

11<sup>th</sup>

**WEST VIRGINIA LEGISLATURE**

**REGULAR SESSION, 1935**



**ENROLLED**

**SENATE BILL No.** 216

(By Mr. Fleming)



**PASSED** March 5 1935

**In Effect** from Passage

216

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**Senate Bill No. 216**

(BY MR. FLEMING)

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[Passed March 5, 1935; in effect from passage.]

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AN ACT to amend chapter seventeen of the code of West Virginia one thousand nine hundred thirty-one, by adding thereto article twenty, relating to the protection of the public against reckless and irresponsible persons on public highways, the operation of motor vehicles on public highways and the financial responsibility of owners and operators of motor vehicles for damages caused by such operation and providing penalties.

*Be it enacted by the Legislature of West Virginia:*

That chapter seventeen of the code of West Virginia, one thou-

sand nine hundred thirty-one, be amended by the addition thereto of article twenty, to read as follows:

Section 1. This article shall in no respect be considered as a repeal of any law relating to motor vehicles and their operation but shall be considered as supplemental thereto, and, in the event there is a conflict between any penalty provided in this article and any other penalty provided by law for the same offense, the greater penalty shall be enforced.

Sec. 2. The motor vehicle learner's permit, operator's and/or chauffeur's license, all of the certificates of registration and the registration plates of any person shall be suspended by the state road commissioner, hereinafter called the commissioner, if such person shall, by a final order or judgment, have been convicted of, or shall have pleaded guilty to, or shall have forfeited any bond or collateral deposited to secure his appearance for trial as defendant (where such forfeiture shall not have been vacated) for any of the following offenses hereafter committed:

(a) Operating a motor vehicle while under the influence of intoxicating liquor, drugs or narcotics in violation of any law of this state;

13 (b) Homicide or assault arising out of the operation of a  
14 motor vehicle;

15 (c) Reckless driving, resulting in bodily injury or damage  
16 to property;

17 (d) Leaving the scene of an automobile accident without  
18 making identity known, in violation of the provisions of ar-  
19 ticle eight of this chapter and of the acts amendatory thereof  
20 and supplemental thereto;

21 (e) Operating a motor vehicle on any road or highway of  
22 this state without being licensed therefor, in violation of any  
23 of the provisions of article six of this chapter and of the acts  
24 amendatory thereof and supplemental thereto;

25 (f) Such other violations of the laws as require suspension  
26 or revocation of permits and/or licenses in this state;

27 (g) An offense in any other state or in any province of the  
28 Dominion of Canada which, if committed in this state, would  
29 be in violation, as aforesaid, of any of the above specified  
30 provisions of law in this state.

31 Such permit, license, certificate and plates, so sus-  
32 pended by the commissioner, shall remain so suspended  
33 and shall not at any time thereafter be renewed or used, nor

34 shall any such permit or license be thereafter issued to such  
35 person, nor shall any motor vehicle be thereafter registered  
36 in the name of such person, until he shall have given proof  
37 of his ability to respond in damages for any liability thereafter  
38 incurred, resulting from the ownership, maintenance, use or  
39 operation thereafter of a motor vehicle, for bodily injury  
40 to or death of any one person in the amount of at least five  
41 thousand dollars, and, subject to the aforesaid limit for any  
42 one person injured or killed, of at least ten thousand dollars  
43 for bodily injury to or the death of two or more persons in  
44 any one accident, and for damage to property in the amount  
45 of at least one thousand dollars resulting from any one acci-  
46 dent: *Provided, however,* That the certificate of registration  
47 and the registration plates issued for any motor vehicle regis-  
48 tered in the name of such person as owner shall not be so  
49 suspended in the event such person has previously given or  
50 shall immediately give and thereafter maintain, for a period  
51 of three years, proof of his ability to respond in damages ac-  
52 cording to the provisions of this article, with respect to each  
53 and every motor vehicle owned and registered by such person.  
54 Such proof in said amounts shall be furnished for each motor

55 vehicle registered by such person. If such person shall not  
56 be a resident of this state, he shall not operate any motor  
57 vehicle in this state nor shall any motor vehicle owned by  
58 him be operated within this state by any person, and no  
59 learner's permit or operator's or chauffeur's license shall be  
60 issued to such person and no motor vehicle shall be registered  
61 in his name, until he shall have given proof as aforesaid.

