

H. B. 2410

(By Delegates Boggs and Moore)

[Introduced February 13, 2013; referred to the
Committee on the Judiciary.]

A BILL to amend and reenact §33-6A-1 of the Code of West Virginia, 1931, as amended; and to amend and reenact §33-17A-5 of said code, all relating to insurance; property insurance declination; cancellation or nonrenewal of automobile liability policies; prohibiting declination, cancellation or nonrenewal of a property insurance policy, based upon information that an insured had a loss or damage to insured property when the insured does not file an insurance claim; and prohibiting cancellation or nonrenewal of an automobile liability policy based upon information that an insured was involved in a motor vehicle accident with another motor vehicle when neither the insured or other person files an insurance claim.

Be it enacted by the Legislature of West Virginia:

That §33-6A-1 of the Code of West Virginia, 1931, as amended,

1 be amended and reenacted; and that §33-17A-5 of said code be
2 amended and reenacted, all to read as follows:

3 **ARTICLE 6A. CANCELLATION OR NONRENEWAL OF AUTOMOBILE LIABILITY**
4 **POLICIES.**

5 **§33-6A-1. Cancellation prohibited except for specified reasons;**
6 **notice.**

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

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

15 (b) The policy is obtained through material misrepresentation;

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

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

21 (1) Has had his or her operator's license suspended or revoked
22 during the policy period including suspension or revocation for
23 failure to comply with the provisions of article five-a, chapter

1 seventeen-c of this code, regarding consent for a chemical test for
2 intoxication: *Provided*, That when a license is suspended for sixty
3 days by the Commissioner of the Division of Motor Vehicles because
4 a person drove a motor vehicle while under the age of twenty-one
5 years with an alcohol concentration in his or her blood of two
6 hundredths of one percent or more, by weight, but less than eight
7 hundredths of one percent, by weight, pursuant to subsection (1),
8 section two of said article, the suspension may not be grounds for
9 cancellation; or

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

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

17 (1) ~~Any~~ A felony or assault involving the use of a motor
18 vehicle;

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

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

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

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

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

7 (7) Three or more moving traffic violations committed within
8 a period of twelve months, each of which results in three or more
9 points being assessed on the driver's record by the Division of
10 Motor Vehicles, whether or not the insurer renewed the policy
11 without knowledge of all such violations. Notice of any
12 cancellation made pursuant to this subsection shall be mailed to
13 the named insured either during the current policy period or during
14 the first full policy period following the date that the third
15 moving traffic violation is recorded by the Division of Motor
16 Vehicles.

17 Notwithstanding any of the provisions of this section to the
18 contrary, no insurer may cancel a policy of automobile liability
19 insurance without first giving the insured thirty days' notice of
20 its intention to cancel: *Provided*, That the insurance policy is
21 voidable from the effective date and time of the policy issued by
22 the insurer if the insurer cancels the policy for failure of
23 consideration to be paid by the insured upon initial issuance of
24 the insurance policy and provides written notice to the insured of

1 the cancellation within fifteen days of receipt of notice of the
2 failure of consideration and consideration has not otherwise been
3 provided within ten days of the notice of cancellation. Notice of
4 cancellation for nonpayment of consideration shall be delivered to
5 the named insured or sent by first class mail to the named insured
6 at the address supplied on the application for insurance and shall
7 state the effective date of the cancellation and shall be
8 accompanied by a written explanation of the specific reason for the
9 cancellation. If the insurer fails to provide such written notice
10 to the insured, then the cancellation of the policy for failure of
11 consideration is effective upon the expiration of ten days' notice
12 of cancellation to the insured.

13 (f) Notwithstanding any other provision of this article or
14 code to the contrary, an insurer may not use information obtained
15 from an insured or other means concerning an accident involving the
16 insured and another motor vehicle for the purpose of cancelling or
17 nonrenewal of a policy if the insured or other person involved in
18 the incident does not file a claim relating to the incident.

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

21 **§33-17A-5. Permissible cancellations.**

22 After coverage has been in effect for more than sixty days or
23 after the effective date of a renewal policy, a notice of
24 cancellation may not be issued unless it is based on at least one

1 of the following reasons:

2 (a) Nonpayment of premium;

3 (b) Conviction of the insured of ~~any~~ a crime having as one of
4 its necessary elements an act increasing any hazard insured
5 against;

6 (c) Discovery of fraud or material misrepresentation made by
7 or with the knowledge of the named insured in obtaining the policy,
8 continuing the policy or in presenting a claim under the policy;

9 (d) Discovery of willful or reckless acts or omissions on the
10 part of the named insured which increase any hazard insured
11 against;

12 (e) The occurrence of a change in the risk which substantially
13 increases any hazard insured against after insurance coverage has
14 been issued or renewed;

15 (f) A violation of any local fire, health, safety, building or
16 construction regulation or ordinance with respect to any insured
17 property or the occupancy thereof which substantially increases any
18 hazard insured against;

19 (g) A determination by the commissioner that the continuation
20 of the policy would place the insurer in violation of the insurance
21 laws of this state;

22 (h) Real property taxes owing on the insured property have
23 been delinquent for two or more years and continue delinquent at
24 the time notice of cancellation is issued;

1 (i) The insurer which issues ~~said~~ the policy of insurance
2 ceases writing the particular type or line of insurance coverage
3 contained in ~~said~~ the policy throughout the state or should such
4 insurer discontinue operations within the state; or

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

6 (k) Notwithstanding any other provision of this article or
7 code to the contrary, an insurer may not use information obtained
8 from an insured or other means concerning a loss or damage to
9 insured property for the purpose of declining, cancelling or
10 nonrenewal of a policy if the insured does not file a claim
11 relating to the loss or damage to insured property.

NOTE: The purpose of this bill is to prohibit declination, cancellation or nonrenewal of a property insurance policy if the insured does not file a claim relating to the loss or damage to insured property. It also prohibits cancellation or nonrenewal of an automobile liability policy based upon information that an insured was involved in a motor vehicle accident with another motor vehicle when neither the insured nor other person files an insurance claim.

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