
WEST VIRGINIA CODE CHAPTER 33
ARTICLE 17A

WV Legislature

§33-17A-1. Purpose of article.

The purpose of this article is to regulate declinations, cancellations and refusals to renew certain policies of property insurance and to provide for disclosure of the reasons for these actions.

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§33-17A-2. Scope of article.

This article applies to policies of property insurance, other than policies of inland marine insurance and policies of property insurance issued through a residual market mechanism, covering risks to property located in this state which take effect or are renewed after the effective date of this article and which insure any of the following contingencies:

- (a) Loss of or damage to real property which is used predominantly for the residential purposes of the named insured and which consists of not more than four dwelling units; or
- (b) Loss of or damage to personal property in which the named insured has an insurable interest where:
 - (1) The personal property is used for personal, family or household purposes; and
 - (2) The personal property is within a residential dwelling.

§33-17A-3. Definitions.

(a) "Declination" is the refusal of an insurer to issue a property insurance policy on a written application or written request for coverage. For the purposes of this article, the offering of insurance coverage with a company within an insurance group which is different from the company requested on the application or written request for coverage, or the offering of insurance upon different terms than requested in the application or written request for coverage, is not considered a declination if such offering of such insurance is based upon any valid underwriting reason which involves a substantial increase in the risk. Each company or groups of companies instituting such transfer shall give notice in the manner provided in §33-17A-4(c) of this code to the insured as to the reasons for such transfer.

(b) "Nonpayment of premium" means the failure of the named insured to discharge any obligation in connection with the payment of premiums on policies of property insurance, subject to this article, whether the payments are directly payable to the insurer or its agent or indirectly payable to the insurer or its agent or indirectly payable under a premium finance plan or extension of credit. "Nonpayment of premium" includes the failure to pay dues or fees where payment of dues or fees is a prerequisite to obtaining or continuing property insurance coverage.

(c) "Renewal" or "to renew" means the issuance and delivery by an insurer at the end of a policy period of a policy superseding a policy previously issued and delivered by the same insurer, or the issuance and delivery of a certificate or notice extending the term of an existing policy beyond its policy period or term. For the purpose of this article, any policy period or term of less than six months is considered a policy period or term of six months, and any policy period or term of more than one year or any policy with no fixed expiration date is considered a policy period or term of one year.

(d) "Termination" means either a cancellation or nonrenewal of property insurance coverage in whole or in part. A cancellation occurs during the policy term. A nonrenewal occurs at the end of the policy term as set forth in §33-17A-3(c) of this code.

(1) For purposes of this article, the transfer of a policyholder between companies within the same insurance group is not considered a termination, if such transfer is based upon any valid underwriting reason which involves a substantial increase in the risk.

(2) Requiring a reasonable deductible, reasonable changes in the amount of insurance, or reasonable reductions in policy limits or coverage is not considered a termination if the requirements are directly related to the hazard involved and are made on the renewal date of the policy.

§33-17A-4. Notification and reasons for a transfer, declination, termination, or renewal with reduction in coverage.

(a) Upon declining to insure any real or personal property, subject to this article, the insurer making a declination shall provide the insurance applicant with a written explanation of the specific reason or reasons for the declination at the time of the declination. The provision of such insurance application form by an insurer shall create no right to coverage on behalf of the insured to which the insured is not otherwise entitled.

(b) A notice of cancellation of property insurance coverage by an insurer shall be in writing, shall be delivered to the named insured or sent by first class mail to the named insured at the last known address of the named insured, shall state the effective date of the cancellation, and shall be accompanied by a written explanation of the specific reason or reasons for the cancellation.

(c) At least 30 days before the end of a policy period, as described in §33-17A-3(c) of this code, an insurer shall deliver or send by first class mail to the named insured at the last known address of the named insured, notice of its intention regarding the renewal of the property insurance policy.

(1) Notice of an intention not to renew a property insurance policy shall be accompanied by an explanation of the specific reasons for the nonrenewal: Provided, That no insurer shall fail to renew an outstanding property insurance policy which has been in existence for four years or longer except for the reasons as set forth in §33-17A-5 of this code, or for other valid underwriting reasons which involve a substantial increase in the risk: Provided, however, That notwithstanding any other provision of this article, no property insurance coverage policy in force for at least four years, may be denied renewal or canceled solely as a result of:

(A) A single first party property damage claim within the previous 36 months and that arose from wind, hail, lightning, wildfire, snow, or ice, unless the insurer has evidence that the insured unreasonably failed to maintain the property and that failure to maintain the property contributed to the loss; or

(B) Two first party property damage claims within the previous 12 months, both of which arose from claims solely due to an event for which a state of emergency is declared for the county in which the insured property is located, unless the insurer has evidence that the insured unreasonably failed to maintain the property and that failure to maintain the property contributed to the loss. "State of emergency" means the situation existing after the occurrence of a disaster in which a state of emergency has been declared by the Governor or by the Legislature pursuant to the provisions of §15-5-6 of this code or in which a major disaster declaration or emergency declaration has been issued by the President of the United States pursuant to the provisions of 42 U. S. C. §5122.

(2) Notice of an intention to transfer a policyholder between companies within the same insurance group as provided in §33-17A-3(d)(1) of this code shall be given by each company or group of companies instituting such transfer and shall be accompanied by an explanation of the reasons for such transfer.

(3) Notice of an intention to renew a property insurance policy with a new policy that includes changes made by the insurer, which result in a removal of coverage, diminution in the scope or reduction in coverage, change in deductible, or addition of an exclusion, shall be accompanied by an explanation of the changes made by the insurer. This subdivision does not apply to any change, reduction, or elimination of coverage made at the request of the insured, any correction of typographical or scrivener's errors, or the application of mandated legislative changes.

§33-17A-4a. Alternative method for nonrenewal for property insurance.

(a) On or after July 1, 2005, an insurer may nonrenew a property insurance policy for any reason that 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 subsection (c), section four of this article, a nonrenewal may only be issued pursuant to the provisions of this section upon notice to the named insured at least thirty days before the end of the policy period of the insurer's election not to renew the policy.

(d) Commencing July 1, 2005, the total number of nonrenewal notices issued by the insurer each year pursuant to this section that result in nonrenewals 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 such nonrenewal notices issued each year to insureds within any given county in this state that result in nonrenewals may not exceed one percent per year of the total number of policies 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 in section seven 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, was based on an underwriting standard found by the Commissioner 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. The notice shall also advise the insured of possible eligibility for coverage through the West Virginia Essential Property Insurance Association.

(f) Each insurer licensed to write property 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, are not subject to discovery or admissible in evidence in any criminal, civil or administrative action and are not subject to production pursuant to court order. The Commissioner may 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 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 and the specific reason or reasons for the nonrenewals by county.

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§33-17A-4b. Manner of making election relating to nonrenewals.

(a) Each insurer licensed to write property insurance policies in this state as of July 1, 2005, may elect to issue all nonrenewal notices either pursuant to subsection (c), section four of this article or section four-a of this article. Each insurer must notify the Commissioner of its election on or before 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 subsection (c), section four of this article or section four-a of this article. The failure of an insurer to notify the Commissioner of its election by July 1, 2005, will be considered to be an election by the insurer to issue all nonrenewal notices pursuant to subsection (c), section four of this article and the insurer will be bound by the election for a period of five years.

(b) An insurer that is not licensed to write property insurance policies in this state as of July 1, 2005, but which becomes licensed to write property insurance policies after that date shall, no later than four years after the date the insurer becomes licensed to write the policies, make an election to issue all nonrenewal notices either pursuant to subsection (c), section four of this article 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 that section. An insurer first becoming licensed to issue property insurance policies in this state after July 1, 2005, 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 subsection (c), section four of this article or section four-a of this article.

(c) An insurer that elects to issue nonrenewals pursuant to subsection (c), section four of this article may include as a permitted reason for nonrenewal of a policy, in addition to the reasons enumerated in section five of this article, two or more paid claims under a policy within a period of thirty-six months, each of which occurs after July 1, 2005.

§33-17A-4c. Report to the Legislature.

By January 1, 2010, 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 2005 legislative session upon rates and insurance availability in the state; and
- (2) Statistics reflecting the rate history of insurers conducting business in West Virginia from July 1, 2005, until July 1, 2009.

§33-17A-5. Permissible cancellations.