62 Whenever there is a conviction, plea or forfeiture, as afore-  
63 said, in any court of record, or in a justice's court, or in the  
64 police court of any incorporated municipality, the clerk of  
65 such court of record, or the justice of a justice's court, or the  
66 clerk or recorder of the municipality in which is such police  
67 court, as the case may be, in which any such judgment is  
68 rendered or order is entered or other such action taken, shall  
69 forward immediately to the commissioner a certified copy  
70 thereof, to which copy shall be appended a certificate showing  
71 the nature of the offense upon which the conviction was had.  
72 A certified copy of the judgment, order or record of other  
73 action of the court or justice shall be prima facie evidence  
74 of the conviction, plea, forfeiture or other action therein  
75 stated. In the event that the person so shown to have been

76 convicted, pleaded guilty or forfeited bond or collateral ap-  
77 pears to be a nonresident of this state, the commissioner shall  
78 transmit a copy of such certified copy, certified to by him, to  
79 the officer in charge of the issuance of motor vehicle operators'  
80 and/or chauffeurs' licenses and registration certificates of  
81 the state or province of which such person appears to be a  
82 resident.

83 If it shall be duly established to the satisfaction of the com-  
84 missioner and the commissioner shall so find (a) that any  
85 person, whether a resident or nonresident of this state, who  
86 shall have been convicted, pleaded guilty or forfeited bond  
87 or collateral, as aforesaid, was, upon the occasion of the offense  
88 upon which such conviction, plea or forfeiture was based, a  
89 chauffeur or motor vehicle operator, however designated, in  
90 the employ of the owner of the motor vehicle involved in such  
91 offense or a member of the immediate family or household of  
92 the owner of such motor vehicle, and (b) that there was not,  
93 at the time of such offense or subsequent thereto, up to the  
94 date of such finding, any motor vehicle registered in this  
95 state, (or if a nonresident, in the state of his residence) in  
96 the name of the person who so has been convicted, pleaded

97 guilty or forfeited bond or collateral, as aforesaid, then and  
98 in that event, if the person in whose name such motor vehicle  
99 is registered shall give proof of ability to respond in damages  
100 according to the provisions of this article (and the commis-  
101 sioner is hereby authorized to accept such proof from such  
102 person) such chauffeur or other person, as aforesaid, shall be  
103 relieved of the necessity of giving such proof in his own behalf,  
104 so long as such chauffeur or other person is operating a motor  
105 vehicle for which the owner has given proof as herein pro-  
106 vided. The commissioner shall designate the restrictions im-  
107 posed by this section on the face of such person's operator's  
108 or chauffeur's license: *Provided, however,* That such chauffeur  
109 or other person shall furnish proof of ability to respond in  
110 damages, as herein required, for all motor vehicles registered  
111 in the name of such chauffeur or other person: *Provided*  
112 *further,* That no such license shall be reinstated or any new  
113 license issued until otherwise permitted under the laws of  
114 this state.

Sec. 3. In the event of the failure of any person, within thirty  
2 days thereafter, to satisfy any judgment, which shall have be-  
3 come final by expiration, without appeal, of the time within



4 which appeal might have been perfected, or by final affirmance  
5 on appeal rendered against him by a court of competent juris-  
6 diction in this state or in any other state or the District of Co-  
7 lumbia, or in any district court of the United States, or by a  
8 court of competent jurisdiction in any province of the Dominion  
9 of Canada, for damages on account of bodily injury, including  
10 death, or damage to property in excess of fifty dollars,  
11 resulting from the ownership, maintenance, use or operation  
11-a hereafter of a motor vehicle, the learner's permit, operator's  
12 and/or chauffeur's license, every certificate of registration and  
13 the registration plates of such person shall be forthwith sus-  
14 pended by the commissioner upon receiving a certified copy of  
15 such final judgment from the court in which or the justice by  
16 whom the same was rendered, together with a certificate from  
17 such court or justice that such judgment is final and still un-  
18 satisfied and that more than thirty days have elapsed since the  
19 same became final, as aforesaid, and shall remain so suspended  
20 and shall not be renewed nor shall any motor vehicle be there-  
21 after registered in the name of such person while any such  
22 judgment remains unstayed, unsatisfied and subsisting, nor  
23 until every such judgment is satisfied or discharged, except by

24 a discharge in bankruptcy, and until such person gives proof  
25 of his ability to respond in damages as required in section two  
26 of this article for future accidents. If such person who has  
27 failed to satisfy within thirty days any final judgment, as  
28 aforesaid, shall not be a resident of this state, he shall not  
29 operate any motor vehicle in this state, nor shall any motor  
30 vehicle owned by him be operated in this state by any person,  
31 nor shall any operator's or chauffeur's license be issued to such  
32 person or any motor vehicle be registered in his name, until  
33 every such judgment shall be stayed, satisfied or discharged as  
34 herein provided, and until such person shall have given proof  
35 of his ability to respond in damages for future accidents as re-  
36 quired in section two of this article. The clerk of the court of  
37 record in which, or the justice by whom, any such judgment  
38 is rendered, shall forward immediately, after the expiration of  
39 said thirty days, as aforesaid, to the commissioner, a certified  
40 copy of such judgment as aforesaid. In the event the defendant  
41 is a nonresident, the commissioner shall transmit to the com-  
42 missioner of motor vehicles or other officer or body in charge  
43 of the issuance of operators' licenses and registration certificates  
44 of the state or province of which the defendant is a resident, a

