive, change or increase the amount of the applicable underinsured motorist coverage beyond the underlying underinsured motorist coverage policy limits.

(e) The provisions of this section shall apply only to written notices sent to underinsured motorist coverage carriers on or after the effective date of this section.

§33-6-31f. Uninsured and underinsured motorists' coverage optional on umbrella and excess type liability policies.

(a) Notwithstanding any other provisions of this article, insurers issuing or providing liability policies that are of an excess or umbrella type and which are written to cover automobile liability shall offer uninsured and underinsured motor vehicle coverage on such policies in an amount not less than the amount of liability insurance purchased by the named insured: Provided, That the named insured may decline any or all of the coverage offered under the excess or umbrella type policy.

(b) Offers of optional uninsured and underinsured motor vehicle coverage required by subsection (a) of this section shall be made to the named insured on a form prepared and made available by the Insurance Commissioner on or before the effective date of this section. The form shall allow any named insured to decline any or all of the coverage offered.

(c) Offers of optional uninsured and underinsured motor vehicle coverage required by subsection (a) of this section shall be made to the named insured by delivering the form at the time of initial application for insurance policies described in subsection (a) of this section or by mailing the form to the named insured along with the initial premium notice. The named insured shall complete, date, sign, and return the form to the insurer within thirty days after receipt thereof. No insurer or agent thereof is liable for payment of any damages applicable under any optional uninsured or underinsured coverage described in this section which occurs from the date the form was mailed or delivered to the named insured until the insurer receives the form and accepts payment of the premium for the coverage requested therein from the named insured: Provided, That if prior to the insurer's receipt of the executed form, the insurer issues a policy described in this section to the named insured which provides for such optional uninsured or underinsured coverage, the insurer shall be liable for payment of claims against such optional coverage up to the limits provided in such policy. The contents of a form described in this section which has been signed by a named insured shall create a presumption that such named insured and all named insureds received an effective offer of the optional coverages described in this section and that such named insured exercised a knowing and intelligent election or rejection, as the case may be, of such offer specified in the form. Such election or rejection shall be binding on all persons insured under the policy.

(d) Failure of the named insured to return the form described in this section to the insurer as required by this section within the time periods specified in this section creates a presumption that such person received an effective offer of the optional coverages described in this section and that such person exercised a knowing and intelligent rejection of such offer. Such rejection is binding on all persons insured under the policy.

(e) The insurer shall make such forms available to any named insured who requests different coverage limits on or after the effective date of this section. No insurer is required to make forms described herein available or notify any person of the availability of such optional coverages authorized by this section except as required by this section.

§33-6-31g. Electronic insurance verification program; insurer's duty to cooperate.

(a) If the Division of Motor Vehicles establishes an electronic insurance verification program in accordance with the provisions of section six-a, article two-a, chapter seventeen-d of this code, any insurance company that issues or delivers in this state a policy or contract of bodily injury liability insurance or of property damage liability insurance covering liability arising from the ownership, maintenance or use of any motor vehicle, or upon any motor vehicle for which a certificate of title has been issued by the Division of Motor Vehicles of this state, shall comply with the requirements of the program.

(b) The insurance commissioner may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code as necessary to implement the provisions of this section, and may initially promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code. Such rules may prescribe penalties, including fines and other administrative sanctions, that may be imposed by the commissioner for a company's failure to comply with requirements of the electronic insurance verification program.

§33-6-31h. Excluded drivers; definitions; legislative findings; restrictive endorsements.

(a) For purposes of this section, the following definitions apply:

(1) A "motor vehicle liability policy" means an "owner's policy" or an "operator's policy" of liability insurance certified as provided in section twelve, article four, chapter seventeen-d of this code.

(2) "Excluded driver" means any driver specifically excluded from coverage under section thirty- one, article six, chapter thirty-three of this code.

(3) "Minimum financial responsibility limits" means those limits defined in section two, article four, chapter seventeen-d of this code.

(b) The Legislature finds that:

(1) The explicit, plain language of a motor vehicle liability policy between an insurer and its insureds should control its effect;

(2) Where insurers are required by the common law to provide minimum financial responsibility limits coverage for excluded drivers, consumers not excluded by restrictive endorsement are negatively impacted;

(3) The decision of the Supreme Court of Appeals of West Virginia in Jones v. Motorists Mutual Insurance Company, 177 W. Va. 763 (1987) interpreted chapter seventeen-d of this code to require insurers to provide minimum financial responsibility limits of coverage to excluded drivers; and

(4) It is not the intent of the legislature to require insurers to provide minimum financial responsibility limits of coverage to excluded drivers.

