
WEST VIRGINIA CODE CHAPTER 33
ARTICLE 6A

WV Legislature

§33-6A-1. Cancellation prohibited except for specified reasons; notice.

(a) No insurer once having issued or delivered a policy providing automobile liability insurance for a private passenger automobile may, after the policy has been in effect for 60 days, or in case of renewal effective immediately, issue or cause to issue a notice of cancellation during the term of the policy except for one or more of the reasons specified in this section:

(1) The named insured fails to make payments of premium for the policy or any installment of the premium when due;

(2) The policy is obtained through material misrepresentation;

(3) The insured violates any of the material terms and conditions of the policy;

(4) The named insured or any other operator, either residing in the same household or who customarily operates an automobile insured under the policy:

(A) Has had his or her operator's license suspended or revoked during the policy period including suspension or revocation for failure to comply with the provisions of Chapter 17C, Article 5A of this code regarding consent for a chemical test for intoxication: *Provided*, That when a license is suspended for 60 days by the Commissioner of the Division of Motor Vehicles because a person drove a motor vehicle while under the age of 21 years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, pursuant to subsection (l), section two of said article, the suspension may not be grounds for cancellation; or

(B) Is or becomes subject to epilepsy or heart attacks and the individual cannot produce a certificate from a physician testifying to his or her ability to operate a motor vehicle; or

(5) The named insured or any other operator, either residing in the same household or who customarily operates an automobile insured under such policy, is convicted of or forfeits bail during the policy period for any of the following reasons:

(A) Any felony or assault, involving the use of a motor vehicle;

(B) Any offense contained within §17C-5-1 of this code;

(C) Operating a motor vehicle while under the influence of alcohol or of any controlled substance or while having an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight;

(D) Leaving the scene of a motor vehicle accident in which the insured is involved without reporting it as required by law;

(E) Theft of a motor vehicle or the unlawful taking of a motor vehicle;

(F) Making false statements in an application for a motor vehicle operator's license; or

(G) Three or more moving traffic violations committed within a period of twelve months, each of which results in three or more points being assessed on the driver's record by the Division of Motor Vehicles, whether or not the insurer renewed the policy without knowledge of all such violations. Notice of any cancellation made pursuant to this subsection shall be mailed to the named insured either during the current policy period or during the first full policy period following the date that the third moving traffic violation is recorded by the Division of Motor Vehicles.

(b) Except as provided in subsections (c) and (d) of this section, no insurer may cancel a policy of automobile liability insurance without first giving the insured thirty days' notice of its intention to cancel. Notice of cancellation shall either be sent by first class mail to the named insured at the address supplied on the application for insurance, or by email or other electronic means if at the request of the policyholder in accordance with the Uniform Electronic Transactions Act as codified in chapter thirty-nine-a of this code, and shall state the effective date of the cancellation and provide a written explanation of the specific reason for the cancellation.

(c) If, pursuant to subsection (a) of this section, an insurer cancels a policy of automobile liability insurance for the failure of the named insured to make payments of premium for the policy or any installment of the premium when due, then the insurer shall first give the insured at least fourteen days' notice of its intention to cancel. Notice of cancellation shall be sent by first class mail to the named insured at the address supplied on the application for insurance, or by email or other electronic means if at the request of the policyholder in accordance with the Uniform Electronic Transactions Act as codified in chapter thirty-nine-a of this code, and shall state the effective date of the cancellation and provide a written explanation of the specific reason for the cancellation. The notice period provided herein shall begin to run on the date mailed and payment shall be deemed accomplished by depositing in first class mail valid payment on or before the expiration date of the fourteen day notice period.

(d) If a named insured fails to make the initial payment of premium or any initial installment of the premium after the initial issuance of an automobile liability insurance policy, the insurance policy is voidable from the effective date and time the policy was issued: *Provided*, That the insurer shall send the insured written notice that the policy will be voided absent payment within ten days of any amounts due under the terms of the policy. Such notice shall either be sent by first class mail to the named insured at the address supplied on the application for insurance, or by email or other electronic means if at the request of the policyholder in accordance with the Uniform Electronic Transactions Act as codified in chapter thirty-nine-a of this code, and shall explain the specific reason for the voidance.

§33-6A-1a. Loss payee defined; notification of cancellation and nonrenewal to loss payee.

(a) For purposes of this article, a loss payee is defined as the person or persons not a named insured designated on an automobile liability insurance policy contract as being entitled to the proceeds of or payments under such policy.

(b) In every instance in which an insurer notifies an insured of its intent to cancel or not renew an automobile liability insurance contract or policy, the insurer shall also provide notice to the loss payee of such cancellation and nonrenewal in accordance with the same notice requirements established for the insured pursuant to sections one and four of this article.