45 certified copy of such judgment. If after such proof has been  
46 given, any other such judgment shall be recovered against such  
47 person for an event occurring before such proof was given but  
48 after this article shall take effect, such permit, license or  
49 licenses and certificate or certificates and plates shall again be  
50 and remain suspended, and no other such permit, license, cer-  
51 tificate or plates shall be issued to such person while any such  
52 judgment remains unstayed, unsatisfied and subsisting, as afore-  
53 said: *Provided, however, That, (a)* When five thousand dollars  
54 has been credited upon any judgment or judgments rendered  
55 in excess of that amount for bodily injury to or death of one  
56 person as the result of any one accident; or

57 (b) When, subject to the limit of five thousand dollars as to  
58 one person, the sum of ten thousand dollars has been credited  
59 upon any judgment or judgments rendered in excess of that  
60 amount for bodily injury to or the death of more than one  
61 person as the result of any one accident; or

62 (c) When one thousand dollars has been credited upon any  
63 judgment or judgments rendered in excess of that amount for  
64 damage to property of others as a result of any one accident,  
65 resulting from the ownership, maintenance, use or operation

66 of a motor vehicle, credit for such amounts shall be deemed a  
67 satisfaction of such judgment or judgments in excess of said  
68 amounts for the purposes of this article only.

69 Whenever payment has been made in settlement of any  
70 claims for bodily injury, death, or property damage arising  
71 from a motor vehicle accident resulting in injury, death, or prop-  
72 erty damage to two or more persons in such accident, any such  
73 payment shall be credited in reduction of the amounts provided  
74 for in this section.

Sec. 4. A judgment debtor to whom this article applies may,  
2 for the sole purpose of giving authority to the commissioner  
3 to authorize such judgment debtor to operate a motor vehicle  
4 thereafter, after five days' notice to the judgment creditor,  
5 apply to the court in which or the justice before whom the  
6 judgment was obtained for the privilege of paying such judg-  
7 ment in installments, and the court or justice, without prejudice  
8 to any other legal remedies which the judgment creditor may  
9 have, may so order, fixing the amounts and times of payment of  
10 the installments. While the judgment debtor is not in default  
11 in payment of such installments, the commissioner, upon his  
12 giving proof of ability to respond in damages for future acci-

13 dents, as hereinbefore provided, may, in his discretion, restore  
14 or refrain from suspending his permit, license and/or certificate  
15 or certificates of registration and registration plates, but such  
16 permit, license and/or certificate or certificates and plates shall  
17 be suspended as hereinbefore provided, if and when the com-  
18 missioner is satisfied that the judgment debtor has failed to  
19 comply with the terms of the order of such court or justice.

Sec. 5. Proof of ability to respond in damages, when re-  
2 quired by this article, may be evidenced by either of the  
3 following:

4 (a) By filing with the commissioner the written certificate  
5 or certificates of any insurance carrier, duly authorized to  
6 do business within this state, that it has issued to, or for  
7 the benefit of, the person furnishing such proof and named  
8 as the insured, a motor vehicle liability policy or policies, or  
9 in certain events an operator's policy, in the form hereinafter  
10 prescribed, which, at the date of the certificate or certificates  
11 is or are in full force and effect, and designating therein by  
12 explicit description or by other adequate reference, all motor  
13 vehicles to which the policy or policies apply, unless the policy  
14 or policies are issued to a person who is not the owner of a

15 motor vehicle. The commissioner shall not accept any cer-  
16 tificate or certificates unless the same shall cover all motor  
17 vehicles then registered in the name of the person furnishing  
18 such proof as owner. An additional certificate or certificates,  
19 as aforesaid, shall be required as a condition precedent to the  
20 registration of any additional motor vehicle or motor vehicles  
21 in the name of such person furnishing such proof as owner.  
22 Such certificate or certificates shall certify that the motor  
23 vehicle liability policy or policies therein cited shall not be  
24 canceled or expire except as hereinafter provided.

25 When a certificate is filed showing that a policy or policies  
26 have been issued covering all motor vehicles owned by the  
27 insured but not insuring such person when operating any  
28 motor vehicle not owned by him, it shall be unlawful for such  
29 person to operate any motor vehicle not owned by him or not  
30 covered by such certificate. In such event the commissioner  
31 shall designate the above restriction upon the operator's or  
32 chauffeur's license of such person. In the event the owner of  
33 a motor vehicle or motor vehicles desires to be relieved of such  
34 restriction and to be permitted to drive any other motor  
35 vehicle he may have such restriction removed upon filing a

36 certificate showing that there has been issued to him a policy  
37 of insurance insuring him as insured against liability imposed  
38 by law upon such insured for bodily injury to or death of  
39 any person or damage to property to the amounts and limits  
40 as provided under section two of this article with respect to  
41 any motor vehicle operated by him and which otherwise com-  
42 plies with the requirements of this article with respect to  
43 such type of policy. Such policy is hereinafter referred to as  
44 an operator's policy. When the person required to give proof  
45 of ability to respond in damages is not the owner of a motor  
46 vehicle, then an operator's policy of the type and coverage  
47 described in this paragraph shall be sufficient under this  
48 article.