After coverage has been in effect for more than sixty days or after the effective date of a renewal policy, a notice of cancellation may not be issued unless it is based on at least one of the following reasons:

- (a) Nonpayment of premium;
- (b) Conviction of the insured of any crime having as one of its necessary elements an act increasing any hazard insured against;
- (c) Discovery of fraud or material misrepresentation made by or with the knowledge of the named insured in obtaining the policy, continuing the policy or in presenting a claim under the policy;
- (d) Discovery of willful or reckless acts or omissions on the part of the named insured which increase any hazard insured against;
- (e) The occurrence of a change in the risk which substantially increases any hazard insured against after insurance coverage has been issued or renewed;
- (f) A violation of any local fire, health, safety, building or construction regulation or ordinance with respect to any insured property or the occupancy thereof which substantially increases any hazard insured against;
- (g) A determination by the commissioner that the continuation of the policy would place the insurer in violation of the insurance laws of this state;
- (h) Real property taxes owing on the insured property have been delinquent for two or more years and continue delinquent at the time notice of cancellation is issued;
- (i) The insurer which issues said policy of insurance ceases writing the particular type or line of insurance coverage contained in said policy throughout the state or should such insurer discontinue operations within the state; or
- (j) Substantial breach of the provisions of the policy.

§33-17A-6. Discriminatory terminations and declinations prohibited.

No insurer may decline to issue or terminate a policy of insurance subject to this article if the declination or termination is:

- (a) Based upon the race, religion, nationality, ethnic group, age, sex or marital status of the applicant or named insured;
- (b) Based solely upon the lawful occupation or profession of the applicant or named insured, unless the decision is for a business purpose that is not a mere pretext for unfair discrimination: Provided, That this provision does not apply to any insurer, agent or broker that limits its market to one lawful occupation or profession or to several related lawful occupations or professions;
- (c) Based upon the age or location of the residence of the applicant or named insured unless the decision is for a business purpose that is not a mere pretext for unfair discrimination or unless the age or location materially affects the risk;
- (d) Based upon the fact that another insurer previously declined to insure the applicant or terminated an existing policy in which the applicant was the named insured;
- (e) Based upon the fact that the applicant or named insured previously obtained insurance coverage through a residual market insurance mechanism;
- (f) Based upon the fact that the applicant has not previously been insured;
- (g) Based upon the fact that the applicant did not have insurance coverage for a period of time prior to the application; or
- (h) Based solely upon an adverse credit report or adverse credit scoring.

§33-17A-7. Hearings and administrative procedure.

Hearings for the violation of any provision of this article, and the administrative procedure prior to, during and following these hearings, shall be conducted in accordance with the provisions of article two of this chapter.

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§33-17A-8. Sanctions.

If the commissioner determines in a final order that:

(a) An insurer has violated section five or six of this article, he may require the insurer to:

(1) Accept the application or written request for insurance coverage at a rate and on the same terms and conditions as are available to other risks similarly situated;

(2) Reinstate insurance coverage to the end of the policy period; or

(3) Continue insurance coverage at a rate and on the same terms and conditions as are available to other risks similarly situated.

(b) Any person has violated any provision of this article, he may:

(1) Issue a cease and desist order to restrain the person from engaging in practices which violate this article; and

(2) Assess a penalty against the person of up to \$5,000 for each willful and knowing violation of this article.

§33-17A-9. Civil liability and actions.

(a) If the commissioner determines in a final order that an insurer has violated section five or six of this article, the applicant or named insured aggrieved by the violation may bring an action in a court of competent jurisdiction in this state to recover from the insurer any loss, not otherwise recovered through insurance, which would have been paid under the insurance coverage that was declined or terminated in violation of this article.

(b) Any amount recovered under subsection (a) of this section may not be duplicative of any recovery obtained through the exercise of any other statutory or common law cause of action arising out of the same occurrence. No action under this section may be brought two years after the date of a final order of the commissioner finding a violation of section five or six of this article.

§33-17A-10. Immunity.

(a) There is no liability on the part of and no cause of action shall arise against the commissioner, any insurer or its authorized representative, or any licensed insurance agent or broker for furnishing information to an insurer as to reasons for a termination or declination, or for any communication giving notice of, or specifying the reasons for, a declination or termination.

(b) Subsection (a) above does not apply to statements made in bad faith with malice in fact.

§33-17A-11. Severability.

If any provisions of this article or the application thereof to any person or circumstances is for any reason held to be invalid, the remainder of the article and the application of such provision to other persons or circumstances shall not be affected thereby.

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