§33-6A-2. Cancellation for other reasons void.

Any purported cancellation by an insurer of a policy of automobile liability insurance which has been in effect for sixty days and which has been renewed shall be void if the purported cancellation is contrary to section one of this article. For purposes of this article, the transfer of an insured between insurance companies within the same group is not considered a cancellation or nonrenewal of an automobile liability insurance policy if the transfer is based upon any valid underwriting reason involving a substantially increased risk associated with the policy.

§33-6A-3. Insurer to specify reasons for cancellation; immunity from liability or suit.

In every instance in which a policy or contract of automobile liability insurance which has been in effect sixty days or which has been renewed is canceled by the insurer, the insurer or its duly authorized agent shall, in the notice of cancellation or at the written request of the named insured, specify the reason or reasons relied upon by the insurer for the cancellation. These reasons shall be stated in a written notice and shall, if not provided in the notice of cancellation, be made within thirty days after the request: Provided, That there shall be no liability on the part of, and no cause of action shall arise against, any insurer or its agents or its authorized investigative sources for any statements made with probable cause by the insurer, agent or investigative source in a written notice required to be given pursuant to this section. A notice of cancellation for nonpayment of premium is not void on the grounds that the notice includes the amount of premium due or the date by which payment was to be paid.

§33-6A-4. Advance notice of nonrenewal required; assigned risk policies; reasons for nonrenewal; hearing and review after nonrenewal.

(a) No insurer shall fail to renew an outstanding automobile liability or physical damage insurance policy unless the nonrenewal is preceded by at least forty-five days advance notice to the named insured of the insurer's election not to renew the policy: *Provided*, That subject to this section, nothing contained in this article shall be construed to prevent an insurer from refusing to issue an automobile liability or physical damage insurance policy upon application to the insurer, nor shall any provision of this article be construed to prevent an insurer from refusing to renew a policy upon expiration, except as to the notice requirements of this section, and except further as to those applicants lawfully submitted pursuant to the West Virginia assigned risk plan.

(b) An insurer may not fail to renew an outstanding automobile liability or physical damage insurance policy which has been in existence for two consecutive years or longer except for the following reasons:

(1) The named insured fails to make payments of premium for the policy or any installment of the premium when due;

(2) The policy is obtained through material misrepresentation;

(3) The insured violates any of the material terms and conditions of the policy;

(4) The named insured or any other operator, either residing in the same household or who customarily operates an automobile insured under the policy:

(A) Has had his or her operator's license suspended or revoked during the policy period; or

(B) Is or becomes subject to a physical or mental condition that prevents the insured from operating a motor vehicle, and the individual cannot produce a certificate from a physician testifying to his or her ability to operate a motor vehicle;

(5) The named insured or any other operator, either residing in the same household or who customarily operates an automobile insured under the policy, is convicted of or forfeits bail during the policy period for any of the following reasons:

(A) Any felony or assault, involving the use of a motor vehicle;

(B) Any offense contained within §17C-5-1 of this code;

(C) Operating a motor vehicle while under the influence of intoxicating liquor or of any narcotic drug;

(D) Leaving the scene of a motor vehicle accident in which the insured is involved without reporting it as required by law;

(E) Theft of a motor vehicle or the unlawful taking of a motor vehicle; or

(F) Making false statements in an application for a motor vehicle operator's license;

(6) The named insured or any other operator, either residing in the same household or who customarily operates an automobile insured under the policy, is convicted of or forfeits bail during the policy period for two or more moving traffic violations committed within a period of twelve months, each of which results in three or more points being assessed on the driver's record by the Division of Motor Vehicles, whether or not the insurer renewed the policy without knowledge of all of the violations: *Provided*, That an insurer that makes an election pursuant to section four-b of this article to issue all nonrenewal notices pursuant to this section, may nonrenew an automobile liability or physical damage insurance policy if the named insured, or any other operator, either residing in the same household or who customarily operates an automobile insured under the policy is convicted of or forfeits bail during the policy period for two or more moving traffic violations committed within a period of twenty-four months, each of which occurs on or after July 1, 2004, and after the date that the insurer makes an election pursuant to section four-b of this article, and results in three or more points being assessed on the driver's record by the Division of Motor Vehicles, whether or not the insurer renewed the policy without knowledge of all of the violations. Notice of any nonrenewal made pursuant to this subdivision shall be mailed to the named insured either during the current policy period or during the first full policy period following the date that the second moving traffic violation is recorded by the Division of Motor Vehicles;