49 If such person be a nonresident, a certificate, as aforesaid,  
50 of an insurance carrier authorized to transact business in the  
51 state or province in which the motor vehicle or motor vehicles  
52 described in such certificate is or are registered, or if such non-  
53 resident does not own a motor vehicle, then in the state or  
54 province in which the insured resides, and otherwise conform-  
55 ing to the provisions of this article, shall be accepted if such  
56 carrier shall, (1) execute a power of attorney authorizing the

57 commissioner to accept service of notice or process in any  
58 action arising out of a motor vehicle accident in this state,  
59 and (2) duly adopt a resolution which shall be binding on it,  
60 declaring that its policies shall be deemed to be varied to  
61 comply with the laws of this state relating to the terms of  
62 motor vehicle liability policies issued therein, and (3) agree  
63 to accept as final and binding any final judgment of any court  
64 of competent jurisdiction in this state, duly rendered in any  
65 action arising out of a motor vehicle accident: *Provided, how-*  
66 *ever,* That the provisions of this section shall be operative as  
67 to such insurance carriers (organized and existing under the  
68 laws of such state or province and not licensed to transact busi-  
69 ness in this state) only to the extent and under the same terms  
70 and conditions that, under the laws of such state or province  
71 where such motor vehicle is registered or in which the insured  
72 resides, like recognition, if a law of like effect is in force and  
73 effect, is granted to certificates of insurance carriers organized  
74 and existing under and by virtue of the laws of this state.  
75 If, under the laws of such state or province, in which a law  
76 of like effect is in force and effect, certificates of insurance  
77 carriers organized and existing under or by virtue of the laws



78 of this state are not accepted, the certificates of insurance car-  
79 riers of such state or province shall not be accepted under the  
80 provisions of this article: *Provided further*, That whenever  
81 any foreign insurance carrier which has qualified to furnish  
82 proof of ability to respond in damages, as hereinbefore re-  
83 quired, defaults in any of its undertakings or agreements, the  
84 commissioner shall not thereafter accept any certificate of said  
85 carrier, whether theretofore filed or thereafter tendered, as  
86 such proof of ability to respond in damages, so long as such  
87 default continues.

88 The commissioner shall be notified by the insurance carrier  
89 of the cancellation or expiration of any motor vehicle liability  
90 policy certified under the provisions of this article at least ten  
91 days before the effective date of such cancellation or expira-  
92 tion, and until such notice is duly given, such policy shall  
93 continue in full force and effect. The notice of such cancella-  
94 tion or expiration shall be served in the manner provided in  
95 section one, article two, chapter fifty-six of the code of West  
96 Virginia, one thousand nine hundred thirty-one, or by regis-  
97 tered mail, which latter method shall be evidenced by a return  
98 receipt.

99 (b) By filing with the commissioner a bond executed by the  
100 person giving such proof and by a surety company, duly  
101 authorized to transact business in this state, or a bond executed  
102 by the person giving such proof and by at least two individual  
103 sureties, each owning real estate within the county where such  
104 surety resides and having an equity therein in the amount of  
105 such bond, which real estate shall be scheduled in the bond  
106 and such bond shall be approved by the clerk of a court of  
107 record in the county in which such surety resides. Such bond  
108 shall be conditioned for the payment of the amounts specified  
109 in section two of this article and shall be filed with the com-  
110 missioner and shall not be cancellable except after ten days'  
111 written notice to said commissioner, served and evidenced in  
112 the manner provided in this section as to similar notices re-  
113 specting motor vehicle liability policies, but cancellation of  
114 such bond shall not prevent recovery thereon with respect to  
115 any right or cause of action arising prior to the date of can-  
116 cellation. Such restriction as to cancellation only after ten  
117 days notice shall be set forth in the bond. Such bond shall  
118 constitute a lien in favor of the state upon the real estate so  
119 scheduled of any surety, which lien shall exist in favor of any

