# WEST VIRGINIA CODE CHAPTER 17D ARTICLE 2A

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## §17D-2A-1. Purpose of article.

The purpose of this article is to promote the public welfare by requiring every owner or registrant of a motor vehicle licensed in this state or operated in this state to maintain certain security during the registration period for the vehicle and to provide the means for the Division of Motor Vehicles, law enforcement and the judicial branch to electronically verify evidence of current insurance coverage at any time while a vehicle has a current registration or is operated on the roads and highways.

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## §17D-2A-2. Scope of article.

This article applies to the operation of all motor vehicles required to be registered or operated on the roads and highways to have the security in effect, as provided in section three, article two-a of this chapter, with the exception of motor vehicles owned by the state, any of its political subdivisions or by the federal government.

For the purposes of this article, "commercial auto coverage" is defined as any coverage provided to an insured, regardless of number of vehicles or entity covered, under a commercial coverage form and rated from a commercial manual approved by the Department of Insurance. This article does not apply to commercial vehicles insured under commercial auto coverage; however, insurers of such vehicles may participate on a voluntary basis.

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## §17D-2A-3. Required security; exceptions.

(a) Every owner or registrant of a motor vehicle required to be registered and licensed in this state shall maintain security as hereinafter provided in effect continuously throughout the registration or licensing period except in case of a periodic use or seasonal vehicle, in which case the owner or registrant is required to maintain security upon the vehicle only for the portion of the year the vehicle is in actual use. As used in this section, a periodic use or seasonal vehicle means a recreational vehicle, antique motor vehicle, motorcycle or other motor vehicle which is stored part of the year and used seasonally.

(b) The owner or registrant shall immediately surrender the registration plate to the Division of Motor Vehicles when he or she drops the required security during the registration period. An owner of a periodic use or seasonal vehicle may retain a registration plate subject to legislative rules promulgated by the commissioner.

(c) Every nonresident owner or registrant of a motor vehicle, which is operated upon any road or highway of this state and which has been physically present within this state for more than thirty days during the preceding three hundred sixty-five days shall thereafter maintain security as hereinafter provided in effect continuously throughout the period the motor vehicle remains within this state.

(d) No person may knowingly drive or operate upon any road or highway any motor vehicle upon which security is required by the provisions of this article unless the required security is in effect.

(e) The security shall be provided by one of the following methods:

(1) By an insurance policy delivered or issued for the delivery in this state by an insurance company authorized to issue vehicle liability and property insurance policies in this state within limits which may not be less than the requirements of section two, article four of this chapter; or

(2) By qualification as a self-insurer under the provisions of section two, article six of this chapter.

(f) This article does not apply to any motor vehicle owned by the state or by a political subdivision of this state, nor to any motor vehicle owned by the federal government.

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## §17D-2A-4. Certificate of insurance.

(a) All insurance carriers transacting insurance in this state shall supply a certificate to the insured or to any person subject to the registration provisions of article three, chapter seventeen-a of this code certifying that there is in effect a motor vehicle liability policy upon such motor vehicle in accordance with the provisions of article three, chapter seventeen-a of this code. The certificate shall give its effective date and the effective date of the policy and, unless the policy is issued to a person who is not the owner of a motor vehicle, must designate by explicit description, in such detail as the Commissioner of the Division of Motor Vehicles shall by rule require, all motor vehicles covered and all replacement vehicles of similar classification: Provided, That on and after July 1, 1984, insurance companies shall supply a certificate of insurance in duplicate for each policy term and for each vehicle included in a policy, except for those listed in a fleet policy. Each such certificate of insurance shall list the name of the policyholder and the name of the vehicle owner if different from the policyholder.

The certificate must specify for each vehicle listed therein that there is a minimum liability insurance coverage not less than the requirements of section two, article four, chapter seventeen-d of this code.