(c) When any person is specifically excluded from coverage under the provisions of a motor vehicle liability policy by any restrictive endorsement to the policy, the insurer is not required to provide any coverage, including both the duty to indemnify and the duty to defend, for damages arising out of the operation, maintenance or use of any motor vehicle by the excluded driver, notwithstanding the provisions of chapter seventeen-d of this code.

§33-6-32. Newly born children to be covered by all health insurance policies.

All individual and group health insurance policies providing coverage on an expense incurred basis and individual and group service or indemnity type contracts issued by a nonprofit corporation which provide coverage for a family member of the insured or subscriber shall, as to such family members' coverage, also provide that the health insurance benefits applicable for children shall be payable with respect to a newly born child of the insured or subscriber from the moment of birth.

The coverage for newly born children shall consist of coverage of injury or sickness including the necessary care and treatment of medically diagnosed congenital defects and birth abnormalities.

If payment of a specific premium or subscription fee is required to provide coverage for a child, the policy or contract may require that notification of birth of a newly born child and payment of the required premium or fees must be furnished to the insurer or nonprofit service or indemnity corporation within thirty-one days after the date of birth in order to have the coverage continue beyond such thirty-one day period.

The requirements of this section shall apply to all insurance policies and subscriber contracts now existing or hereafter delivered or issued for delivery in this state.

§33-6-33. Valuation of motor vehicle involved in claim.

Insurance companies doing business in this state shall use the most recent version of an "official used car guide" approved by the Insurance Commissioner as a guide for setting the minimum value of any motor vehicle involved in a claim settlement arising from the total loss of a motor vehicle. In addition to any cash settlement value so agreed to by the claimant, there shall be added an amount equal to the consumers sales tax set forth in §11-15-3c (b) of this code.

§33-6-34. Fee for form, rate, and rule filing.

(a) As used in this section, "filing" means any form filing made pursuant to §33-6-8 of this code or any rule or rate filing made pursuant to this chapter.

(b) A fee of $100 shall be submitted with each filing for each insurer, irrespective of the number of forms, rules, or rates included within or affected by the filing. If a filing is made on behalf of more than one insurer, other than a filing made by a rating organization licensed by the commissioner, the applicable fee shall be $100 multiplied by the number of insurers on whose behalf the filing is made. Fees submitted pursuant to this section may not be refunded, and a resubmission of a filing previously disapproved by the commissioner shall be considered a new filing for the purposes of the filing fee. Any request by the commissioner for additional information pertaining to a form filing shall not be considered a new filing for purposes of the filing fee. All fees collected pursuant to this section shall be used for the operation of the offices of the Insurance Commissioner.

§33-6-35. Mass marketed life and health insurance.

(a) No mass marketed life or health insurance including mass marketed life or health insurance under a group or blanket policy issued outside this state to residents of this state, shall be effected on persons in this state until the commissioner finds that the total charges for the insurance to the persons insured are reasonable in relation to the benefits provided.

(1) "Direct response solicitation" means any offer by an insurer to persons in this state, either directly or through a third party, to effect life or health insurance coverage which enables the individual to apply or enroll for the insurance on the basis of the offer. It shall not include solicitations for insurance through an employee benefit plan which is defined in P.L. 90-406, 88 Stat. 829, nor shall it include such a solicitation through the individual's creditor with respect to credit life or credit health insurance.

(2) "Mass marketed life or health insurance" for purposes of this article, means the insurance under any individual, franchise, group or blanket policy of life or health insurance which is offered by means of direct response solicitation through a sponsoring organization or through mails or other mass communications media and under which the person insured pays all or substantially all of the cost of his or her insurance.

(b) Any insurer extending mass marketed life or health insurance under a group or blanket policy issued outside this state to residents of this state shall comply with respect to such insurance with the requirements of this state relating to advertising and to claim settlement practices.

§33-6-36. Continuation of coverage under automobile liability policy; selection of coverage; exclusions; notice.

(a) In the event of death, legal separation or termination of the marital relationship of the named insured, the named insured or spouse covered by a motor vehicle liability policy for a period of two or more years shall, upon request of the named insured or spouse within thirty days of the expiration of said policy, be issued his or her own individual motor vehicle liability insurance policy providing the same coverage as the original policy through the same insurer, without any lapse in coverage: Provided, That any such named insured or spouse may elect to increase or decrease the amount of coverage in his or her respective policies without affecting any privilege provided by this section. Any named insured or spouse requesting an individual policy pursuant to this section shall be entitled to the continuation of all rights and privileges afforded by section one-a and section four of article six-a of this chapter which were accrued under the original policy: Provided, however, That this section shall not apply to any motor vehicle liability insurance policy canceled, nonrenewed or terminated pursuant to the provisions of section one or section four, article six-a of this chapter.

