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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1985

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ENROLLED

HOUSE BILL No. 2057

(By ~~Mr.~~ Del. Schifano)

—●—

Passed April 13, 1985

In Effect 90 Days From Passage

ENROLLED

H. B. 2057

(By DELEGATE SCHIFANO)

[Passed April 13, 1985; in effect ninety 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
- 2 real property situate in West Virginia, shall be liable, in case

3 of total loss, by fire or otherwise, as stated in the policy, for
4 the whole amount of the insurance stated in the policy, upon
5 such real property; and in case of partial by fire or otherwise,
6 as aforesaid, of the real property insured, the liability shall be
7 for the amount of the loss as determined in accordance with
8 the following provisions:

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

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

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

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

36 (d) As used in this section, total loss shall be construed to
37 mean a loss where the actual cost of repair exceeds the actual
38 fair market value of the property immediately prior to the loss,
39 provided, in any event the definition of total loss adopted by
40 the West Virginia supreme court of appeals shall take
41 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,
- 2 cancellations and refusals to renew certain policies of property
- 3 insurance and to provide for disclosure of the reasons for these
- 4 actions.

§33-17A-2. Scope of article.

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

- 7 (a) Loss of or damage to real property which is used
- 8 predominantly for the residential purposes of the named
- 9 insured and which consists of not more than four dwelling
- 10 units; or

- 11 (b) Loss of or damage to personal property in which the
- 12 named insured has an insurable interest where:

- 13 (1) The personal property is used for personal, family or
- 14 household purposes; and

- 15 (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
- 2 a broker to issue a property insurance policy on a written
- 3 nonbinding application or written request for coverage. For
- 4 the purposes of this article, the offering of insurance coverage
- 5 with a company within an insurance group which is different
- 6 from the company requested on the nonbinding application or
- 7 written request for coverage or the offering of insurance upon
- 8 different terms than requested in the nonbinding application
- 9 or written request for coverage is considered a declination.

- 10 (b) "Nonpayment of premium" means the failure of the
- 11 named insured to discharge any obligation in connection with
- 12 the payment of premiums on policies of property insurance
- 13 subject to this article, whether the payments are directly

14 payable to the insurer or its agent or indirectly payable under
15 a premium finance plan or extension of credit. "Nonpayment
16 of premium" includes the failure to pay dues or fees where
17 payment of dues or fees is a prerequisite to obtaining or
18 continuing property insurance coverage.

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

29 (d) "Termination" means either a cancellation or nonrenewal
30 or property insurance coverage in whole or in part. A
31 cancellation occurs during the policy term. A nonrenewal
32 occurs at the end of the policy term as set forth in subsection
33 (c) of this section. For purposes of this article, the transfer
34 of a policyholder between companies within the same
35 insurance group is considered a termination, but requiring a
36 reasonable deductible, reasonable changes in the amount of
37 insurance or reasonable reductions in policy limits or coverage
38 is not considered a termination if the requirements are directly
39 related to the hazard involved and are made on the renewal
40 date of the policy.

§33-17A-4. Notification and reasons for a declination or termination.

1 (a) Upon declining to insure any real or personal property
2 subject to this article the insurer, agent or broker making a
3 declination shall either provide the insurance applicant with
4 a written explanation of the specific reason or reasons for the
5 declination at the time of the declination or advise the
6 applicant in writing within twenty-one days of the timely
7 receipt of the applicant's written request for an explanation.
8 An applicant's written request is timely under this subsection
9 if received within ninety days of the date of notice of the
10 declination. In the event of a declination by the insurer of a
11 risk submitted by an agent or broker on behalf of the

12 applicant, the insurer shall provide the agent or broker with
13 a written explanation of the reasons for the declination. In the
14 event the agent or broker is unable to effect insurance for the
15 applicant through an admitted insurer other than a residual
16 market machanism, the agent or broker shall submit an
17 explanation in writing to the applicant of all insurer
18 declinations. No agent, broker or insurer not represented by
19 an agent or broker may decline to provide an insurance
20 application form or other means of making a written request
21 for insurance to a prospective applicant who requests
22 insurance coverage from the agent, broker or insurer.

