WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1985

ENROLLED

HOUSE BILL No. 2057

(By )

Passed April 13, 1985

In Effect 90 Days From Passage
AN ACT to amend and reenact section nine, article seventeen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter thirty-three by adding thereto a new article, designated article seventeen-a, relating to determining a fire insurer’s liability in case of total or partial loss due to fire when property is insured under an actual cash value policy or when property is insured under a replacement cost policy; insurers must inform applicants of the different types of fire insurance policies available; definition of total loss; relating to regulating declinations, cancellations and refusals to renew property insurance policies; requiring reasons for such actions to be disclosed; exceptions; prohibiting discriminatory terminations and declinations; notice; hearing; and penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 17. FIRE AND MARINE INSURANCE.

§33-17-9. Total or partial fire loss; different types of fire insurance.

1 (a) All insurers issuing policies providing fire insurance on real property situate in West Virginia, shall be liable, in case
of total loss, by fire or otherwise, as stated in the policy, for
the whole amount of the insurance stated in the policy, upon
such real property; and in case of partial by fire or otherwise,
as aforesaid, of the real property insured, the liability shall be
for the amount of the loss as determined in accordance with
the following provisions:

(1) When the property is insured under an actual cash value
policy, the costs of repairs or replacement calculated to restore
the damaged property to its condition prior to loss less a
reasonable allowance for depreciation, but in no instance shall
the insurer's liability exceed the whole amount of insurance
upon such real property; or

(2) Where the property is insured under a replacement cost
policy, the cost of repairs or replacement calculated to restore
the damaged property to its condition prior to loss, subject
to the terms and conditions of said policy, without considering
depreciation, but in no instance shall the insurer's liability
exceed the whole amount of insurance upon such real
property.

(b) All insurers issuing policies providing fire insurance on
real property situate in West Virginia shall, at the time of
application for such coverage, provide to the applicant a
disclosure statement printed in bold type, in a form filed with
and approved by the insurance commissioner, which informs
the applicant as to the differences between an actual cash value
policy and a replacement cost policy. One signed copy of such
statement shall be physically affixed to the policy upon
delivery to the applicant, and one copy shall be signed by the
applicant and retained by the insurer; and such statement shall
be printed in bold type on the actual cash value policy.

(c) This section shall not apply when such insurance has
been procured from two or more insurers covering the same
interest in such real property.

(d) As used in this section, total loss shall be construed to
mean a loss where the actual cost of repair exceeds the actual
fair market value of the property immediately prior to the loss,
provided, in any event the definition of total loss adopted by
the West Virginia supreme court of appeals shall take
precedence over those definitions contained herein.
ARTICLE 17A. PROPERTY INSURANCE DECLINATION, TERMINATION AND DISCLOSURE.

§33-17A-1. Purpose of article.
1 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.

§33-17A-2. Scope of article.
1 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.
1 (a) "Declination" is the refusal of an insurer, an agent or a broker to issue a property insurance policy on a written nonbinding 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 nonbinding application or written request for coverage or the offering of insurance upon different terms than requested in the nonbinding application or written request for coverage is considered a declination.
   (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 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
or 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 subsection
c) of this section. For purposes of this article, the transfer
of a policyholder between companies within the same
insurance group is considered a termination, but 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 declination or
termination.

(a) Upon declining to insure any real or personal property
subject to this article the insurer, agent or broker making a
decision shall either provide the insurance applicant with
a written explanation of the specific reason or reasons for the
decision at the time of the declination or advise the
applicant in writing within twenty-one days of the timely
receipt of the applicant's written request for an explanation.
An applicant's written request is timely under this subsection
if received within ninety days of the date of notice of the
decision. In the event of a declination by the insurer of a
risk submitted by an agent or broker on behalf of the
applicant, the insurer shall provide the agent or broker with
a written explanation of the reasons for the declination. In the
event the agent or broker is unable to effect insurance for the
applicant through an admitted insurer other than a residual
market mechanism, the agent or broker shall submit an
explanation in writing to the applicant of all insurer
declinations. No agent, broker or insurer not represented by
an agent or broker may decline to provide an insurance
application form or other means of making a written request
for insurance to a prospective applicant who requests
insurance coverage from the agent, broker or insurer.

(b) A notice of cancellation of property insurance coverage
by an insurer shall be in writing, shall be delivered to the
named insured or mailed 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 thirty days before the end of a policy period
as described in subsection (c), section three of this article, an
insurer shall deliver or 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. 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 one year or longer except for the reasons as set
forth in section five of this article.

§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 substan-
tially 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 increases any
hazard insured against;
(g) A determination by the commissioner that the continua-
tion 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; or
(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.
§33-17A-6. Discriminatory terminations and declinations
prohibited.
No insurer or agent 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, except that this provision
does not apply to an insurer which 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 name insured unless the decision is for a business purpose which is not a mere pretext for unfair discrimination;

(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; or

(e) Based upon the fact that the applicant or named insured previously obtained insurance coverage through a residual market insurance mechanism.


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.


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) Reinstatet 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;

(2) Assess a penalty against the person of up to five thousand dollars 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 rise against:

(1) The commissioner;

(2) Any insurer or its authorized representatives, agents or
employees;

(3) Any licensed insurance agent or broker; or

(4) Any person furnishing information to an insurer as to
reasons for a termination or declination, for any communica-
tion giving notice of, or specifying the reasons for, a
declation or termination or for any statement made in
connection with an attempt to discover or verify the existence
of conditions which would be a reason for a declination or
termation under this article.

(b) Subsection (a) above does not apply to statements made
in bad faith with malice in fact.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within bill was passed by this body on the 2nd day of May, 1985.

Governor
PRESIDENT TO THE
GOVERNOR

Date: 4/30/85
Time: 6:35 p.m.