(b) Insurers shall notify all named insureds at policy issuance or the first renewal after the effective date of this section and upon any change or termination of the policy for reasons other than those provided in sections one and four of article six-a of this chapter of the right of the named insured or spouse to continue coverage as provided by this section.

(c) The commissioner shall promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code regarding the form of such notice and procedures required by this section.

§33-6-37. Cancellation or nonrenewal of a combination insurance policy; offer of optional coverage; date of inception of optional coverage.

Notwithstanding of any provision of this chapter to the contrary, an insurer may cancel or nonrenew a combination automobile and homeowners policy of insurance if either the automobile or homeowners insurance in such policy may be cancelled or nonrenewed pursuant to the cancellation or nonrenewal provisions of this chapter pertaining to such insurance: Provided, That the insurer shall offer, on a form approved by the commissioner, to issue a policy of insurance, effective as of the date of cancellation of the combination policy, to the insured for the insurance that was not cancelled or nonrenewed and shall issue such policy if the offer is accepted by the insured. For the purposes of cancellation, nonrenewal and termination of policies provided for in articles six-a and seventeen-a of this chapter, the inception date of a reissued policy is the inception date of the combination policy.

§33-6-38. Lyme disease to be covered by all health insurance policies.

All individual and group health insurance policies providing coverage on an expense-incurred basis and individual and group service or indemnity type contracts issued by a nonprofit corporation shall provide coverage for long-term antibiotic therapy for a patient with Lyme disease when determined to be medically necessary and ordered by a licensed physician after making a thorough evaluation of the patient's symptoms, diagnostic test results, or response to treatment.

§33-6-39. Prohibitions related to dental insurance plans, agreements, charges, and reimbursements; definitions.

(a) For purposes of this section:

"Covered services" means dental care services for which reimbursement is available/ under an enrollee's plan contract, or for which reimbursement would be available but for the application of contractual limitations such as deductibles, copayments, coinsurance, waiting periods, annual or lifetime maximum, frequency limitations, alternative benefit payments, or any other limitation.

"Contractual discount" means a percentage reduction from the provider's usual and customary rate for covered dental services and materials required under a participating provider agreement.

"Dental plan" includes any policy of insurance which is issued by a health care service contractor which provides for coverage of dental services not in connection with a medical plan.

"Materials" includes, but is not limited to, any material or device utilized within the scope of practice by a licensed dentist.

(b) No contract of any health care service contractor that covers any dental services, and no contract or participating provider agreement with a dentist may require, directly or indirectly, that a dentist who is a participating provider, provide services to an enrolled participant at a fee set by, or a fee subject to the approval of, the health care services contractor unless the dental services are covered services.

(c) A health care service contractor or other person providing third-party administrator services shall not make available any providers in its dental network to a plan that sets dental fees for any services except covered services.

(d) A dentist may not charge more for services and materials that are noncovered services under a dental benefits policy than his or her usual and customary fee for those services and materials.

(e) Reimbursement paid by a dental plan for covered services and materials shall be reasonable and may not provide nominal reimbursement in order to claim that services and materials are covered services.

(f) This section applies to dental plans, contracts, and participating provider agreements which take effect or are renewed on or after July 1, 2019.

§33-6-40. Military service as factor in insurance rates.

With respect to any fire, marine, or casualty insurance contract, no person may deny, refuse to renew, cancel coverage, or charge increased premiums for applicants or insureds solely as a result of a uniformed service member's performance of active military duty in the United States armed forces or as a member of a reserve component of the United States armed forces, to include the National Guard of a state or territory, because the uniformed service member fails to meet underwriting standards that require continuous coverage unless the failure to maintain continuous coverage existed prior to the applicant's or insured's entry into active duty status and was not related in any way to the applicant's or insured's military service. For the purposes of this section, service in the National Guard includes any full-time active duty for training in the National Guard, active duty operational support, active duty special work, state active duty as a member of a National Guard unit, or any other periods of service pursuant to Title 32 of the United States Code or active service of the state or territory. For purposes of determining premiums, an insurer shall consider such persons as having maintained continuous coverage.