120 holder of a final judgment against the person who has filed  
121 such proof, on account of damage to property in excess of  
122 fifty dollars, or injury to, including death of, a person  
123 or persons resulting from the ownership, maintenance, use or  
124 operation hereafter of a motor vehicle, upon the filing of a  
125 notice to that effect by the commissioner in the office of the  
126 clerk of the county court of the county where such real estate  
127 is located. Such notice shall contain the name in full of any  
128 such surety to be affected by it, the description of the real  
129 estate located in such county as scheduled in the bond, and  
130 shall be signed by said commissioner and bear an imprint of  
131 the official seal of the commission. Such clerk shall indicate  
132 on such notice the day and hour when it was received by him,  
133 and, upon the payment of a fee of one dollar, he shall imme-  
134 diately record such notice in the place wherein trust deeds  
135 of real estate are recorded and shall index such notice in the  
136 name of such surety in the same place in which such trust  
137 deeds are indexed, treating such surety as a grantor and the  
138 state of West Virginia as a grantee, and such clerk shall be  
139 subject to the penalties provided in article three of chapter  
140 thirty-eight and in article four of chapter fifty-one of the code

141 of West Virginia, one thousand nine hundred thirty-one, for the  
142 failure to so record and to so index such notice, respectively.  
143 A fee of one dollar shall be collected by the commissioner from  
144 the person who has filed such proof and shall be paid to such  
145 clerk by the commissioner. All liens so created shall relate  
146 to the time of filing such notice in such clerk's office and shall  
147 have priority over all liens suffered or created thereafter.  
148 Whenever any evidence of proof of ability to respond in  
149 damages filed under the provisions of this article no longer  
150 fulfills the purpose for which required, the commissioner shall,  
151 for the purposes of this article, require other evidence of ability  
152 to respond in damages as required by this article and shall  
153 suspend the operator's license, chauffeur's license, certificate  
154 of registration and registration plates of the person con-  
155 cerned pending such proof.

Sec. 6. A bond filed by or on behalf of any person, under  
2 the provisions of the preceding section, shall be held by the  
3 commissioner to satisfy, in accordance with the provisions of  
4 this article, any execution issued against such person on a  
5 judgment for damages, as aforesaid, arising out of the owner-  
6 ship, maintenance, use or operation of a motor vehicle as afore-

7 said. If such a judgment rendered against the principal on  
8 the surety company or real estate individual bond given under  
9 the provisions of this article shall not be satisfied within thirty  
10 days after it has become final, as hereinbefore provided, the  
11 judgment creditor may, for his own use and benefit and at his  
12 sole expense, bring an action or actions in the name of the  
13 state against the company or persons executing such bond and  
14 may enforce by a suit in equity in his own name any lien  
15 existing by virtue of the provisions of this article upon the  
16 real estate of a person who has executed such bond.

Sec. 7. The commissioner shall upon request furnish any  
2 insurance carrier, person or surety a certified abstract of the  
3 operating record on file in the office of said commissioner, of  
4 any person subject to the provisions of this article, which  
5 abstract shall fully designate every motor vehicle (if any)  
6 registered in the name of such person, and if there shall be no  
7 such record of any conviction of such person of a violation of  
8 any provisions of any statute relating to the operating of a  
9 motor vehicle or of any injury or damage caused by such  
10 person as herein provided, the commissioner shall so certify.  
11 The commissioner shall collect for each such certificate the sum

12 of one dollar. Such record shall not be admissible as evidence  
13 in any action for damages or criminal proceeding arising out of  
14 a motor vehicle accident.

Sec. 8. The commissioner shall furnish any person who may  
2 have been injured in person or property by any motor vehicle,  
3 upon written request accompanied by a fee of one dollar, with  
4 all information of record in his office pertaining to the evidence  
5 of the ability of any operator or owner of any motor vehicle  
6 to respond in damages.

Sec. 9. Any operator or any owner, whose learner's permit,  
2 operator's and/or chauffeur's license or certificate of registra-  
3 tion or registration plates shall have been suspended as in this  
4 article provided, or whose policy of insurance or surety bond,  
5 when same is required under this article, shall have been can-  
6 celed or terminated, or who shall neglect to furnish additional  
7 evidence of ability to respond in damages upon request of  
8 the commissioner, shall immediately return to the commissioner  
9 his learner's permit, operator's license, certificate of registra-  
10 tion and the registration plates issued under the provisions of  
11 this article. If any person shall wilfully fail to return to the  
12 commissioner the learner's permit, operator's and/or chauffeur's

13 license, certificate of registration and the registration plates so  
14 issued as provided herein, the commissioner shall forthwith  
15 notify the superintendent of the department of public safety  
16 who shall, as soon as possible, secure possession thereof and  
17 return same to the commissioner. Said superintendent of the  
18 department of public safety shall make a report in writing  
19 to the commissioner, within two weeks after being so notified  
20 by the commissioner, as to the result of his efforts to secure  
21 the possession and return of such permit, license, certificate of  
22 registration and registration plates. Any person wilfully fail-  
23 ing to return such learner's permit, operator's or chauffeur's  
24 license or such certificate and registration plates shall be guilty  
25 of a misdemeanor and, upon conviction thereof, shall be fined  
26 not more than two hundred dollars, and such penalty shall be  
27 in addition to any penalty imposed for any violation of any of  
28 the motor vehicle laws of this state.

