WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1990

ENROLLED
Committee Substitute for
SENATE BILL NO. 162

(By Senators Beutler, Mr. President and Harman by request of the Executive)

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.

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.

This article applies to policies of property insurance,
other than policies of inland marine insurance and
policies of property insurance issued through a resid-
ual 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.

(a) “Declination” is the refusal of an insurer to issue
a property insurance policy on a written 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 application or
written request for coverage or the offering of insur-
ance upon different terms than requested in the
application or written request for coverage is not
considered a declination if such offering of such
insurance is based upon any valid underwriting reason
which involves a substantial increase in the risk. Each
company or groups of companies instituting such
transfer shall give notice in the manner provided in
subsection (c), section four of this article, to the
insured as to the reasons for such transfer.

(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 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 of 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 not considered a termination, if such transfer is based upon any valid underwriting reason which involves a substantial increase in the risk. Each company or group of companies instituting such transfer shall give notice in the manner provided in subsection (c), section four of this article, to the insured as to the reasons for such transfer. 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 transfer, declina-
tion or termination.

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

(b) A notice of cancellation of property insurance
coverage by an insurer shall be in writing, shall be
delivered to the named insured or sent by first class
mail 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 send by first
class 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 explana-
tion 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 four years or longer except for the
reasons as set forth in section five of this article; or for
other valid underwriting reasons which involve a
substantial increase in the risk.

§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 substantially 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 substantially increases any hazard insured against;

(g) A determination by the commissioner that the continuation 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;

(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; or

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

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

No insurer may decline to issue or terminate a policy or 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, 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 occupa-
tion or profession or to several related lawful occupa-
tions 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 or unless the age or location
materially affects the risk;

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

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

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

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


Hearings for the violation of any provision of this
article, and the administrative procedure prior to,
during and following these hearings, shall be con-
ducted 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) Reinstat,e 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; and

(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 arise against the commissioner, any insurer or its authorized representative, or any licensed insurance agent or broker for furnishing information to an insurer as to reasons for a termination or declination, or for any communication giving notice of, or specifying the reasons for a declination or termination.

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


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

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

Maston Capitol

Governor