ENROLLED

House Bill No. 4650

(By Delegates Beane, Angotti, L. White, Facemyer and Capito)

Passed March 11, 2000

In Effect Ninety Days from Passage
AN ACT to amend and reenact sections one, two and four, article six-a; section three, article six-b; and section six, article seventeen-a, all of chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to insurance policies; cancelling and not renewing an automobile liability insurance policy for moving violations resulting in three or more points on the driver’s record; permitting an insurer to transfer an insured between companies for a valid underwriting reason; clarifying the reinstatement date of an automobile liability insurance policy; and prohibiting the declination of an automobile liability insurance policy and a homeowner’s insurance policy based solely on an adverse credit report.

Be it enacted by the Legislature of West Virginia:

That sections one, two and four, article six-a; section three, article six-b; and section six, article seventeen-a, all of chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:
ARTICLE 6A. CANCELLATION OR NONRENEWAL OF AUTOMOBILE LIABILITY POLICIES.

§33-6A-1. Cancellation prohibited except for specified reasons; notice.

No insurer once having issued or delivered a policy providing automobile liability insurance for a private passenger automobile may, after the policy has been in effect for sixty days, or in case of renewal effective immediately, issue or cause to issue a notice of cancellation during the term of the policy except for one or more of the reasons specified in this section:

(a) The named insured fails to make payments of premium for the policy or any installment of the premium when due;

(b) The policy is obtained through material misrepresentation;

(c) The insured violates any of the material terms and conditions of the policy;

(d) The named insured or any other operator, either residing in the same household or who customarily operates an automobile insured under the policy:

(1) Has had his or her operator’s license suspended or revoked during the policy period including suspension or revocation for failure to comply with the provisions of article five-a, chapter seventeen-c of this code, regarding consent for a chemical test for intoxication: Provided, That when a license is suspended for sixty days by the commissioner of motor vehicles because a person drove a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than ten hundredths of one percent, by weight, pursuant to subsection (1), section two, article five-a, chapter
seventeen-c of this code, the suspension shall not be grounds for cancellation; or

(2) Is or becomes subject to epilepsy or heart attacks and the individual cannot produce a certificate from a physician testifying to his or her ability to operate a motor vehicle.

(e) The named insured or any other operator, either residing in the same household or who customarily operates an automobile insured under such policy, is convicted of or forfeits bail during the policy period for any of the following reasons:

(1) Any felony or assault involving the use of a motor vehicle;

(2) Negligent homicide arising out of the operation of a motor vehicle;

(3) Operating a motor vehicle while under the influence of alcohol or of any controlled substance or while having an alcohol concentration in his or her blood of ten hundredths of one percent or more, by weight;

(4) Leaving the scene of a motor vehicle accident in which the insured is involved without reporting it as required by law;

(5) Theft of a motor vehicle or the unlawful taking of a motor vehicle;

(6) Making false statements in an application for a motor vehicle operator’s license;

(7) Three or more moving traffic violations committed within a period of twelve months, each of which results in three or more points being assessed on the driver’s record by the division of motor vehicles, whether or not the insurer renewed the policy without knowledge of all such violations. Notice of any cancellation made pursuant to this subsection shall be mailed to the named insured either during the current policy
period or during the first full policy period following the date that the third moving traffic violation is recorded by the division of motor vehicles.

Notwithstanding any of the provisions of this section to the contrary, no insurer may cancel a policy of automobile liability insurance without first giving the insured thirty days’ notice of its intention to cancel: Provided, That cancellation of the insurance policy by the insurer for failure of consideration to be paid by the insured upon initial issuance of the insurance policy is effective upon the expiration of ten days’ notice of cancellation to the insured.

§33-6A-2. Cancellation for other reasons void.

Any purported cancellation by an insurer of a policy of automobile liability insurance which has been in effect for sixty days and which has been renewed shall be void if the purported cancellation is contrary to section one of this article. For purposes of this article, the transfer of an insured between insurance companies within the same group is not considered a cancellation or nonrenewal of an automobile liability insurance policy if the transfer is based upon any valid underwriting reason involving a substantially increased risk associated with the policy.

§33-6A-4. Advance notice of nonrenewal required; assigned risk policies; reasons for nonrenewal; hearing and review after nonrenewal.

