

2004 Omnibus Bill on Insurance Availability & Affordability

A Bill for West Virginia Consumers

Independent Consumer Advocate – West Virginia Insurance Commission

What We Have Now

- The West Virginia Insurance Commission's consumer advocate is limited to just health insurance related issues
- The position is appointed by the commissioner and the office's budget comes from the commission—which is funded solely by taxes paid by the insurance industry to the commission
- The advocate's scope is too narrow, and the position is too closely tied to the commissioner and the industry for the advocate to lobby in the best interests of the consumers the position is supposed to represent

What This Bill Will Provide

- An independent consumer advocate appointed by the governor, with the consent of the Senate—not appointed by the commissioner
- The scope of the office is extended to all areas of insurance, not just health care
- The office is completely independent of the commission, with its own office space and staff and annual funding determined by the Legislature, not by the commission
- The advocate will work on behalf of West Virginia consumers by instituting, intervening and participating in other ways on their behalf with the West Virginia Insurance Commission, the Legislature, state and federal courts, administrative agencies, etc.

Why It's Good

- West Virginia will have a completely independent consumer advocate for insurance issues just like the one we currently have for utilities
- The advocate will be able to address concerns from West Virginia small businesses and consumers in all areas of insurance—property, casualty, health care, etc.
- The advocate can work in the best interests of consumers and small businesses without fear of retaliation

What They Could Say Against It

- That the West Virginia Insurance Commission already carefully balances both industry and consumer concerns and issues—and so does the consumer advocate

Counter Argument

- The commission's entire budget comes from tax revenue generated by insurance premiums—as premiums rise, so does its income. How can West Virginia policy holders know for certain that their best interests are being considered equally to the industry that is funding the commission?
- The bill provides an independent advocate who can challenge the commission on issues like whether or not a rate increase is warranted without fear of retaliation because his/her paycheck is not tied to it

Full Disclosure for All Rate Filings

What We Have Now

- The West Virginia Insurance Commission currently allows insurance companies to submit their claims expenses as a lump sum—there is no explanation of what the specific claims were.
- As a result, premiums could be increased because of payments for bad faith as much as payouts for claims—no one knows for sure

What This Bill Will Provide

- Requires full disclosure for all rate filings—with specific costs given in individual line items
- Prohibits the inclusion of costs associated with bad business practices—bad faith, unfair claims settlements, excess verdict liability and other extracontractual damages—from consideration when the Insurance Commission determines rate increases

Why It's Good

- The West Virginia Insurance Commission will be able to determine whether or not premium increases are warranted based on settlements made on claims filed by or against policy holders—and nothing else
- The costs for the insurance company's bad business practices are not extended to West Virginia small businesses and consumers—why should these billionaire corporations be rewarded for underhanded dealings by getting to charge their policyholders more?

What They Could Say Against It

- All costs related to doing business in West Virginia should be included when considering rate increases—the money to cover those expenses has to come from somewhere.

Counter Argument

- Those costs are related to bad business practices—if you're dealing fairly with West Virginia consumers, then you won't have those costs. It's a non-issue.

- Costs for bad business practices should come from corporate profits, not by shifting those costs to policy holders.

Prohibit the Use of Credit Scores for Rate Setting

What We Have Now

- There is a belief in the insurance industry that an individual's credit history can determine whether a policyholder is an insurance risk.
- Insurance corporations are allowed to use an individual's credit report or credit scores to determine what premiums to charge a new or current customer—which forces people to pay even higher premiums even though they may not have had a claim in 20 years.

What This Bill Will Provide

- Insurance companies would be prohibited from using credit reports or scores to determine what insurance premium to charge a policy holder—rates will be based on the individual's claims history

Why It's Good

- Insurance premium rates should be based on an individual's driving record and claims history—the real indicators of whether a policy holder is a risk
- The practice is so outrageously bad that people are penalized just because they are good consumers—they shop around for the best value and pay their credit cards on time.
How is this possible?
 - Every potential insurer a customer calls has to run a credit check to determine the premium rate. When too many people run a credit check on you, your score decreases and you are charged a higher premium rate.
 - When you have too many credit cards—even if those cards have a zero balance (maybe you signed up for new ones to get store discounts, frequent flier miles or a lower interest rate)—it shows negatively on your credit report and you pay a higher rate.
 - If you pay all your credit card bills on time, you are sometimes rewarded for being a good customer by having your credit limit increased. Those increases may put you too close to your total allowable credit based on your income and assets. Too close to the limit? You're a credit risk and pay higher insurance rates.

What They Could Say Against It

- The best way to determine whether an individual is an insurance risk is checking the credit history, and it allows them to place the cost burden on those who present the highest level of risk. If they can't, those costs have to be shifted to everyone.

Counter Argument

- You won't be placing the cost burden on everyone. Insurance companies check driving records and claims histories—analyses which clearly indicate whether or not a policyholder is high-risk. The high-risk clients are then charged accordingly.

Insurers Prohibited from Declining Customers Based on Number of Inquiries

What We Have Now

- Insurance companies can decline offering a policy to a consumer based just on the number of inquiries made on the person's credit report or Comprehensive Loss Underwriting Exchange (CLUE) report, an industry report which details claims history.

What This Bill Will Provide

- This legislation will prohibit insurance companies from declining new insurance policies solely on the number of inquiries that have been made on credit reports and CLUE reports
- Cannot decline a policy based on information contained in a report that is disputed by the applicant—the applicant has the opportunity to challenge errors in their reports

Why It's Good

- It allows West Virginia consumers to be smart shoppers. If a consumer would like to find a better rate, it allows them to check with several potential insurers—all of whom would need to check credit and CLUE reports to determine what the premium would be—without being decline by a potential carrier based solely on the fact that there have been several inquiries made to those reports.
- It allows the consumer to dispute errors in those reports

What They Could Say Against It

- Insurance companies need to use the CLUE reports to spot potential “policy-hoppers,” who frequently change their insurance carrier

Counter Argument

- This legislation does not prohibit declination based on the number of insurers a policyholder has had in the past two years—only the number of inquiries that have been made on the CLUE report. There is a difference between a good shopper and a policy hopper.

Premium Rate Rollbacks

What This Bill Will Provide

- This legislation will create a new provision which mandates insurance rate rollbacks for policy holders as a quid pro quo for any tort reform measure which the West Virginia Legislature has already passed or will pass in the future.

- The legislation is based on a similar measure passed in Texas as part of its tort reform package

Why It's Good

- Insurance corporations have clearly stated that they had to increase premiums because consumer protection laws—medical malpractice laws, third party bad faith, joint and several liability, collateral source, etc.—have driven up their expenses.
- So-called “tort reforms” are supposed to benefit consumers, not help insurance corporations further increase their profits.
- Since they believe that these laws have increased their expenses, changes to these laws will then lower their expenses, providing savings. These savings must be passed on to the policy holders—exponentially based on the number of tort reform changes which are made—not pocketed by the corporations.

What They Could Say Against It

- It should not be done without a study to determine the effect
- The insurance carrier's rate could be inadequate, and the carrier could become insolvent

Counter Argument

- If the carrier believes that the rollback is too substantial, then it can request a lesser rollback. The Insurance Commission will then review the request and work with the individual carriers to ensure that there is an adequate rate
- The rollback is not permanent—the insurance rate will still undergo periodic review and can be raised at that time