(7) The named insured or any other operator either residing in the same household or who customarily operates an automobile insured under the policy has had a second at-fault motor vehicle accident within a period of twelve months, whether or not the insurer renewed the policy without knowledge of all of the accidents: *Provided*, That an insurer that makes an election pursuant to section four-b of this article to issue all nonrenewal notices pursuant to this section, may nonrenew an automobile liability or physical damage insurance policy under this subsection if the named insured or any other operator either residing in the same household or who customarily operates an automobile insured under such policy has had two at-fault motor vehicle accidents within a period of thirty-six months, each of which occurs after July 1, 2004, and after the date that the insurer makes an election pursuant to section four-b of this article, and results in a claim paid by the insurer for each accident, whether or not the insurer renewed the policy without knowledge of all of the accidents. Notice of any nonrenewal made pursuant to this subsection shall be mailed to the named insured either during the current policy period or during the first full policy period following the date of the second accident; or

(8) The insurer ceases writing automobile liability or physical damage insurance policies throughout the state after submission to and approval by the commissioner of a withdrawal plan or discontinues operations within the state pursuant to a withdrawal plan approved by the commissioner.

(c) An insurer that makes an election pursuant to section four-b of this article to issue all nonrenewal notices pursuant to this section shall not fail to renew an automobile liability or physical damage insurance policy when an operator other than the named insured has violated the provisions of subdivision (6) or (7), subsection (b) of this section, if the named insured, by restrictive endorsement, specifically excludes the operator who violated the provision. An insurer issuing a nonrenewal notice informing the named insured that the policy will be nonrenewed for the reason that an operator has violated the provisions of subdivision (6) or (7), subsection (b) of this section, shall at that time inform the named insured of his or her option to specifically exclude the operator by restrictive endorsement and shall further inform the named insured that upon obtaining the restrictive endorsement, the insurer will renew the policy or rescind the nonrenewal absent the existence of any other basis for nonrenewal set forth in this section.

(d) A notice provided under this section shall state the specific reason or reasons for nonrenewal and shall advise the named insured that nonrenewal of the policy for any reason is subject to a hearing and review as provided for in section five of this article. Cost of the hearing shall be assessed against the losing party but shall not exceed \$75. The notice must also advise the insured of possible eligibility for insurance through the West Virginia assigned risk plan.

(e) Notwithstanding the provisions of subsection (a) of this section, the insurer shall reinstate any automobile liability or physical damage insurance policy that has not been renewed due to the insured's failure to pay the renewal premium when due if:

(1) None of the other grounds for nonrenewal as set forth in this section exist; and

(2) The insured makes an application for reinstatement within forty-five days of the original expiration date of the policy. If a policy is reinstated as provided for in this paragraph, then the coverage afforded shall not be retroactive to the original expiration date of the policy: *Provided*, That such policy shall be effective on the reinstatement date at the current premium levels offered by the company and shall not be afforded the protections of this section relating to renewal of an outstanding automobile liability or physical damage insurance policy that has been in existence for at least two consecutive years.

§33-6A-4a. Alternative method for nonrenewal for automobile liability and physical damage insurance.

(a) On or after July 1, 2004, an insurer may nonrenew an automobile liability or physical damage insurance policy for any reason which is consistent with its underwriting standards.

(b) Notwithstanding any other provisions in this section, race, religion, nationality, ethnic group, age, sex, marital status, or other reason prohibited by the provisions of this chapter may not be considered as a reason for nonrenewal;

(c) Notwithstanding the provisions of section four of this article, a nonrenewal may only be issued pursuant to the provisions of this section upon forty-five days advance notice to the named insured of the insurer's election not to renew the policy.

(d) The total number of nonrenewal notices issued each year, commencing on July 1, 2004, by the insurer, resulting in nonrenewal, pursuant to this section may not exceed one percent per year of the total number of the policies of the insurer in force at the end of the previous calendar year in this state: Provided, That the total number of nonrenewal notices issued each year to insureds within any given county in this state resulting in nonrenewal may not exceed one percent per year of the total number of the policies of the insurer in force in that county at the end of the previous calendar year: Provided, however, That an insurer may nonrenew one policy per year in any county if the applicable percentage limitation results in less than one policy.

(e) A notice issued pursuant to this section shall state the specific reason or reasons for refusal to renew and shall advise the named insured that nonrenewal of the policy for any reason is subject to a hearing and review as provided for in section five of this article: Provided, That the hearing shall relate to whether the nonrenewal of the policy was issued for a discriminatory reason, was based upon inadequate notice, an underwriting standard by the commissioner found to be in violation of this chapter or causes the insurer to exceed the percentage limitations, or percentage limitations by county, of nonrenewal notices set forth in this section. Cost of the hearing shall be assessed against the losing party but shall not exceed \$75. The notice shall also advise the insured of possible eligibility for insurance through the West Virginia assigned risk plan.