Sec. 10. (a) The commissioner shall, upon the request in  
2 writing of the person on whose behalf such proof of ability  
3 to respond in damages was furnished, cancel any bond or return  
4 any certificate of insurance filed pursuant to this article as  
5 proof of ability to respond in damages, or waive the requirement

6 of filing proof of ability to respond in damages in any of the  
7 following events:

8 (1) At any time after three years shall have elapsed since  
9 the filing of such bond or certificate, if the person has not,  
10 during the three year period immediately preceding the re-  
11 quest, been convicted of any offense referred to in section two  
12 of this article; or

13 (2) In the event of the death of the person on whose behalf  
14 such proof was filed, or the permanent incapacity of such per-  
15 son to operate a motor vehicle; or

16 (3) In the event the person who has given proof of ability  
17 to respond in damages surrenders his operator's or chauffeur's  
18 license, every certificate of registration and all registration  
19 plates to the commissioner: *Provided, however,* That in each  
20 of the foregoing instances such cancellation or return shall  
21 be upon the condition that no action for damages, upon a  
22 liability referred to in this article, is pending against such  
23 person on whose behalf such proof of ability to respond in  
24 damages was furnished, that no judgment upon any such lia-  
25 bility against such person is outstanding and unsatisfied, and  
26 that no notice has been filed with the commissioner of an acci-



27 dent involving such person, occurring within the three month  
28 period immediately preceding such request and resulting from  
29 the ownership, maintenance, use or operation of a motor ve-  
30 hicle.

31 The affidavit of such person, showing fulfillment of the neces-  
32 sary requirements under this section, shall be sufficient proof  
33 thereof in the absence of evidence to the contrary in the records  
34 of the commissioner.

35 Whenever any person, as to whom such proof has been so  
36 canceled or to whom such proof has been so returned, applies  
37 for an operator's or chauffeur's license or the registration of  
38 a motor vehicle within a period of three years from the date  
39 proof of ability to respond in damages was originally required,  
40 any such application shall be refused unless the applicant shall  
41 reestablish such proof for the remainder of such period.

42 (b) The commissioner shall cancel any bond or return any  
43 certificate of insurance to the person entitled thereto, upon  
44 the substitution and acceptance of other adequate proof of  
45 ability to respond in damages pursuant to the provisions of this  
46 article.

Sec. 11. If an owner's certificate of registration has been

2 suspended under the provisions of this article, such certificate  
3 shall not be transferred nor the motor vehicle, in respect of  
4 which such certificate was issued, registered in another name,  
5 where the commissioner has reasonable grounds to believe that  
6 such transfer or registration is proposed for the purpose or will  
7 have the effect of defeating the purpose of this article: *Pro-*  
8 *vided, however,* That nothing in this section contained shall be  
9 held to apply to or affect the registration of any motor vehicle  
10 sold by a person who, pursuant to the terms or conditions of  
11 any written instrument giving a right of repossession, has  
12 exercised such right and has repossessed such motor vehicle  
13 from a person whose certificate of registration has been sus-  
14 pended under the provisions of this article: *Provided further,*  
15 That nothing in this section contained shall prevent the owner  
16 of a motor vehicle, the registration of which has been suspended  
17 hereunder, from effecting a bona fide sale of such motor vehicle  
18 to another person whose rights or privileges are not suspended  
19 under this article nor prevent the registration of such motor  
20 vehicle by such other person.

Sec. 12. Nothing in this article contained shall be held to  
2 apply to or affect policies of automobile insurance against

3 liability which may now or hereafter be required by any other  
4 law of this state, and such policies, if endorsed to conform to  
5 the requirements of this article, shall be accepted as proof of  
6 ability to respond in damages when required under this article,  
7 nor shall anything in this article contained be held to apply  
8 to or affect policies insuring solely the insured named in the  
9 policy against liability resulting from the maintenance, opera-  
10 tion or use by persons in the insured's employ or in his behalf  
11 of motor vehicles not owned by the insured.

Sec. 13. Any person who shall forge, or, without authority,  
2 sign any evidence of ability to respond in damages as required  
3 by the commissioner in the administration of this article, or  
4 utter or attempt to employ as true such forged evidence of  
5 ability to respond in damages, knowing the same to be forged,  
6 and any person who shall violate any of the provisions of this  
7 article for which no penalty is otherwise provided shall be  
8 guilty of a misdemeanor, and, upon conviction thereof, be fined  
9 not more than one thousand dollars, or imprisoned not more  
10 than six months, or both so fined and imprisoned. Any person  
11 whose learner's permit, operator's or chauffeur's license or  
12 certificate of registration, registration plates and/or other

13 privilege to operate a motor vehicle has been suspended or re-  
14 voked and restoration thereof or issuance of a new permit,  
15 license or certificate of registration is contingent upon the fur-  
16 nishing of proof of ability to respond in damages according  
17 to the provisions of this article, and who, during such sus-  
18 pension or revocation, or in the absence of full authorization  
19 from the commissioner, drives any motor vehicle upon any  
20 highway or knowingly permits any motor vehicle owned by him  
21 to be operated by another upon any highway, except as per-  
22 mitted hereunder, shall be guilty of a misdemeanor, and, upon  
23 conviction thereof, be imprisoned for not more than six months  
24 or fined not more than five hundred dollars, or both so fined  
25 and imprisoned.

