

1 **H. B. 2467**

2
3 (By Delegates Rodighiero, Fleischauer, Longstreth,
4 Boggs and Martin)

5
6 [Introduced January 13, 2011; referred to the
7 Committee on Banking and Insurance then the Judiciary.]

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9
10 A BILL to amend and reenact §33-6B-3 of the Code of West Virginia,
11 1931, as amended; and to amend and reenact §33-20-3 and §33-
12 20-5 of said code, all relating to prohibiting the number of
13 inquiries reflected in a credit report, credit score report or
14 CLUE report from adversely affecting an application for
15 insurance; to limiting the use of a credit score to banking
16 institution credit scoring for casualty insurance rate
17 filings; and prohibiting reliance on information which is
18 false or potentially false; limiting the use of a credit score
19 in casualty insurance rate filings.

20 *Be it enacted by the Legislature of West Virginia:*

21 That §33-6B-3 of the Code of West Virginia, 1931, as amended,
22 be amended and reenacted; and that §33-20-3 and §33-20-5 of said
23 code be amended and reenacted, all to read as follows:

24 **ARTICLE 6B. DECLINATION OF AUTOMOBILE LIABILITY INSURANCE.**

25 **§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 of
7 the applicant or named insured, unless the decision is for a
8 business purpose that is not a mere pretext for unfair
9 discrimination: *Provided*, That this provision does not apply to
10 any insurer, agent or broker that limits its market to one lawful
11 occupation or profession or to several related lawful occupations
12 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 not
15 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 carrier;

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

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

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

4 (I) Based upon the fact that another insurer previously
5 declined to insure the applicant or terminated an existing policy
6 in which the applicant was the named insured;

7 (j) Based solely upon an adverse credit report or adverse
8 credit scoring;

9 (k) Based, in any part, upon the number of inquiries reflected
10 in a credit report, credit score report or CLUE report or upon any
11 information contained in any of these reports, the accuracy of
12 which is disputed by the applicant.

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

17 **ARTICLE 20. RATES AND RATING ORGANIZATIONS.**

18 **§33-20-3. Ratemaking.**

19 All rates ~~shall be~~ are made in accordance with the following
20 provisions:

21 (a) Due consideration ~~shall be~~ is given to past and
22 prospective loss experience within and outside this state, to
23 catastrophe hazards, if any, to a reasonable margin for
24 underwriting profit and contingencies, to dividends, savings or

1 unabsorbed premium deposits allowed or returned by insurers to
2 their policyholders, members or subscribers, to past and
3 prospective expenses both countrywide and those specially
4 applicable to this state and to all other relevant factors within
5 and outside this state.

6 (b) Rates may not be excessive, inadequate or unfairly
7 discriminatory.

8 (c) Rates for casualty and surety insurance to which this
9 article applies shall also be subject to the following provisions:

10 (1) The systems of expense provisions included in the rates
11 for use by any insurer or group of insurers may differ from those
12 of other insurers or groups of insurers to reflect the requirements
13 of the operating methods of any such insurer or group with respect
14 to any kind of insurance or with respect to any subdivision or
15 combination thereof for which subdivision or combination separate
16 expense provisions are applicable.

17 (2) Risks ~~shall be~~ are grouped by classifications and by
18 territorial areas for the establishment of rates and minimum
19 premiums. Classification of rates ~~shall be~~ are modified to produce
20 rates for individual risks in a territorial area in accordance with
21 rating plans which establish standards for measuring variations in
22 hazards or expense provisions, or both. Such standards may measure
23 any differences among risks that can be demonstrated to have a
24 probable effect upon losses or expenses: *Provided*, That such

1 standards shall include the establishment of at least seven
2 territorial rate areas within the state: *Provided, however, That*
3 such territorial rate established by any insurer or group of
4 insurers may differ from those of other insurers or group of
5 insurers.

6 (3) Due consideration ~~shall be~~ is given to such factors as
7 expense, management, individual experience, underwriting judgment,
8 degree or nature of hazard or any other reasonable considerations,
9 provided such factors apply to all risks under the same or
10 substantially the same circumstances or conditions.

11 (4) In the case of any homeowners or automobile liability
12 policy, credit scoring may not be considered as a factor to
13 calculate rates.

14 (d) Rates for fire and marine insurance to which this article
15 applies shall also be subject to the following provisions:

16 (1) Manual, minimum, class rates, rating schedules or rating
17 plans shall be made and adopted, except in the case of specific
18 inland marine rates on risks specially rated.

19 (2) Due consideration ~~shall be~~ is given to the conflagration
20 hazard and in the case of fire insurance rates, consideration ~~shall~~
21 ~~be~~ is given to the experience of the fire insurance business during
22 a period of not less than the most recent five-year period for
23 which such experience is available.

24 (e) Rates for title insurance to which this article applies

1 shall also be subject to the following provisions:

2 (1) Title insurance rates shall be reasonable and adequate for
3 the class of risks to which they apply. Rates may not be unfairly
4 discriminatory between risks involving essentially the same hazards
5 and expense elements. The rates may be fixed in an amount
6 sufficient to furnish a reasonable margin for profit after
7 provisions to account for: (I) Probable losses as indicated by
8 experience within and without this state; (ii) exposure to loss
9 under policies; (iii) allocations to reserves; (iv) costs
10 participating insurance; (v) operating costs; and (vi) other items
11 of expense fairly attributable to the operation of a title
12 insurance business.

