



STATE OF WEST VIRGINIA

Offices of the Insurance Commissioner

BOB WISE
Governor

JANE L. CLINE
Insurance Commissioner

DECEMBER, 2004

WEST VIRGINIA INFORMATIONAL LETTER

NO. 150

TO: ALL INSURERS LICENSED TO TRANSACT THE BUSINESS OF PRIVATE PASSENGER AUTOMOBILE LIABILITY INSURANCE OR PHYSICAL DAMAGE INSURANCE IN THE STATE OF WEST VIRGINIA

RE: IMPLEMENTATION OF NONRENEWAL METHOD ELECTED BY INSURER UNDER WEST VIRGINIA CODE SECTION 33-6A-4b

The purpose of this Informational Letter is to clarify the provisions of West Virginia Code Sections 33-6A-4, 33-6A-4a and 33-6A-4b¹ as they relate to the implementation of the nonrenewal method elected by an insurer that is licensed to write private passenger automobile liability insurance or physical damage insurance in West Virginia. By notice dated May 14, 2004, all such insurers were provided an election form to be completed and returned to the Rates and Forms Division of the Insurance Commissioner's office. Insurers were informed that for the period of July 1, 2004 to July 1, 2005, insurers may elect to issue all nonrenewal notices based upon one of three methods: 1) the enumerated reasons contained in West Virginia Code Section 33-6A-4 prior to the 2004 amendments to that section by H.B. 4004; 2) the enumerated reasons contained in West Virginia Code Section 33-6A-4 after the 2004 amendments to that section by H.B. 4004; or 3) the alternative one percent methodology authorized by West Virginia Code Section 33-6A-4a. Insurers were informed that an election made after July 1, 2004 could not be implemented until July 1, 2005.² Insurers were further advised to bear in mind the statutory sixty (60) day prior approval review period for policy forms that would need to be amended if policy language conflicts with the new statutory provisions relating to nonrenewal.

It has come to our attention that there may be some confusion among insurers regarding the date by which the insurer's elected method of nonrenewal may be implemented. This letter is intended to provide guidance to these insurers and to ensure that the elected method is not implemented prematurely. In addition, this letter is intended to

¹ H.B. 4004, which was passed by the West Virginia Legislature during the regular 2004 session, added two new sections to Article 6A, which are Sections 33-6A-4a and 33-6A-4b. West Virginia Code Section 33-6A-4 was also amended by H.B. 4004.

² By July 1, 2005, all insurers licensed to write automobile liability or physical damage insurance policies in West Virginia must make an election to issue all nonrenewal notices pursuant to either the enumerated reasons in West Virginia Code Section 33-6A-4, as amended by H.B. 4004, or the alternative one percent methodology set forth in West Virginia Code Section 33-6A-4a.

clarify the date upon which insurers which have elected to issue all nonrenewal notices pursuant to the enumerated reasons in West Virginia Code Section 33-6A-4, as amended by H.B. 4004, can begin counting both at-fault accidents and moving traffic violations.

West Virginia Code Section 33-6A-4(b)(6) states that an insurer that elects to issue all nonrenewal notices pursuant to that section may nonrenew a policy if the named insured or any other operator described therein is convicted of or forfeits bail during the policy period for two or more moving traffic violations committed within a period of twenty-four (24) months, each of which occurs on or after July 1, 2004 and after the date that the insurer makes an election pursuant to West Virginia Code Section 33-6A-4b. Likewise, West Virginia Code Section 33-6A-4(b)(7) states that nonrenewal notices may also be based upon two at-fault accidents within a period of thirty-six (36) months, each of which occurs after July 1, 2004 and after the date that the insurer makes its election. Therefore, in order to begin counting moving traffic violations or at-fault accidents for the purpose of this section, two elements must exist: the incident must have occurred after July 1, 2004 and the insurer must have made an election to issue all nonrenewal notices pursuant to that section. For example, if the insurer had made its election to issue all nonrenewal notices pursuant to Section 33-6A-4 on June 15, 2004, it could begin counting moving traffic violations and at-fault accidents on July 1, 2004. However, if the insurer makes its election between July 1, 2004 and July 1, 2005, it may not begin counting moving traffic violations and at-fault accidents until July 1, 2005. This is because West Virginia Code Section 33-6A-4b(a)(1) disallows any post-July 1, 2004 election from being implemented prior to July 1, 2005.

As a point of further clarification, the insurer's election will be considered to have been made on the date that the election form is signed by the company representative. Again, it is important to remember that policy forms that are inconsistent with the language of West Virginia Code Sections 33-6A-4, as amended, or 33-6A-4a must be refiled and approved before they may be issued to insureds. Although an insurer may have made its election by July 1, 2004, and may therefore begin counting moving traffic violations and at-fault accidents as of that date, it may not act in a manner that violates the terms of the contract with its insureds. Once policy forms have been filed and approved, however, and issued to insureds, an insurer may nonrenew a policy based upon the number of moving traffic violations and at-fault accidents occurring after July 1, 2004 at the insured's next renewal.

For those insurers that have elected by July 1, 2004 to issue all nonrenewal notices pursuant to the alternative one percent methodology under West Virginia Code Section 33-6A-4a, an insured may be nonrenewed under that methodology at any time after July 1, 2004 if the insurer's policy forms are consistent with the law in effect on that date. If an insurer elects to issue all nonrenewal notices pursuant to the one percent methodology between July 1, 2004 and July 1, 2005, it may only begin to issue such nonrenewals after July 1, 2005, assuming again that its policy forms have been amended as necessary.

Please contact Jack Rife, Director of Rates and Forms, at 304.558.2094, ext. 117 if you have any questions about the contents of this Informational Letter.

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Jane L. Cline
West Virginia Insurance Commissioner