(b) The certificate provided pursuant to the provisions of this section or other proof of insurance shall be carried by the insured in the appropriate vehicle for use as proof of security, and must be presented at the time of vehicle inspection as required by article sixteen, chapter seventeen-c of this code. Any person violating the provisions of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $200 nor more than $5,000; and upon a second or subsequent conviction, shall be fined not less than $200 nor more than $5,000, or confined in the county or regional jail for not less than fifteen days nor more than one year, or both: Provided, That an insured shall not be guilty of a violation of this subsection (b) if he or she furnishes proof that such insurance was in effect within seven days of being cited for not carrying such certificate or other proof in such vehicle.

(c) As used in this section, proof of insurance means a certificate of insurance, an insurance policy, a mechanically reproduced copy of an insurance policy, a certificate of self-insurance, an image displayed on a wireless communication device, as defined in section one, article one, chapter seventeen-b of this code, that includes the information required by this section as provided by a liability insurer or a copy of the current registration issued to a motor carrier by the Public Service Commission: (1) Through the single state registration system established pursuant to section fourteen, article six-a, chapter twenty-four-a of this code; or (2) pursuant to the provisions of section four, article six, chapter twenty-four-a of this code.

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## §17D-2A-5. Minimum policy term.

No policy of motor vehicle liability insurance issued or delivered for issuance in this state shall be contracted for a period of less than ninety days: Provided, That the Insurance Commissioner may establish exceptions thereto by rules proposed for legislative approval pursuant to chapter twenty-nine-a of this code.

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**§17D-2A-6. Investigation by duly authorized law-enforcement officer to include inquiry regarding required security; notice by officer or court to Division of Motor Vehicles.**

(a) At the time of investigation of a motor vehicle offense or crash the State Police or other law-enforcement agency or when a vehicle is stopped by a law-enforcement officer for reasonable cause, the officer of the agency making the investigation shall inquire of the operator of any motor vehicle involved and, by an inquiry through the on-line insurance verification program established in accordance with section six-a of this article if available as to the existence upon the vehicle or vehicles of the evidence of insurance or other security required by the provisions of this code and upon a finding by the law-enforcement agency, officer or agent thereof that the security required by the provisions of this article is not in effect, as to any vehicle, he or she shall notify the Division of Motor Vehicles of the finding within five days: Provided, That the law-enforcement officer or agent may not stop vehicles solely to inquire as to the certificate of insurance.

(b) A defendant who is charged with a traffic offense that requires an appearance in court shall present the court at the time of his or her appearance or subsequent appearance with proof that the defendant had security at the time of the traffic offenses as required by this article subject to verification by the court through the Division of Motor Vehicles or its agent or by an on-line insurance verification program if available.

(c) If, as a result of the defendant's failure to show proof, the court determines that the defendant has violated this article, the court shall notify the Division of Motor Vehicles within five days.

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**§17D-2A-6a. Determining if required security is in effect.**

(a) The commissioner may make a determination that the required security on a motor vehicle is not in effect based upon crash reports required under the provisions of §17C-4-1 *et seq*. of this code, reports or citations from law-enforcement agencies, citations or abstracts of conviction from courts, or from information from an online electronic insurance verification program.

(b) The commissioner is authorized to develop and implement an electronic insurance verification program based upon a model established by the Insurance Industry Committee on Motor Vehicle Administration (IICMVA) to electronically verify evidence of insurance coverage with insurance companies.

(c) The commissioner may contract with a third-party vendor to act as his or her agent to develop the program, conduct the electronic verification process with insurance companies, and to operate the program.

(d) If developed and implemented by the commissioner, the online insurance verification program shall:

(1) Be able to verify, on an on-demand basis minus reasonable down time for system maintenance as agreed upon by the division or its agent and the insurance carrier, the liability insurance status as of the time of the inquiry or at other times not exceeding six months prior unless otherwise agreed upon by the division or its agent and the insurance carrier or via other similar electronic system that is consistent with insurance industry and IICMVA recommendations and the specifications and standards of the IICMVA model;

(2) Be able to make insurance verification inquiries to insurers by using multiple data elements for greater matching accuracy including National Association of Insurance Commissioners' (NAIC) code specific to each licensed insurance company, vehicle identification numbers, and policy number or other data elements as otherwise agreed to by the division or its agent and the insurer;

(3) Provide sufficient measures for the security and integrity of data including a requirement that the information obtained through the operation of the program be only used for the sole use of the Division of Motor Vehicles or its agent, law enforcement, new and used motor vehicle dealerships, and the judiciary to effectuate the provisions of this article; and

(4) Utilize open and agreed upon data and data transmission standards and standard SML extensible markup language schema.

