

H. B. 2051

(By Delegate Shott)

[Introduced January 14, 2015; referred to the
Committee on Banking and Insurance then Finance.]

A BILL to amend and reenact §33-17A-4 and §33-17A-6 of the Code of West Virginia, 1931, as amended, all relating to the use of credit information in connection with the declination and termination of property insurance and expanding the information required to be provided by an insurer in the notice of declination or termination to an insured or applicant.

Be it enacted by the Legislature of West Virginia:

That §33-17A-4 and §33-17A-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

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

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

(a) Upon declining to insure any real or personal property, subject to this article, the insurer making a 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 an

1 insurance application form by an insurer ~~shall create~~ creates no right to coverage on the behalf of the
2 insured to which the insured is not otherwise entitled.

3 (b) A notice of cancellation of property insurance coverage by an insurer shall be in writing,
4 shall be delivered to the named insured or sent by first class mail to the named insured at the last
5 known address of the named insured, shall state the effective date of the cancellation and shall be
6 accompanied by a written explanation of the specific reason or reasons for the cancellation.

7 (c) At least thirty days before the end of a policy period, as described in subsection (c),
8 section three of this article, an insurer shall deliver or send by first class mail to the named insured
9 at the last known address of the named insured, notice of its intention regarding the renewal of the
10 property insurance policy. Notice of an intention not to renew a property insurance policy shall be
11 accompanied by an explanation of the specific reasons for the nonrenewal. ~~Provided, That~~ No insurer
12 ~~shall~~ may fail to renew an outstanding property insurance policy which has been in existence for four
13 years or longer except for the reasons as set forth in section five of this article; or for other valid
14 underwriting reasons which involve a substantial increase in the risk. ~~Provided, however, That~~
15 Notwithstanding any other provision of this article, no property insurance coverage policy in force
16 for at least four years, may be denied renewal or canceled solely as a result of:

17 (1) A single first party property damage claim within the previous thirty-six months and that
18 arose from wind, hail, lightning, wildfire, snow or ice, unless the insurer has evidence that the
19 insured unreasonably failed to maintain the property and that failure to maintain the property
20 contributed to the loss, or

21 (2) Two first party property damage claims within the previous twelve months, both of which
22 arose from claims solely due to an event for which a state of emergency is declared for the county

1 in which the insured property is located, unless the insurer has evidence that the insured
2 unreasonably failed to maintain the property and that failure to maintain the property contributed to
3 the loss. “State of emergency” means the situation existing after the occurrence of a disaster in
4 which a state of emergency has been declared by the Governor or by the Legislature pursuant to the
5 provisions of section six, article five, chapter fifteen of this code or in which a major disaster
6 declaration or emergency declaration has been issued by the President of the United States pursuant
7 to the provisions of 42 U. S. C. §5122.

8 (d) If an insurer’s declination, cancellation or refusal to renew an existing property insurance
9 policy is due at least in part to the applicant's or insured's credit history or the results of the
10 application of the insurer’s financial history measurement program, in addition to the other notice
11 requirements of this section, the insurer shall disclose to the applicant or insured in writing as
12 follows:

13 (1) That the adverse action was based on the credit report of such insured or applicant;

14 (2) That the applicant or insured is entitled to a free copy of such credit report and where such
15 report can be obtained;

16 (3) That in determining whether to modify its action, it will consider if the following types
17 of extraordinary life circumstances occurred to the insured or applicant within three years prior to
18 its action:

19 (A) A catastrophic illness or injury;

20 (B) A divorce;

21 (C) Death of a spouse, child or parent;

22 (D) Involuntary loss of employment for more than three consecutive months;

1 (E) Identity theft;

2 (F) Total or other loss that makes a home uninhabitable;

3 (G) Other circumstances as may be adopted in rules by the commissioner; or

4 (H) Any other circumstance the insurer may choose to recognize; and

5 (4) The procedures for an applicant or insured:

6 (A) To inform the insurer of an extraordinary life circumstance; and

7 (B) To submit required documentation in support of his or her request for reconsideration of
8 the insurer's action.

9 (e) When used in this article:

10 (1) "Credit history" means any credit-related information derived from or found in a credit
11 report or credit scoring program or provided in an application for property insurance; and

12 (2) "Financial history measurement program" means any program that uses an applicant's
13 credit history to measure the applicant's risk of loss.

14 **§33-17A-6. Discriminatory terminations and declinations prohibited.**

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

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

19 (b) Based solely upon the lawful occupation or profession of the applicant or named insured
20 unless the decision is for a business purpose that is not a mere pretext for unfair discrimination.

21 ~~Provided, That~~ This provision does not apply to any an insurer, agent or broker that limits its market
22 to one lawful occupation or profession or to several related lawful occupations or professions;

- 1 (c) Based upon the age or location of the residence of the applicant or named insured unless
2 the decision is for a business purpose that is not a mere pretext for unfair discrimination or unless
3 the age or location materially affects the risk;
- 4 (d) Based upon the fact that another insurer previously declined to insure the applicant or
5 terminated an existing policy in which the applicant was the named insured;
- 6 (e) Based upon the fact that the applicant or named insured previously obtained insurance
7 coverage through a residual market insurance mechanism;
- 8 (f) Based upon the fact that the applicant has not previously been insured;
- 9 (g) Based upon the fact that the applicant did not have insurance coverage for a period of time
10 prior to the application; or
- 11 (h) Based solely upon an ~~adverse credit report or adverse credit scoring.~~ applicant's or
12 insured's credit history or credit rating, lack of credit history or the results of the insurer's financial
13 history measurement program.

NOTE: The purpose of this bill is to limit the use of credit information in connection with the declination and termination of property insurance and to expand the information required to be provided by the insurer to the insured or applicant in the notice of declination or termination.

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