

WEST VIRGINIA INFORMATIONAL LETTER

NO. 53

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TO: All Property and Casualty Insurers Licensed In West Virginia

The purpose of this Informational Letter is to summarize changes in § 33-6-31 as a consequence of 1988 Senate Bill No. 86 and to provide guidelines by which this legislation will be implemented by the Department. The changes in § 33-6-31 are as follows:

- 1) Uninsured motorists coverage is made mandatory;
- 2) Underinsured motorists coverage will no longer be offset by amounts recovered under the tortfeasors liability coverage; and,
3. A restrictive endorsement may be used in certain instances to avoid cancellation of coverage.

These three points are discussed in detail below.

Restrictive Endorsement

Senate Bill No. 86 amended Subsection (a) of 33-6-31 by adding the following language:

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 chapter seventeen-d, article four, section two of this code, but nothing in such restrictive endorsement shall be construed to abrogate the "family purpose doctrine."

The amended language speaks only to cancellation and does not address nonrenewal of coverage. Therefore, the Department assumes that the legislature intended that the provision apply only to cases involving cancellation, and not to cases involving nonrenewal.

The amendment is limited to cancellation based upon a violation of law by a person insured under the policy. The statute does not specify those acts which are considered to be "a violation of law." For implementation purposes, the Department will use the violations of law cited in the cancellation provisions of § 33-6A-1, specifically Subsection (d)(1) and Subsections (e)(1) through (7). When a policy is cancelled for any of the above-cited reasons, the policyholder may request that the individual who committed the violation in question be removed from coverage through a restrictive endorsement. If the policyholder makes this request, the insurer must issue the restrictive endorsement and keep the policy in force.

#### Mandatory Uninsured Motorists Coverage

Senate Bill No. 86 deleted the language of § 33-6-31 which allowed an insured to waive uninsured motorist coverage. Therefore, on and after June 10, 1988, the effective date of the legislation, all policies must provide uninsured motorist coverage in at least minimum limits of 20,000/40,000/10,000. The Department takes the position that this coverage should be added to existing policies effective June 10, 1988, rather than on the renewal date of the policy. Underinsured motorist coverage remains optional.

#### Underinsured Motorist Coverage

Senate Bill No. 86 added the following language to § 33-6-31(b), "[n]o sums payable as a result of underinsured motorist coverage shall be reduced by payments made under the insureds policy or any other policy."

Prior to this amendment, the Department interpreted § 33-6-31(b) as permitting offset of the amount of liability recovery under the tortfeasor's policy against underinsured motorist coverage limits. An example is as follows: Motorist No. 1 who has underinsured coverage limits of \$100,000 is involved in an accident with Motorist No. 2 (the tortfeasor) who has liability limits of \$20,000. Motorist No. 1 suffered \$150,000 in bodily injury damages. Prior to Senate Bill No. 86, Motorist No. 1 could collect \$20,000 under Motorist No. 2s liability coverage and \$80,000 from his underinsured motorist coverage. This is because the \$20,000 which Motorist No. 1 recovered under Motorist No. 2s liability coverage is offset against Motorist No. 1's underinsured motorist coverage limits. Under the amendments to § 33-6-31, Motorist No. 1 can now recover the full \$100,000 of his underinsured coverage since offset of the liability recovery is no longer permitted. Thus, Motorist No. 1's total compensation is increased from \$100,000 to \$120,000.

Questions concerning this Informational Letter should be sent in writing to Cheryl L. Davis, General Counsel, Office of the Insurance Commissioner, 2101 Washington Street, East, Charleston, West Virginia 25305.

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