(e) If the commissioner develops and implements an online insurance verification program, each insurer shall:

(1) Cooperate with the Division of Motor Vehicles or its agent in establishing and operating the program;

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(2) Maintain the data necessary to verify the existence of mandatory liability insurance coverage provided to its customers pursuant to the required time period established for the online insurance verification program;

(3) Maintain the internet web service, pursuant to the requirements established under the online insurance verification program, through which online insurance verification can take place that includes the ability to respond to authorized inquiries on whether the vehicle is insured or the policy in effect on the requested date through the insurer's NAIC code, vehicle identification number, insurance policy number, or other data key or keys as otherwise agreed to by the division or its agent and the insurer;

(4) Provide security consistent with accepted insurance industry and United States motor vehicle agency standards pertinent to the transmission of personal data;

(5) Be immune from civil and administrative liability for good faith efforts to comply with the terms of the verification program; and

(6) As a condition of writing motor vehicle liability insurance in this state, insurance carriers shall cooperate with the division or its agent and the insurance commission in establishing and maintaining an insurance verification system. Nothing prohibits an insurer from using the services of a third-party vendor for facilitating the insurance verification program required by this section.

(f) If the commissioner develops and implements an online insurance verification program, the Division of Motor Vehicles or its agent, as applicable, shall:

(1) Consult and cooperate with insurers in establishing and operating the online insurance verification system;

(2) Designate and maintain a contact person for insurers during the establishment and implementation of the online insurance verification system;

(3) Conduct a pilot project to test the insurance verification system no less than 18 months prior to final implementation;

(4) Establish and maintain the systems necessary to make verification requests to insurers using the data elements that the Division of Motor Vehicles or its agent and the insurer have agreed upon and are necessary to receive accurate responses from insurers;

(5) For all information transmitted and received, implement and maintain strict system and data security measures consistent with applicable standards. Data secured via the verification system by either the division or its agent may not be shared by any person who accesses the verification system with any party other than those permitted by state or federal privacy laws;

(6) Be responsible for keeping all interested state agencies informed on the implementation

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status, functionality, and planned or unplanned service interruptions; and

(7) Provide alternative methods of reporting for small insurers writing less than 500 non-commercial motor vehicle policies in the state as determined by the Division of Motor Vehicles or its agent.

(g) Any information obtained by the division or its agent under the provisions of an electronic insurance system is for the sole use of the Division of Motor Vehicles or its agent, law enforcement, new and used motor vehicle dealerships, and the judiciary to effectuate the provisions of this article and is exempt from disclosure under the provisions of §29B-1-1 *et seq*. of this code and may not be considered a public record as defined in §29B-1-2 of this code.

(h) Not more than two years after the establishment of an online insurance verification program, the Division of Motor Vehicles, after consultation with insurers, shall report to the Legislature as to the costs of the program incurred by the division, insurers, and the public and the effectiveness of the program in reducing the number of uninsured motor vehicles.

(i) The online insurance verification system authorized in this section may be accessed by new and used motor vehicle dealerships in this state to verify if a prospective purchaser has valid motor vehicle insurance.

