

Senate Bill No. 588

(By Senator Jenkins)

[Introduced February 21, 2011; referred to the Committee on
Banking and Insurance; and then to the Committee on the
Judiciary.]

11 A BILL to amend and reenact §33-6A-4 of the Code of West Virginia,
12 1931, as amended, relating to placing a private passenger
13 vehicle into commercial service as proper reason to refuse to
14 renew coverage.

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

16 That §33-6A-4 of the Code of West Virginia, 1931, as amended,
17 be amended and reenacted to read as follows:

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

20 **§33-6A-4. Advance notice of nonrenewal required; assigned risk**
21 **policies; reasons for nonrenewal; hearing and**
22 **review after nonrenewal.**

23 (a) No insurer shall fail to renew an outstanding automobile
24 liability or physical damage insurance policy unless the nonrenewal
25 is preceded by at least forty-five days advance notice to the named
26 insured of the insurer's election not to renew the policy:

1 *Provided*, That subject to this section, nothing contained in this
2 article shall be construed to prevent an insurer from refusing to
3 issue an automobile liability or physical damage insurance policy
4 upon application to the insurer, nor shall any provision of this
5 article be construed to prevent an insurer from refusing to renew
6 a policy upon expiration, except as to the notice requirements of
7 this section, and except further as to those applicants lawfully
8 submitted pursuant to the West Virginia assigned risk plan.

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

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

15 (2) The policy is obtained through material misrepresentation;

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

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

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

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

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

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

7 (B) Negligent homicide arising out of the operation of a motor
8 vehicle;

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

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

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

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

17 (6) The named insured or any other operator, either residing
18 in the same household or who customarily operates an automobile
19 insured under the policy, is convicted of or forfeits bail during
20 the policy period for two or more moving traffic violations
21 committed within a period of twelve months, each of which results
22 in three or more points being assessed on the driver's record by
23 the Division of Motor Vehicles, whether or not the insurer renewed
24 the policy without knowledge of all of the violations: *Provided,*
25 That an insurer that makes an election pursuant to section four-b
26 of this article to issue all nonrenewal notices pursuant to this

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

17 (7) The named insured or any other operator either residing in
18 the same household or who customarily operates an automobile
19 insured under the policy has had a second at-fault motor vehicle
20 accident within a period of twelve months, whether or not the
21 insurer renewed the policy without knowledge of all of the
22 accidents: *Provided*, That an insurer that makes an election
23 pursuant to section four-b of this article to issue all nonrenewal
24 notices pursuant to this section, may nonrenew an automobile
25 liability or physical damage insurance policy under this subsection
26 if the named insured or any other operator either residing in the

1 same household or who customarily operates an automobile insured
2 under such policy has had two at-fault motor vehicle accidents
3 within a period of thirty-six months, each of which occurs after
4 July 1, 2004, and after the date that the insurer makes an election
5 pursuant to section four-b of this article, and results in a claim
6 paid by the insurer for each accident, whether or not the insurer
7 renewed the policy without knowledge of all of the accidents.
8 Notice of any nonrenewal made pursuant to this subsection shall be
9 mailed to the named insured either during the current policy period
10 or during the first full policy period following the date of the
11 second accident; ~~or~~

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

17 (9) A vehicle insured under the policy issued in a manner that
18 substantially alters the insured risk, including placing a private
19 passenger automobile into commercial use.

20 (c) An insurer that makes an election pursuant to section
21 four-b of this article to issue all nonrenewal notices pursuant to
22 this section shall not fail to renew an automobile liability or
23 physical damage insurance policy when an operator other than the
24 named insured has violated the provisions of subdivision (6) or
25 (7), subsection (b) of this section, if the named insured, by
26 restrictive endorsement, specifically excludes the operator who

1 violated the provision. An insurer issuing a nonrenewal notice
2 informing the named insured that the policy will be nonrenewed for
3 the reason that an operator has violated the provisions of
4 subdivision (6) or (7), subsection (b) of this section, shall at
5 that time inform the named insured of his or her option to
6 specifically exclude the operator by restrictive endorsement and
7 shall further inform the named insured that upon obtaining the
8 restrictive endorsement, the insurer will renew the policy or
9 rescind the nonrenewal absent the existence of any other basis for
10 nonrenewal set forth in this section.

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

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

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

25 (2) The insured makes an application for reinstatement within
26 forty-five days of the original expiration date of the policy. If

1 a policy is reinstated as provided for in this paragraph, then the
2 coverage afforded shall not be retroactive to the original
3 expiration date of the policy: *Provided*, That such policy shall be
4 effective on the reinstatement date at the current premium levels
5 offered by the company and shall not be afforded the protections of
6 this section relating to renewal of an outstanding automobile
7 liability or physical damage insurance policy that has been in
8 existence for at least two consecutive years.

NOTE: The purpose of this bill is to amend portions of the current statute to permit the nonrenewal of a vehicle insurance policy when a passenger vehicle is placed into commercial use.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.