Sec. 14. "Motor vehicle liability policy," as used in this  
2 article, shall be taken to mean any policy of liability insurance  
3 issued by an insurance carrier authorized to transact business  
4 in this state, or issued by an insurance carrier authorized to  
5 transact business in the state or province in which the motor  
6 vehicle or motor vehicles therein described is or are registered,  
7 or if none be described, then in the state in which the insured  
8 resides, to or for the benefit of the person therein named as

9 insured, which policy shall either (a) designate, by explicit  
10 description or other adequate reference, every motor vehicle  
11 with respect to which coverage is intended to be granted by  
12 such policy, and shall insure the insured named therein and  
13 any other person using or responsible for the use of any such  
14 motor vehicle with the consent, express or implied, of such  
15 insured, against loss from the liability imposed by law upon  
16 such insured or upon such other person for injury to or  
17 death of any person, other than such insured and such person  
18 or persons as may be covered as respects such injury or death  
19 by any workmen's compensation law, and/or for damage to  
20 property, except property of others in charge of the insured  
21 or of his employees or other agents, growing out of the owner-  
22 ship, maintenance, use or operation of any such motor vehicle  
23 within the continental limits of the United States of America  
24 or the Dominion of Canada, or which policy shall, in the  
25 alternative (b) insure the person therein named as insured  
26 against loss from the liability imposed by law upon such  
27 insured for bodily injury to or death of any person, other  
28 than such insured and such person or persons as may be  
29 covered as respects such injury or death by any workmen's

30 compensation law, and/or for damage to property, except  
31 property of others in charge of the insured or of his employees  
32 or other agents, growing out of the maintenance, operation or  
33 use by such insured of any motor vehicle, except a motor  
34 vehicle registered in the name of such insured, and occurring  
35 while such insured is personally in control, as driver or occu-  
36 pant, of such motor vehicle within the continental limits of  
37 the United States of America or the Dominion of Canada, the  
38 policy in the latter case to be known as an operator's policy;  
39 in either case to the amount or limit of five thousand dollars,  
40 exclusive of interest and costs, on account of bodily injury  
41 to or death of any one person, and, subject to the same limit  
42 as respects bodily injury to or death of any one person, of  
43 ten thousand dollars, exclusive of interest and costs, on ac-  
44 count of any one accident resulting in bodily injury to or  
45 death of more than one person; and of one thousand dollars  
46 for damage to property of others, as herein provided, result-  
47 ing from any one accident; or a binder pending the issuance  
48 of any such policy, or an endorsement to an existing policy,  
49 both as hereinafter provided: *Provided, however,* That this  
50 section shall not be construed as preventing an insurance

51 carrier from granting in a motor vehicle liability policy any  
52 lawful coverage in excess of or in addition to the coverage  
53 herein provided for, or from embodying in such policy any  
54 agreements, provisions or stipulations not contrary to the pro-  
55 visions of this article and not otherwise contrary to law:  
56 *Provided further*, That separate concurrent policies, which  
57 together meet the requirements of this article, whether issued  
58 by one or several carriers, covering, respectively, (1) personal  
59 injury or death, as aforesaid, and (2) property damage, as  
60 aforesaid, shall be termed a "motor vehicle liability policy,"  
61 within the meaning of this article.

62 Except as in section twelve of this article is provided, no  
63 motor vehicle liability policy or operator's policy shall be  
64 issued or delivered in this state, pursuant to the provisions of  
65 this article, until a copy of the form of policy shall have been  
66 on file with the insurance commissioner for at least thirty  
67 days, unless sooner approved in writing by said insurance  
68 commissioner, nor if within said period of thirty days said  
69 insurance commissioner shall have notified the carrier in writ-  
70 ing that in his opinion, specifying the reasons therefor, the  
71 form of policy does not comply with the provisions of this

72 article. Said insurance commissioner shall approve any form  
73 of policy which specifies the name, address and business, if  
74 any, of the insured, the coverage afforded by the policy, the  
75 premium charged therefor, the policy period, and the limits  
76 of liability, and contains an agreement that the insurance  
77 thereunder is provided in accordance with the coverage defined  
78 in this article, as respects bodily injury and death or property  
79 damage or both, and is subject to all the provisions of this  
80 article.

