

H. B. 2398

(By Delegates Rodighiero, Hicks and Perdue)

[Introduced January 27, 2015; referred to the

Committee on Banking and Insurance then Finance.]

**FISCAL
NOTE**

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6B. DECLINATION OF AUTOMOBILE LIABILITY INSURANCE.

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

The declination of an application for a private passenger policy of automobile liability

1 insurance by an insurer, agent or broker is prohibited if the declination is:

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

4 (b) Based solely upon the lawful occupation or profession of the applicant or named insured,
5 unless the decision is for a business purpose that is not a mere pretext for unfair discrimination:
6 *Provided*, That this provision does not apply to any insurer, agent or broker that limits its market to
7 one lawful occupation or profession or to several related lawful occupations or professions;

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

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

12 (e) Based upon the fact that the applicant has previously obtained insurance coverage with
13 a substandard insurance carrier;

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

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

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

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

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

22 (k) Based, in any part, upon the number of inquiries reflected in a credit report, credit score

1 report or CLUE report or upon any information contained in any of these reports, the accuracy of
2 which is disputed by the applicant.

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

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

7 **§33-20-3. Ratemaking.**

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

9 (a) Due consideration ~~shall be~~ is given to past and prospective loss experience within and
10 outside this state, to catastrophe hazards, if any, to a reasonable margin for underwriting profit and
11 contingencies, to dividends, savings or unabsorbed premium deposits allowed or returned by insurers
12 to their policyholders, members or subscribers, to past and prospective expenses both countrywide
13 and those specially applicable to this state and to all other relevant factors within and outside this
14 state.

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

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

18 (1) The systems of expense provisions included in the rates for use by any insurer or group
19 of insurers may differ from those of other insurers or groups of insurers to reflect the requirements
20 of the operating methods of any such insurer or group with respect to any kind of insurance or with
21 respect to any subdivision or combination thereof for which subdivision or combination separate
22 expense provisions are applicable.

1 (2) Risks ~~shall be~~ are grouped by classifications and by territorial areas for the establishment
2 of rates and minimum premiums. Classification of rates ~~shall be~~ are modified to produce rates for
3 individual risks in a territorial area in accordance with rating plans which establish standards for
4 measuring variations in hazards or expense provisions, or both. Such standards may measure any
5 differences among risks that can be demonstrated to have a probable effect upon losses or expenses:
6 *Provided*, That such standards shall include the establishment of at least seven territorial rate areas
7 within the state: *Provided, however*, That such territorial rate established by any insurer or group
8 of insurers may differ from those of other insurers or group of insurers.

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

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

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

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

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

22 (e) Rates for title insurance to which this article applies shall also be subject to the following

1 provisions:

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

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

13 (B) Title insurance companies shall file separate rate schedules for commercial and
14 noncommercial risks. The Insurance Commissioner shall promulgate rules regarding the
15 requirements of this subsection which shall give due consideration to the nature of commercial
16 transactions and the need for greater protections for consumers in noncommercial transactions.

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

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

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

3 **§33-20-5. Disapproval of filings.**

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

10 (b) If within thirty days after a special surety filing subject to subsection (f) of section four
11 of this article or if within thirty days after a specific inland marine rate on a risk specially rated by
12 a rating organization subject to subsection (g) of section four of this article has become effective, the
13 commissioner finds that ~~such~~ the filing does not meet the requirements of this article, he or she shall
14 send to the rating organization which made ~~such~~ the filing written notice of disapproval of ~~such~~ the
15 filing specifying therein in what respects he or she finds that ~~such~~ the filing fails to meet the
16 requirements of this article and stating when, within a reasonable period thereafter, ~~such~~ the filing
17 ~~shall be deemed~~ is no longer effective. ~~Said~~ The disapproval shall not affect any contract made or
18 issued prior to the expiration of the period set forth in ~~said~~ the notice.

19 (c) If at any time subsequent to the applicable review period provided ~~for~~ in subsection (a)
20 or (b) of this section, the commissioner finds that a filing does not meet the requirements of this
21 article, he or she shall, after notice and hearing to every insurer and rating organization which made
22 ~~such~~ the filing, issue an order specifying in what respects he or she finds that ~~such~~ the filing fails to

1 meet the requirements of this article, and stating when, within a reasonable period thereafter, ~~such~~
2 ~~the filing shall be deemed~~ is no longer effective. Copies of ~~said the order shall be~~ are sent to every
3 ~~such~~ insurer and rating organization which made the filing. ~~Said The~~ The order shall not affect any
4 contract or policy made or issued prior to the expiration of the period set forth in ~~said the~~ the order.

5 (d) Any person or organization aggrieved with respect to any filing which is in effect may
6 demand a hearing thereon. If, after ~~such~~ hearing, the commissioner finds that the filing does not
7 meet the requirements of this article, he or she shall issue an order specifying in what respects he or
8 she finds that ~~such the~~ filing fails to meet the requirements of this article, and stating when, within
9 a reasonable period thereafter, ~~such the~~ filing shall be deemed no longer effective. ~~Said The~~ The order
10 shall not affect any contract or policy made or issued prior to the expiration of the period set forth
11 in ~~said the~~ the order.

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

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

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