23 (b) A notice of cancellation of property insurance coverage
24 by an insurer shall be in writing, shall be delivered to the
25 named insured or mailed to the named insured at the last
26 known address of the named insured, shall state the effective
27 date of the cancellation and shall be accompanied by a written
28 explanation of the specific reason or reasons for the
29 cancellation.

30 (c) At least thirty days before the end of a policy period
31 as described in subsection (c), section three of this article, an
32 insurer shall deliver or mail to the named insured at the last
33 known address of the named insured notice of its intention
34 regarding the renewal of the property insurance policy. Notice
35 of an intention not to renew a property insurance policy shall
36 be accompanied by an explanation of the specific reasons for
37 the nonrenewal: *Provided*, That no insurer shall fail to renew
38 an outstanding property insurance policy which has been in
39 existence for one year or longer except for the reasons as set
40 forth in section five of this article.

§33-17A-5. Permissible cancellations.

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

5 (a) Nonpayment of premium;

6 (b) Conviction of the insured of any crime having as one
7 of its necessary elements an act increasing any hazard insured
8 against;

9 (c) Discovery of fraud or material misrepresentation made

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10 by or with the knowledge of the named insured in obtaining
11 the policy, continuing the policy or in presenting a claim under
12 the policy;

13 (d) Discovery of willful or reckless acts or omissions on the
14 part of the named insured which increase any hazard insured
15 against;

16 (e) The occurrence of a change in the risk which substan-
17 tially increases any hazard insured against after insurance
18 coverage has been issued or renewed;

19 (f) A violation of any local fire, health, safety, building or
20 construction regulation or ordinance with respect to any
21 insured property or the occupancy thereof which increases any
22 hazard insured against;

23 (g) A determination by the commissioner that the continua-
24 tion of the policy would place the insurer in violation of the
25 insurance laws of this state;

26 (h) Real property taxes owing on the insured property have
27 been delinquent for two or more years and continue delinquent
28 at the time notice of cancellation is issued; or

29 (i) The insurer which issues said policy of insurance ceases
30 writing the particular type or line of insurance coverage
31 contained in said policy throughout the state or should such
32 insurer discontinue operations within the state.

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

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

4 (a) Based upon the race, religion, nationality, ethnic group,
5 age, sex or marital status of the applicant or named insured;

6

7 (b) Based solely upon the lawful occupation or profession
8 of the applicant or named insured, except that this provision
9 does not apply to an insurer which limits its market to one
10 lawful occupation or profession or to several related lawful
11 occupations or professions;

- 12 (c) Based upon the age or location of the residence of the
13 applicant or name insured unless the decision is for a business
14 purpose which is not a mere pretext for unfair discrimination;
15 (d) Based upon the fact that another insurer previously
16 declined to insure the applicant or terminated an existing
17 policy in which the applicant was the named insured; or
18 (e) Based upon the fact that the applicant or named insured
19 previously obtained insurance coverage through a residual
20 market insurance mechanism.

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

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

§33-17A-8. Sanctions.

- 1 If the commissioner determines in a final order that:

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

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

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

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

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

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

- 16 (2) Assess a penalty against the person of up to five
17 thousand dollars for each willful and knowing violation of this
18 article.

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

- 1 (a) If the commissioner determines in a final order that an

2 insurer has violated section five or six of this article, the
3 applicant or named insured aggrieved by the violation may
4 bring an action in a court of competent jurisdiction in this
5 state to recover from the insurer any loss, not otherwise
6 recovered through insurance, which would have been paid
7 under the insurance coverage that was declined or terminated
8 in violation of this article.

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

§33-17A-10. Immunity.

1 (a) There is no liability on the part of and no cause of action
2 shall rise against:

3 (1) The commissioner;

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

6 (3) Any licensed insurance agent or broker; or

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

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

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Samuel E. Allen
Chairman Senate Committee

Floyd Fuller
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Leola C. Wilk
Clerk of the Senate

Donald L. Kopp
Clerk of the House of Delegates

Dan Toubenfeld
President of the Senate

Joseph F. Allright
Speaker of the House of Delegates

The within *disapproved* this the *2nd*
day of *May*, 1985.

Aubrey Phares, Jr.
Governor

PRESIDENT OF THE

GOVERNOR

Date 4/30/85

Time 6:51 p.m.