(f) Each insurer licensed to write automobile liability and physical damage insurance policies in this state shall file with the commissioner a copy of its underwriting standards, including any amendments or supplements. The commissioner shall review and examine the underwriting standards to ensure that they are consistent with generally accepted underwriting principles. The underwriting standards filed with the commissioner shall be considered confidential by law and privileged, are exempt from disclosure pursuant to chapter twenty-nine-b of this code, are not open to public inspection, are not subject to subpoena, and are not subject to discovery or admissible in evidence in any criminal, private civil or administrative action and are not subject to production pursuant to court order. The commissioner shall promulgate legislative rules pursuant to chapter twenty-nine-a of this

code to implement the provisions of this section.

(g) Each insurer that has elected to issue nonrenewal notices pursuant to the percentage limitations provided in this section shall report to the commissioner, on a form prescribed by the commissioner, on or before September 30, of each year the total number of nonrenewal notices issued in this state and in each county of this state for the preceding year. The insurer shall also report to the commissioner the specific reason or reasons for the nonrenewals by county which have been issued pursuant to this section.

§33-6A-4b. Manner of making election relating to nonrenewals.

(a) Each insurer licensed to write automobile liability or physical damage insurance policies in this state, as of July 1, 2004, may elect to issue all nonrenewal notices either pursuant to section four or section four-a of this article. Each insurer may notify the commissioner of its election any time after July 1, 2004, and shall remain bound by the election for a period of five years. For each subsequent five-year period each insurer shall notify the commissioner of its election to issue all nonrenewal notices either pursuant to section four or section four-a of this article.

(1) If no election is made by July 1, 2004, then, until July 1, 2005, the insurer shall continue to issue all nonrenewal notices pursuant to the existing nonrenewal provisions in section four prior to the amendments enacted therein by the acts of the Seventy-Sixth Legislature during the second session, 2004.

(2) As of July 1, 2005, each insurer licensed to write automobile liability or physical damage insurance policies in this state, and that has not previously made an election under this section, shall elect to issue all nonrenewal notices either pursuant to section four or section four-a of this article. Each insurer which has not previously made an election must notify the commissioner of its election no later than July 1, 2005, and shall remain bound by the election for a period of five years. For each subsequent five-year period each insurer shall notify the commissioner of its election to issue all nonrenewal notices either pursuant to section four or section four-a of this article.

(b) An insurer that is not licensed to write automobile liability or physical damage insurance policies in this state, as of July 1, 2004, but becomes licensed to write such policies after that date shall, no later than two years after the date the insurer becomes licensed to write such policies, make an election to issue all nonrenewal notices either pursuant to section four or section four-a of this article, and shall notify the commissioner of its election. If the insurer elects to issue all nonrenewal notices pursuant to section four-a of this article, the total number of nonrenewals may not exceed the percentage limitations set forth in section four-a of this article. An insurer first becoming licensed to issue automobile liability and physical damage insurance policies in this state after July 1, 2004, shall be bound by its election for a period of five years, and for each subsequent five-year period shall notify the commissioner of its election to issue all nonrenewal notices either pursuant to section four or section four-a of this article.

(c) Notwithstanding any provision of this article to the contrary, a named insured by restrictive endorsement may specifically exclude from automobile liability or physical damage insurance policy an operator who has violated the provisions of subdivision (6) or (7), subsection (b), section four of this article.

§33-6A-4c. Report to the Legislature.

By January 1, 2009, the commissioner shall submit a report to the Legislature. The report shall contain the following:

- (1) An analysis of the impact of legislation enacted during the two thousand four legislative session upon rates and insurance availability in the state;
- (2) Statistics reflecting the rate history of insurers conducting business in West Virginia from July 1, 2004, until July 1, 2008.

§33-6A-5. Hearings and review by commissioner; action by commissioner; judicial review.

For the implementation of this article and for advising all persons of their rights and privileges under this article, the commissioner, by regulation and in accordance with section thirteen, article two of this chapter, shall establish a procedure whereby any person whose automobile liability insurance policy has been cancelled or whose policy has not been renewed without proper notice being given to such insured, may within forty-five days after the mailing of notice of cancellation or nonrenewal appeal such cancellation or nonrenewal to the commissioner for hearing and review. The appeal and hearing shall relate to the ground or grounds upon which the insurer's action is based. The commissioner after such hearing may affirm the insurer's cancellation or nonrenewal, or may reinstate the policy and if reinstated such policy shall become effective from the date of cancellation or nonrenewal. Either party may appeal the commissioner's ruling to the circuit court of the county in which the applicant or the insured resides in accordance with section fourteen, article two of this chapter.