No insurer shall fail to renew an outstanding automobile liability or physical damage insurance policy unless such nonrenewal is preceded by at least forty-five days of advance notice to the named insured of such insurer’s election not to renew such policy: Provided, That subject to this section, nothing contained in this article shall be construed so as to prevent an insurer from refusing to issue an automobile liability
or physical damage insurance policy upon application to such insurer, nor shall any provision of this article be construed to prevent an insurer from refusing to renew such a policy upon expiration, except as to the notice requirements of this section, and except further as to those applicants lawfully submitted pursuant to the West Virginia assigned risk plan: Provided, however, That an insurer may not fail to renew an outstanding automobile liability or physical damage insurance policy which has been in existence for two consecutive years or longer except for the following reasons:

(a) The named insured fails to make payments of premium for such policy or any installment of the premium when due;

(b) The policy is obtained through material misrepresentation;

(c) The insured violates any of the material terms and conditions of the policy;

(d) The named insured or any other operator, either residing in the same household or who customarily operates an automobile insured under such policy:

(1) Has had his or her operator’s license suspended or revoked during the policy period; or

(2) Is or becomes subject to epilepsy or heart attacks and such individual cannot produce a certificate from a physician testifying to his ability to operate a motor vehicle;

(e) The named insured or any other operator, either residing in the same household or who customarily operates an automobile insured under such policy, is convicted of or forfeits bail during the policy period for any of the following reasons:

(1) Any felony or assault involving the use of a motor vehicle;
(2) Negligent homicide arising out of the operation of a motor vehicle;

(3) Operating a motor vehicle while under the influence of intoxicating liquor or of any narcotic drug;

(4) Leaving the scene of a motor vehicle accident in which the insured is involved without reporting it as required by law;

(5) Theft of a motor vehicle or the unlawful taking of a motor vehicle;

(6) Making false statements in an application for a motor vehicle operator's license;

(7) Two or more moving traffic violations committed within a period of twelve months, each of which results in three or more points being assessed on the driver's record by the division of motor vehicles, whether or not the insurer renewed the policy without knowledge of all such violations. Notice of any nonrenewal made pursuant to this subsection shall be mailed to the named insured either during the current policy period or during the first full policy period following the date that the second moving traffic violation is recorded by the division of motor vehicles.

(f) The named insured or any other operator has had a second at-fault motor vehicle accident within a period of twelve months, whether or not the insurer renewed the policy without knowledge of all such accidents. Notice of any nonrenewal made pursuant to this subsection shall be mailed to the named insured either during the current policy period or during the first full policy period following the date of the second accident.

Nonrenewal of such policy for any reason is subject to a hearing and review as provided for in section five of this article.
Cost of the hearing shall be assessed against the losing party but shall not exceed seventy-five dollars.

Notwithstanding the provisions of subsection (a) of this section, the insurer shall renew any automobile liability or physical damage insurance policy that has not been renewed due to the insured's failure to pay the renewal premium when due if: (1) None of the other grounds for nonrenewal as set forth in subsections (b) through (f), inclusive, of this section exist; and (2) the insured makes an application for renewal within ninety days of the original expiration date of the policy. If a policy is renewed as provided for in this paragraph, then the coverage afforded shall not be retroactive to the original expiration date of the policy, but shall begin on the reinstatement date at the current premium levels offered by the company.

ARTICLE 6B. DECLINATION OF AUTOMOBILE LIABILITY INSURANCE.

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

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

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

(b) Based solely upon the lawful occupation or profession of the applicant or named insured, unless the decision is for a business purpose that is not a mere pretext for unfair discrimination: Provided, That this provision does not apply to any insurer, agent or broker that 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 the decision is for a business purpose which is not a mere pretext for unfair discrimination;
Based solely upon the age, sex or marital status of an applicant or an insured, except that this subsection does not prohibit rating differentials based on age, sex or marital status;

Based upon the fact that the applicant has previously obtained insurance coverage with a substandard insurance carrier;

Based upon the fact that the applicant has not previously been insured;

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

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

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;

Based solely upon an adverse credit report or adverse credit scoring.

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

ARTICLE 17A. PROPERTY INSURANCE DECLINATION, TERMINATION AND DISCLOSURE.

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

No insurer may decline to issue or terminate a policy of 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 the decision is for a business purpose that is not a mere pretext for unfair discrimination: Provided, That this provision does not apply to any insurer, agent or broker that limits its market to one lawful occupation or profession or to several related lawful occupations or professions;

(c) Based upon the age or location of the residence of the applicant or named insured unless the decision is for a business purpose that 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 previously 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;

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

(j) Based solely upon an adverse credit report or adverse credit scoring.
That Joint Committee on Enrolled Bills hereby certifies that the
foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within Approved this the 4th
day of , 2000.

Governor