13 (2) (A) Policies may be grouped into classes for the
14 establishment of rates. A title insurance policy that is unusually
15 hazardous to the title insurance company because of an alleged
16 defect or irregularity in the title insured or because of
17 uncertainty regarding the proper interpretation or application of
18 the law involved may be classified separately according to the
19 facts of each case.

20 (B) Title insurance companies shall file separate rate
21 schedules for commercial and noncommercial risks. The Insurance
22 Commissioner shall promulgate rules regarding the requirements of
23 this subsection which shall give due consideration to the nature of
24 commercial transactions and the need for greater protections for

1 consumers in noncommercial transactions.

2 (3) Title insurance rates may not include charges for
3 abstracting, record searching, certificates regarding the record
4 title, escrow services, closing services and other related services
5 that may be offered or furnished or the cost and expenses of
6 examinations of titles.

7 (f) Except to the extent necessary to meet the provisions of
8 subdivisions (b) and (c) of this section, uniformity among insurers
9 in any matters within the scope of this section is neither required
10 nor prohibited.

11 (g) Rates made in accordance with this section may be used
12 subject to the provisions of this article.

13 **§33-20-5. Disapproval of filings.**

14 (a) If within the waiting period or any extension ~~thereof~~ of
15 it as provided in subsection (e) of section four of this article,
16 the commissioner finds that a filing does not meet the requirements
17 of this article, he or she shall send to the insurer or rating
18 organization which made ~~such~~ the filing, written notice of
19 disapproval of such filing specifying therein in what respects he
20 or she finds such filing fails to meet the requirements of this
21 article and stating that such filing shall not become effective.

22 (b) If within thirty days after a special surety filing
23 subject to subsection (f) of section four of this article or if
24 within thirty days after a specific inland marine rate on a risk

1 specially rated by a rating organization subject to subsection (g)
2 of section four of this article has become effective, the
3 commissioner finds that ~~such~~ the filing does not meet the
4 requirements of this article, he or she shall send to the rating
5 organization which made such filing written notice of disapproval
6 of such filing specifying therein in what respects he or she finds
7 that such filing fails to meet the requirements of this article and
8 stating when, within a reasonable period thereafter, such filing
9 ~~shall be deemed~~ is no longer effective. Said disapproval shall not
10 affect any contract made or issued prior to the expiration of the
11 period set forth in said notice.

12 (c) If at any time subsequent to the applicable review period
13 provided ~~for~~ in subsection (a) or (b) of this section, the
14 commissioner finds that a filing does not meet the requirements of
15 this article, he or she shall, after notice and hearing to every
16 insurer and rating organization which made such filing, issue an
17 order specifying in what respects he or she finds that such filing
18 fails to meet the requirements of this article, and stating when,
19 within a reasonable period thereafter, such filing ~~shall be deemed~~
20 is no longer effective. Copies of said order ~~shall be~~ are sent to
21 every such insurer and rating organization. Said order shall not
22 affect any contract or policy made or issued prior to the
23 expiration of the period set forth in said order.

24 (d) Any person or organization aggrieved with respect to any

1 filing which is in effect may demand a hearing thereon. If, after
2 such hearing, the commissioner finds that the filing does not meet
3 the requirements of this article, he or she shall issue an order
4 specifying in what respects he or she finds that such filing fails
5 to meet the requirements of this article, and stating when, within
6 a reasonable period thereafter, such filing shall be deemed no
7 longer effective. Said order shall not affect any contract or
8 policy made or issued prior to the expiration of the period set
9 forth in said order.

10 (e) Any insurer or rating organization, in respect to any
11 filing made by it which is not approved by the commissioner, may
12 demand a hearing thereon.

13 (f) No manual of classifications, rules, rating plans, or any
14 modification of any of the foregoing which establishes standards
15 for measuring variations in hazards or expense provisions, or both,
16 in the case of casualty insurance to which this article applies and
17 no manual, minimum, class rate, rating schedule, rating plan,
18 rating rule or any modification of any of the foregoing, in the
19 case of fire insurance to which this article applies, and which has
20 been filed pursuant to the requirements of section four of this
21 article, ~~shall be~~ is disapproved if the rates thereby produced meet
22 the requirements of this article. ~~Provided, That none of the~~
23 ~~foregoing consider as a factor a credit score.~~ If a credit score
24 is used as a factor in establishing a rating, only credit scores

1 from a banking institution as defined in section two, article one,
2 chapter thirty-one-a of the code may be used.

3 (g) If, in the opinion of the commissioner, the rate or form
4 filing made by an insurer is of such import that it will affect the
5 public he or she may, at his or her discretion, issue notice to
6 such insurer of a public hearing. The notice of public hearing to
7 the insurer making such form or rate filing ~~shall be~~ is made by
8 United States mail at least 15 days prior to hearing date. Notice
9 to the public shall be given by appropriate publication in a
10 newspaper in the form and manner prescribed by chapter twenty-
11 nine-a of this code. The holding of a public hearing as outlined
12 in this subsection shall have the effect of eliminating the right
13 of the party making such filing to demand a hearing as stated in
14 subsections (d) and (e) of this section.

NOTE: The purpose of this bill is to limit the use of a credit score to banking institution credit scoring for casualty insurance rate filings; to prohibit the use of credit scoring as a consideration in calculating insurance rates in homeowners or automobile liability policies; and to prohibit the number of inquiries reflected in a credit report, credit score report or CLUE report from adversely affecting an application for insurance; and, prohibiting reliance on information which is false or potentially false.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.