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# WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1998



# ENROLLED

## House Bill No. 4220

(By Delegates Beane, Michael, Mezzatesta,  
Ashley, L. White and Azinger)



Passed March 14, 1998

In Effect Ninety Days from Passage

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**H. B. 4220**

(BY DELEGATES BEANE, MICHAEL, MEZZATESTA,  
ASHLEY, L. WHITE AND AZINGER)

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[Passed March 14, 1998; in effect ninety days from passage.]

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AN ACT to amend article six, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding a new section, designated section thirty-one-e; and to amend and reenact section one, article six-a of said chapter, all relating to automobile liability insurance; establishing a procedure for written notification of an offer to settle for policy limits to an underinsured motorist coverage carrier; setting forth notice requirements; establishing requirements for preservation of subrogation rights by underinsured motorist coverage carrier; eliminating requirement that notice of cancellation of coverage be given by registered or certified mail; and making certain technical revisions.

*Be it enacted by the Legislature of West Virginia:*

That article six, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section thirty-one-e; and that section one, article six-a of said chapter, be amended and reenacted, all to read as follows:

**ARTICLE 6. THE INSURANCE POLICY.**

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

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

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

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

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

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

21 (4) The name of the tortfeasor;

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

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

31 (7) A statement that under the law the underinsured  
32 motorist coverage carrier has sixty days to preserve its  
33 subrogation rights against the tortfeasor by providing  
34 written notice of its intention to do so and by paying to

35 the claimant an amount equal to the policy limits that have  
36 been offered to the claimant by the liability insurance  
37 company indemnifying the tortfeasor.

38 (c) The underinsured motorist coverage carrier is  
39 considered to have fully waived its rights of subrogation  
40 against the tortfeasor, unless within sixty days from receipt  
41 of the notice described in subsection (b) above, the  
42 underinsured motorist coverage carrier sends in writing by  
43 certified mail, return receipt requested, to the claimant and  
44 to the liability insurer indemnifying the tortfeasor written  
45 notice that it does not waive its rights of subrogation  
46 against the tortfeasor. This notice is not effective unless  
47 the notice to the claimant is accompanied by payment to  
48 the claimant of an amount equal to the policy limits which  
49 had been offered by the liability insurance company  
50 indemnifying the tortfeasor. If the underinsured motorist  
51 carrier fails to send the notice provided for in this  
52 subsection or fails to pay the sum required by this  
53 subsection within the time specified, then the underinsured  
54 motorist coverage carrier is considered to have waived its  
55 subrogation rights against the tortfeasor, and the claimant  
56 may proceed to consummate the settlement about which  
57 notice had been provided, as set forth in subsections (a)  
58 and (b) of this section.

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

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

**ARTICLE 6A. CANCELLATION OR NONRENEWAL OF AUTOMOBILE LIABILITY POLICIES.**

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

1 No insurer once having issued or delivered a policy  
2 providing automobile liability insurance in this state  
3 insuring a private passenger automobile may, after the  
4 policy has been in effect for sixty days, or in case of  
5 renewal effective immediately, issue or cause to issue a  
6 notice of cancellation during the term of the policy except  
7 for one or more of the reasons specified in this section:

8 (a) The named insured fails to discharge when due  
9 any of his or her obligations in connection with the  
10 payment of premium for the policy or any installment of  
11 the premium;

12 (b) The policy was obtained through material  
13 misrepresentation;

14 (c) The insured violates any of the material terms and  
15 conditions of the policy;

16 (d) The named insured or any other operator, either  
17 resident in the same household or who customarily  
18 operates an automobile insured under the policy:

19 (1) Has had his or her operator's license suspended or  
20 revoked during the policy period including suspension or  
21 revocation for failure to comply with the provisions of  
22 article five-a, chapter seventeen-c of this code, regarding  
23 consent for a chemical test for intoxication: *Provided,*  
24 That when a license is suspended for sixty days by the  
25 commissioner of motor vehicles because a person did  
26 drive a motor vehicle while under the age of twenty-one  
27 years with an alcohol concentration in his or her blood of  
28 two hundredths of one percent or more, by weight, but less  
29 than ten hundredths of one percent, by weight, pursuant to  
30 subsection (1), section two, article five-a, chapter

31 seventeen-c of this code, the suspension shall not be  
32 grounds for cancellation; or

33 (2) Is or becomes subject to epilepsy or heart attacks,  
34 and the individual cannot produce a certificate from a  
35 physician testifying to his or her ability to operate a motor  
36 vehicle.

37 (e) The named insured or any other operator, either  
38 resident in the same household or who customarily  
39 operates an automobile insured under such policy is  
40 convicted of or forfeits bail during the policy period for  
41 any of the following:

42 (1) Any felony or assault involving the use of a motor  
43 vehicle;

44 (2) Negligent homicide arising out of the operation of  
45 a motor vehicle;

46 (3) Operating a motor vehicle while under the  
47 influence of alcohol or of any controlled substance or  
48 while having an alcohol concentration in his blood of ten  
49 hundredths of one percent or more, by weight;

50 (4) Leaving the scene of a motor vehicle accident in  
51 which the insured is involved without reporting as required  
52 by law;

53 (5) Theft of a motor vehicle or the unlawful taking of  
54 a motor vehicle;

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

57 (7) A third violation, committed within a period of  
58 twelve months, of any moving traffic violation which  
59 constitutes a misdemeanor, whether or not the violations  
60 were repetitious of the same offense or were different  
61 offenses. Notwithstanding any of the provisions of this  
62 section to the contrary, no insurance company may cancel  
63 a policy of automobile liability insurance without first  
64 giving the insured thirty days' notice of its intention to  
65 cancel: *Provided*, That cancellation of the insurance  
66 policy by the insurance carrier for failure of consideration  
67 to be paid by the insured upon initial issuance of the

68 insurance policy is effective upon the expiration of ten  
69 days' notice of cancellation to the insured.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Nathaniel Sporn*  
Chairman Senate Committee

*Neil Santoni*  
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

*Harrell E. White*  
Clerk of the Senate

*Bryson D. Boy*  
Clerk of the House of Delegates

*Earl Ray Tomblin*  
President of the Senate

*Frederick W. Fisher*  
Speaker of the House of Delegates

The within *approved* this the *1<sup>st</sup>*  
day of *April*, 1998.

*[Signature]*  
Governor

PRESENTED TO THE

GOVERNOR

Date\_ 3/31/98

Time\_ 2:32 pm