

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1990



## ENROLLED

*Committee Substitute for*

SENATE BILL NO. 162

(By Senators *Sundette, Mr. President and*  
*Warman by request of the Executive*)



PASSED March 8, 1990

In Effect from Passage

**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 162**

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

BY REQUEST OF THE EXECUTIVE, *original sponsors*)

[Passed March 8, 1990; in effect from passage.]

AN ACT to amend chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article seventeen-a, relating to insurance; and providing a mechanism to regulate the declination and termination of property insurance policies and to provide for disclosure of the reasons for declinations and terminations.

*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 seventeen-a, to read as follows:

**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

3 property insurance and to provide for disclosure of the  
4 reasons for these actions.

**§33-17A-2. Scope of article.**

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

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

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

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

16 (2) The personal property is within a residential  
17 dwelling.

**§33-17A-3. Definitions.**

1 (a) "Declination" is the refusal of an insurer to issue  
2 a property insurance policy on a written application or  
3 written request for coverage. For the purposes of this  
4 article, the offering of insurance coverage with a  
5 company within an insurance group which is different  
6 from the company requested on the application or  
7 written request for coverage or the offering of insur-  
8 ance upon different terms than requested in the  
9 application or written request for coverage is not  
10 considered a declination if such offering of such  
11 insurance is based upon any valid underwriting reason  
12 which involves a substantial increase in the risk. Each  
13 company or groups of companies instituting such  
14 transfer shall give notice in the manner provided in  
15 subsection (c), section four of this article, to the  
16 insured as to the reasons for such transfer.

17 (b) "Nonpayment of premium" means the failure of

18 the named insured to discharge any obligation in  
19 connection with the payment of premiums on policies  
20 of property insurance, subject to this article, whether  
21 the payments are directly payable to the insurer or its  
22 agent or indirectly payable to the insurer or its agent  
23 or indirectly payable under a premium finance plan or  
24 extension of credit. "Nonpayment of premium"  
25 includes the failure to pay dues or fees where pay-  
26 ment of dues or fees is a prerequisite to obtaining or  
27 continuing property insurance coverage.

28 (c) "Renewal" or "to renew" means the issuance  
29 and delivery by an insurer at the end of a policy  
30 period of a policy superseding a policy previously  
31 issued and delivered by the same insurer, or the  
32 issuance and delivery of a certificate or notice extend-  
33 ing the term of an existing policy beyond its policy  
34 period or term. For the purpose of this article, any  
35 policy period or term of less than six months is  
36 considered a policy period or term of six months, and  
37 any policy period or term of more than one year or  
38 any policy with no fixed expiration date is considered  
39 a policy period or term of one year.

40 (d) "Termination" means either a cancellation or  
41 nonrenewal of property insurance coverage in whole  
42 or in part. A cancellation occurs during the policy  
43 term. A nonrenewal occurs at the end of the policy  
44 term as set forth in subsection (c) of this section. For  
45 purposes of this article, the transfer of a policyholder  
46 between companies within the same insurance group  
47 is not considered a termination, if such transfer is  
48 based upon any valid underwriting reason which  
49 involves a substantial increase in the risk. Each  
50 company or group of companies instituting such  
51 transfer shall give notice in the manner provided in  
52 subsection (c), section four of this article, to the  
53 insured as to the reasons for such transfer. Requiring  
54 a reasonable deductible, reasonable changes in the  
55 amount of insurance or reasonable reductions in policy  
56 limits or coverage is not considered a termination if  
57 the requirements are directly related to the hazard  
58 involved and are made on the renewal date of the  
59 policy.

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

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

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

18 (c) At least thirty days before the end of a policy  
19 period, as described in subsection (c), section three of  
20 this article, an insurer shall deliver or send by first  
21 class mail to the named insured at the last known  
22 address of the named insured, notice of its intention  
23 regarding the renewal of the property insurance  
24 policy. Notice of an intention not to renew a property  
25 insurance policy shall be accompanied by an explana-  
26 tion of the specific reasons for the nonrenewal:  
27 *Provided*, That no insurer shall fail to renew an  
28 outstanding property insurance policy which has been  
29 in existence for four years or longer except for the  
30 reasons as set forth in section five of this article; or for  
31 other valid underwriting reasons which involve a  
32 substantial increase in the risk.

**§33-17A-5. Permissible cancellations.**

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

6 (a) Nonpayment of premium;

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

10 (c) Discovery of fraud or material misrepresentation  
11 made by or with the knowledge of the named insured  
12 in obtaining the policy, continuing the policy or in  
13 presenting a claim under the policy;

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

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

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

25 (g) A determination by the commissioner that the  
26 continuation of the policy would place the insurer in  
27 violation of the insurance laws of this state;

28 (h) Real property taxes owing on the insured prop-  
29 erty have been delinquent for two or more years and  
30 continue delinquent at the time notice of cancellation  
31 is issued;

32 (i) The insurer which issues said policy of insurance  
33 ceases writing the particular type or line of insurance  
34 coverage contained in said policy throughout the state  
35 or should such insurer discontinue operations within  
36 the state; or

37 (j) Substantial breach of the provisions of the policy.

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

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

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

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

15 (c) Based upon the age or location of the residence  
16 of the applicant or name insured unless the decision is  
17 for a business purpose which is not a mere pretext for  
18 unfair discrimination or unless the age or location  
19 materially affects the risk;

20 (d) Based upon the fact that another insurer pre-  
21 viously declined to insure the applicant or terminated  
22 an existing policy in which the applicant was the  
23 named insured;

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

27 (f) Based upon the fact that the applicant has not  
28 previously been insured; or

29 (g) Based upon the fact that the applicant did not  
30 have insurance coverage for a period of time prior to  
31 the application.

**§33-17A-7. 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 con-  
4 ducted in accordance with the provisions of article two  
5 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

3 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 other risks similarly  
7 situated;

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 other  
12 risks similarly situated.

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; and

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

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

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

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

**§33-17A-10. Immunity.**

1 (a) There is no liability on the part of and no cause



2 of action shall arise against the commissioner, any  
3 insurer or its authorized representative, or any  
4 licensed insurance agent or broker for furnishing  
5 information to an insurer as to reasons for a termina-  
6 tion or declination, or for any communication giving  
7 notice of, or specifying the reasons for a declination or  
8 termination.

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

**§33-17A-11. Severability.**

1 If any provisions of this article or the application  
2 thereof to any person or circumstances 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.

*Frederick L. Parker*  
.....  
Chairman Senate Committee

*Bernard V. Kelly*  
.....  
Chairman House Committee

Originated in the Senate.

In effect from passage.

*Harold E. Albrecht*  
.....  
Clerk of the Senate

*Donald D. Voss*  
.....  
Clerk of the House of Delegates

*Will Fardette*  
.....  
President of the Senate

*Bob C. Carlson*  
.....  
Speaker House of Delegates

The within *is approved* this the *26th* day of *March* 1990.

*Lawton Cassin*  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/16/90

Time 3:53 pm

RECEIVED

1930 MAR 28 PM 3:02

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE