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WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2000



ENROLLED

House Bill No. 4650

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



Passed March 11, 2000

In Effect Ninety Days from Passage

ENROLLED

H. B. 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.

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

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

9 (b) The policy is obtained through material misrepresenta-
10 tion;

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

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

16 (1) Has had his or her operator's license suspended or
17 revoked during the policy period including suspension or
18 revocation for failure to comply with the provisions of article
19 five-a, chapter seventeen-c of this code, regarding consent for
20 a chemical test for intoxication: *Provided*, That when a license
21 is suspended for sixty days by the commissioner of motor
22 vehicles because a person drove a motor vehicle while under
23 the age of twenty-one years with an alcohol concentration in his
24 or her blood of two hundredths of one percent or more, by
25 weight, but less than ten hundredths of one percent, by weight,
26 pursuant to subsection (l), section two, article five-a, chapter

27 seventeen-c of this code, the suspension shall not be grounds
28 for cancellation; or

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

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

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

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

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

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

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

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

50 (7) Three or more moving traffic violations committed
51 within a period of twelve months, each of which results in three
52 or more points being assessed on the driver's record by the
53 division of motor vehicles, whether or not the insurer renewed
54 the policy without knowledge of all such violations. Notice of
55 any cancellation made pursuant to this subsection shall be
56 mailed to the named insured either during the current policy

57 period or during the first full policy period following the date
58 that the third moving traffic violation is recorded by the
59 division of motor vehicles.

60 Notwithstanding any of the provisions of this section to the
61 contrary, no insurer may cancel a policy of automobile liability
62 insurance without first giving the insured thirty days' notice of
63 its intention to cancel: *Provided*, That cancellation of the
64 insurance policy by the insurer for failure of consideration to be
65 paid by the insured upon initial issuance of the insurance policy
66 is effective upon the expiration of ten days' notice of cancella-
67 tion to the insured.

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

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

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

1 No insurer shall fail to renew an outstanding automobile
2 liability or physical damage insurance policy unless such
3 nonrenewal is preceded by at least forty-five days of advance
4 notice to the named insured of such insurer's election not to
5 renew such policy: *Provided*, That subject to this section,
6 nothing contained in this article shall be construed so as to
7 prevent an insurer from refusing to issue an automobile liability

8 or physical damage insurance policy upon application to such
9 insurer, nor shall any provision of this article be construed to
10 prevent an insurer from refusing to renew such a policy upon
11 expiration, except as to the notice requirements of this section,
12 and except further as to those applicants lawfully submitted
13 pursuant to the West Virginia assigned risk plan: *Provided,*
14 *however,* That an insurer may not fail to renew an outstanding
15 automobile liability or physical damage insurance policy which
16 has been in existence for two consecutive years or longer except
17 for the following reasons:

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

20 (b) The policy is obtained through material misrepresenta-
21 tion;

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

24 (d) The named insured or any other operator, either residing
25 in the same household or who customarily operates an automo-
26 bile insured under such policy:

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

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

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

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

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

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

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

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

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

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

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

66 Nonrenewal of such policy for any reason is subject to a
67 hearing and review as provided for in section five of this article.

68 Cost of the hearing shall be assessed against the losing party but
69 shall not exceed seventy-five dollars.

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

ARTICLE 6B. DECLINATION OF AUTOMOBILE LIABILITY INSURANCE.

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

1 The declination of an application for a private passenger
2 policy of 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 ethnic
5 group, of the applicant or named insured;

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

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

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

19 (e) Based upon the fact that the applicant has previously
20 obtained insurance coverage with a substandard insurance
21 carrier;

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

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

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

29 (i) Based upon the fact that another insurer previously
30 declined to insure the applicant or terminated an existing policy
31 in which the applicant was the named insured;

32 (j) Based solely upon an adverse credit report or adverse
33 credit scoring.

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

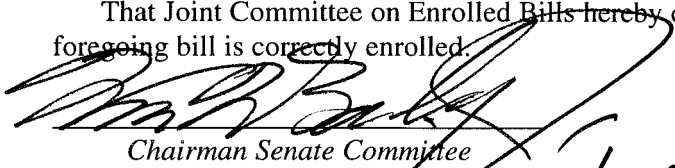
**ARTICLE 17A. PROPERTY INSURANCE DECLINATION, TERMINATION
AND DISCLOSURE.**

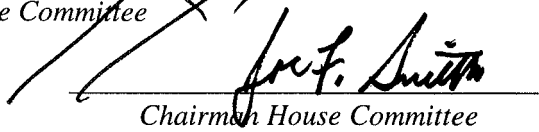
**§33-17A-6. Discriminatory terminations and declinations prohib-
ited.**

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

- 4 (a) Based upon the race, religion, nationality, ethnic group,
5 age, sex or marital status of the applicant or named insured;
- 6 (b) Based solely upon the lawful occupation or profession
7 of the applicant or named insured, unless the decision is for a
8 business purpose that is not a mere pretext for unfair discrimi-
9 nation: *Provided*, That this provision does not apply to any
10 insurer, agent or broker that limits its market to one lawful
11 occupation or profession or to several related lawful occupa-
12 tions or professions;
- 13 (c) Based upon the age or location of the residence of the
14 applicant or named insured unless the decision is for a business
15 purpose that is not a mere pretext for unfair discrimination or
16 unless the age or location materially affects the risk;
- 17 (d) Based upon the fact that another insurer previously
18 declined to insure the applicant or terminated an existing policy
19 in which the applicant was the named insured;
- 20 (e) Based upon the fact that the applicant or named insured
21 previously obtained insurance coverage through a residual
22 market insurance mechanism;
- 23 (f) Based upon the fact that the applicant has not previously
24 been insured;
- 25 (g) Based upon the fact that the applicant did not have
26 insurance coverage for a period of time prior to the application;
27 or
- 28 (j) Based solely upon an adverse credit report or adverse
29 credit scoring.

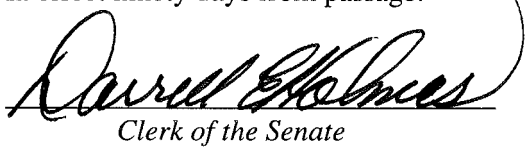
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

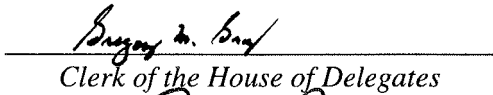

Chairman Senate Committee

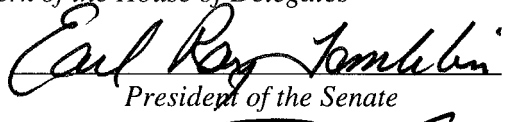

Chairman House Committee

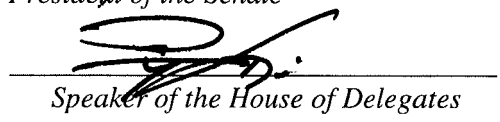
Originating in the House.

In effect ninety days from passage.

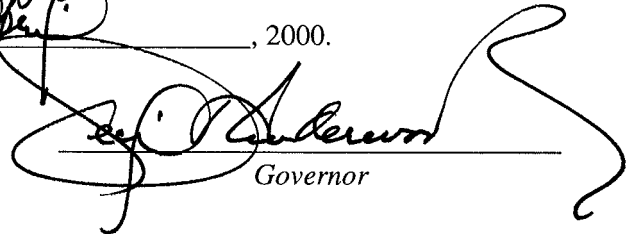

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within approved this the 4th
day of April, 2000.


Governor

PRESENTED TO THE

GOVERNOR

Date 3/31/20

Time 2:30pm