WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1989

ENROLLED
Committee Substitute for
SENATE BILL NO. 264

(By Senator [Signature], President, et al.)

PASSED April 6, 1989
In Effect 90 days from Passage
AN ACT to amend chapter thirty-three of the code West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article six-b, relating to providing a mechanism to regulate the declination of automobile liability policies.

Be it enacted by the Legislature of West Virginia:

That chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article six-b, to read as follows:

ARTICLE 6B. DECLINATION OF AUTOMOBILE LIABILITY INSURANCE.

§33-6B-1. Purpose of article.

The purpose of this article is to regulate the declination of automobile liability policies.

§33-6B-2. Definitions.

“Declination” means either the refusal of an insurer
to issue an automobile liability insurance policy upon receipt of a written nonbinding application or written request for coverage from its agent or an applicant. 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 policy coverage or rates substantially less favorable than requested in the nonbinding application or written request for coverage, shall not be considered a declination. Further, for the purposes of this article "declination" shall include the cancellation of an automobile liability policy which has been in effect less than sixty days and the non-renewal of an automobile liability policy which has been in effect less than two years.

§33-6B-3. Declinations; prohibited reasons.

The declaration of an application for a policy of automobile liability insurance by an insurer, agent or broker is prohibited if the declaration is:

(a) Based upon the race, religion, nationality, or ethnic group of the applicant or name insured;

(b) Based solely upon the lawful occupation or profession of the applicant or named insured, unless such decision is for a business purpose which is not a mere pretext for unfair discrimination: Provided, That this provision shall not apply to any insurer, agent or broker which limits its market to one lawful occupation or profession or to several related lawful occupations or professions;

(c) Based upon the principal location of the insured motor vehicle unless such decision is for a business purpose which is not a mere pretext for unfair discrimination;

(d) Based solely upon the age, sex or marital status of an applicant or an insured, except that this subsection shall not prohibit rating differentials based on age, sex or marital status;

(e) Based upon the fact that the applicant has
previously obtained insurance coverage with a sub-
standard insurance carrier;

(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;

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

(i) 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.

Nothing in this section shall be construed as
prohibiting an insurer, agent, or broker from using
legitimate, documented, underwriting data in making
their own independent risk assessment of an applicant
for insurance.

§33-6B-4. Notification.

1 In the event of a declination, the insurer shall,
2 within thirty days of the receipt of the written
3 nonbinding application or written request for coverage
4 provide the applicant reasons for such declination.

§33-6B-5. Hearings and administrative procedure.

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

§33-6B-6. Sanctions.

1 If the commissioner determines in a final order that:

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

4 (1) Accept the application or written request for
5 insurance coverage at a rate and on the same terms
and conditions as are available to its other risks with
similar characteristics; or

(2) Reinstall 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 its other
risks with similar characteristics.

(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.

§33-6B-7. Severability.

If any provision of this article or the application
thereof to any person or circumstance 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.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Frederick B. Parker
Chairman Senate Committee

Benoard V. Kelly
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Fred C. West
Clerk of the Senate

Donnell H. Hagg
Clerk of the House of Delegates

John Tainter
President of the Senate

Ralph R. Mitchell
Speaker House of Delegates

The within is approved this the 25th day of April, 1989.

Gaston Caperton
Governor