

No. 264

RECEIVED  
1989 APR 25 PM 4:15  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
**REGULAR SESSION, 1989**



**ENROLLED**

*Committee Substitute for*  
**SENATE BILL NO. 264**

(By Senator *Susan M. President, et al.*)



**PASSED April 6, 1989**

In Effect 90 days from Passage

**ENROLLED**

COMMITTEE SUBSTITUTE  
FOR

**Senate Bill No. 264**

(BY SENATORS TUCKER, MR. PRESIDENT, AND HARMAN,

BY REQUEST OF THE EXECUTIVE)

---

[Passed April 6, 1989; in effect ninety 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.**

1 The purpose of this article is to regulate the declina-  
2 tion of automobile liability policies.

**§33-6B-2. Definitions.**

1 "Declination" means either the refusal of an insurer

2 to issue an automobile liability insurance policy upon  
3 receipt of a written nonbinding application or written  
4 request for coverage from its agent or an applicant.  
5 For the purposes of this article, the offering of  
6 insurance coverage with a company within an insur-  
7 ance group which is different from the company  
8 requested on the nonbinding application or written  
9 request for coverage, or the offering of policy coverage  
10 or rates substantially less favorable than requested in  
11 the nonbinding application or written request for  
12 coverage, shall not be considered a declination. Fur-  
13 ther, for the purposes of this article "declination" shall  
14 include the cancellation of an automobile liability  
15 policy which has been in effect less than sixty days  
16 and the non-renewal of an automobile liability policy  
17 which has been in effect less than two years.

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

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

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

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

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

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

22 (e) Based upon the fact that the applicant has

23 previously obtained insurance coverage with a sub-  
24 standard insurance carrier;

25 (f) Based upon the fact that the applicant has not  
26 previously been insured;

27 (g) Based upon the fact that the applicant did not  
28 have insurance coverage for a period of time prior to  
29 the application;

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

33 (i) Based upon the fact that another insurer  
34 previously declined to insure the applicant or  
35 terminated an existing policy in which the applicant  
36 was the named insured.

37 Nothing in this section shall be construed as  
38 prohibiting an insurer, agent, or broker from using  
39 legitimate, documented, underwriting data in making  
40 their own independent risk assessment of an applicant  
41 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

6 and conditions as are available to its other risks with  
7 similar characteristics; or

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

10 (3) Continue insurance coverage at a rate and on the  
11 same terms and conditions as are available to its other  
12 risks with similar characteristics.

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

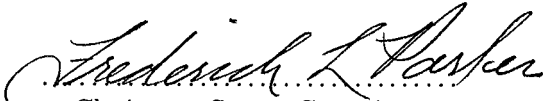
15 (1) Issue a cease and desist order to restrain the  
16 person from engaging in practices which violate this  
17 article;

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

**§33-6B-7. Severability.**

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


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

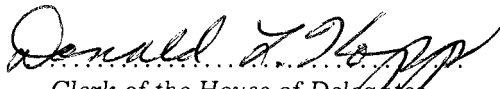
  
.....  
Chairman Senate Committee


  
.....  
Chairman House Committee

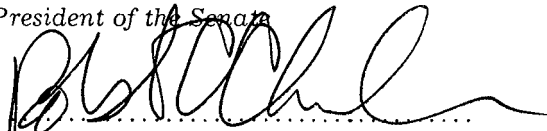
Originated in the Senate.

In effect ninety days from passage.

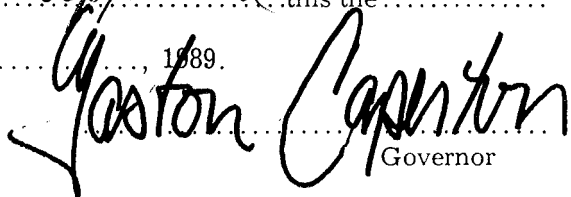
  
.....  
Clerk of the Senate

  
.....  
Clerk of the House of Delegates

  
.....  
President of the Senate

  
.....  
Speaker House of Delegates

The within *is approved* this the *25th*  
.....  
day of *April* ....., 1889.

  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date 4/14/89

Time 4:47