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**§17D-2A-7. Suspension or revocation of license, registration; reinstatement.**

(a) Any owner of a motor vehicle, subject to this article, who fails to have the required security in effect at the time such vehicle is registered or being operated upon the roads or highways shall have his or her driver's license suspended by the Commissioner of the Division of Motor Vehicles and shall have his or her motor vehicle registration revoked as follows:

(1) For the first offense, the commissioner shall suspend the driver's license for thirty days and until such time as he or she presents current proof of insurance on all currently registered vehicles: Provided, That if an owner complies with this subdivision, and pays a penalty fee of $200 before the effective date, the driver's license suspension of thirty days may not be imposed and the vehicle registration revocation may not be imposed and no reinstatement fees are required. Any fees collected under the provisions of this subsection shall be deposited in the Motor Vehicle Fees Fund established in accordance with section twenty-one, article two, chapter seventeen-a of this code.

(2) For the second or subsequent offense within five years, the commissioner shall suspend the owner's driver's license for a period of ninety days and shall revoke the owner's vehicle registration until he or she presents to the Division of Motor Vehicles the proof of security required by this article.

(3) If the motor vehicle is titled and registered in more than one name, the commissioner shall suspend the driver's license of only one of the owners.

(b) Any person who is not the vehicle owner and is convicted of operating a motor vehicle upon the roads or highways of this state which does not have the security required by this article shall have the conviction placed on his or her driver's license record.

(c) The division may not suspend or revoke a driver's license under this article for any citation of driving without insurance that is received by the division from a court that is more than one year from the date of the offense.

(d) The commissioner may withdraw a suspension of a driver's license or revocation of a motor vehicle registration and refund any penalty or reinstatement fees at any time provided that the commissioner is satisfied that there was not a violation of the provisions of required security related to operation of a motor vehicle upon the roads or highways of this state by such person. The commissioner may request additional information as needed in order to make such determination.

(e) A person may not have his or her driver's license suspended or motor vehicle registration revoked under this section unless he or she and any lienholder noted on the certificate of title are first given written notice of such suspension or revocation sent by certified mail, at least thirty days prior to the effective date of such suspension or revocation, and upon that person's written request, he or she shall be afforded an opportunity for a hearing thereupon

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as well as a stay of the commissioner's order of suspension or revocation and an opportunity for judicial review of such hearing. The request for a hearing shall be made within ten days from the date of receipt of the notice of driver's license suspension or motor vehicle registration revocation. The scope of the hearing is limited to questions of identity or whether or not there was insurance in effect at the time of the event causing the commissioner's action. Upon affirmation of the commissioner's order, the period of suspension, revocation or other penalty commences to run.

(f) A suspended driver's license is reinstated following the period of suspension upon compliance with the conditions set forth in this article and a revoked motor vehicle registration is reissued only upon lawful compliance with this article.

(g) Revocation of a motor vehicle registration pursuant to this section does not affect the perfection or priority of a lien or security interest attaching to the motor vehicle that is noted on the certificate of title to the motor vehicle.

(h) Any owner or driver of a motor vehicle determined by an electronic insurance verification program to be uninsured shall be assessed the same criminal and administrative sanctions prescribed in this chapter subject to the following:

(1) Any person who is assessed a penalty prescribed by this section has the same procedural due process provided by this chapter or by rules promulgated by the division to show that there was not a violation and provide for the exoneration of any penalties or records; and

(2) The commissioner may accept a binder, an identification card or a declaration page from a policy as evidence of insurance pending electronic verification to stay a pending administrative sanction.

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## §17D-2A-8. Rules.

The Commissioner of the Division of Motor Vehicles is hereby authorized to promulgate rules, in accordance with chapter twenty-nine-a of this code, for the administration, operation and enforcement of the provisions of this article. Any rules or procedures which pertain to an electronic insurance verification program shall be consistent with the provisions and intent of the standards and specifications of the Insurance Industry Committee for Motor Vehicle Administration Model.

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## §17D-2A-9. Criminal penalty.

In addition to any administrative penalty provided for violation of any provision of this article, any person who violates any provision of this article for which another penalty is not provided in this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $200 nor more than $5000, or confined in the county or regional jail not less than 15 days nor more than one year, or both.

The arrest procedures authorized in §17C-19-4 of this code shall apply to the enforcement of the provisions of this article.

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