81 Every such motor vehicle liability policy and every such  
82 operator's policy shall be subject to the following provisions,  
83 whether or not contained therein:

84 (a) The liability of the insurance carrier under any such  
85 policy shall become absolute whenever loss or damage covered  
86 by such policy occurs, and the satisfaction by the insured of  
87 a final judgment for such loss or damage shall not be a con-  
88 dition precedent to the right or obligation of the carrier to  
88-a make payment on account of such loss or damage: *Provided,*  
88-b *however,* That the insurance carrier shall have the right to  
88-c settle any claim covered by the policy and, if such settlement  
88-d is made in good faith, the amount thereof shall be deductible



88-e from the limits of liability specified in the policy: No such  
89 policy shall be canceled or annulled as respects any loss or  
90 damage, by any agreement between the carrier and the in-  
91 sured after the insured has become involved in any accident  
92 out of which any liability may arise for such loss or damage,  
93 and any such cancellation or annulment shall be void.

94 The policy may provide that the insured, or any other person  
95 covered by the policy, shall reimburse the insurance carrier  
96 for any payment made on account of a loss, or damage claim,  
97 or suit, involving a breach of the terms, provisions or con-  
98 ditions of the policy; and further, if the policy shall provide  
99 for limits in excess of the limits specified in this article, the  
100 insurance carrier may plead against any plaintiff, with respect  
101 to the amount of such excess limits of liability, any defenses  
102 which it may be entitled to plead against the insured, and any  
103 such policy may further provide for the prorating of the in-  
104 surance thereunder with other applicable valid and collectible  
105 insurance.

106 (b) The policy, the written application therefor, if any, and  
107 any rider or endorsement which does not conflict with the

108 provisions of this article shall constitute the entire contract  
109 between the parties.

110 (c) The insurance carrier shall, upon the request of the  
111 insured, deliver to the insured for filing, or at the request of  
112 the insured shall file direct with the commissioner, an appro-  
113 priate certificate showing that such policy has been issued,  
114 which certificate shall be in conformity with the provisions of  
115 section five of this article.

116 (d) Any carrier authorized to issue motor vehicle liability  
117 policies may, pending the issuance of such a policy, execute  
118 an agreement, to be known as a "binder", or may, in lieu of  
119 such a policy, issue an endorsement to an existing policy.  
120 Every such binder or endorsement shall be subject to the pro-  
121 visions of this section and shall be construed to provide in-  
122 demnity or insurance in like manner and to the same extent  
123 as a motor vehicle liability policy.

124 Sec. 15. The operation by a nonresident, or by his duly  
125 2 authorized agent, of a motor vehicle upon a public street or  
126 3 highway of this state, shall be deemed equivalent to an appoint-  
127 4 ment by such nonresident of the commissioner, or his successor  
128 5 in office, to be his true and lawful attorney upon whom may

6 be served all lawful process in any action or proceeding against  
7 him, growing out of any accident or collision in which such  
8 nonresident may be involved while so operating or so per-  
9 mitting to be operated a motor vehicle on any such street or  
10 highway, and such operation shall be a signification of his  
11 agreement that any such process against him, which is so served,  
12 shall be of the same legal force and validity as if served upon  
13 him personally. Service of such process shall be made by  
14 leaving a copy thereof, with a fee of two dollars, with said  
15 commissioner or in his office, together with a bond conditioned  
16 on the failure of the plaintiff to prevail in the action, in the  
17 sum of five hundred dollars with sureties to be approved by the  
18 commissioner, for the purpose of reimbursing the defendant for  
19 expenses necessarily incurred by him in defending the action  
20 in this state, and such service shall be sufficient service upon  
21 said nonresident, provided that notice of such service and a  
22 copy of the process shall forthwith be sent by registered mail  
23 by said commissioner to the defendant, and the defendant's  
24 return receipt is appended to the original process and filed  
25 therewith in court. The court in which the action is pending  
26 may order such continuances as may be reasonable to afford the

27 defendant opportunity to defend the action. The fee of two  
28 dollars, paid by the plaintiff to said commissioner at the time  
29 of service, shall be taxed in the costs of the proceeding and said  
30 commissioner shall keep a record of all such process, which  
31 shall show the day and hour of service, and he shall pay into  
32 the state treasury all funds so coming into his hands from such  
33 service.

Sec. 16. The following words and phrases, when used in  
2 this article, shall, for the purpose of this article and unless a  
3 different intent on the part of the legislature be apparent from  
4 the context, have the following meanings:

5 (a) "Commissioner" shall mean the state road commissioner  
6 of this state.

7 (b) "Person" shall include individuals, partnerships, corpo-  
8 rations, receivers, referees, trustees, executors and adminis-  
9 trators, and shall also include the owner of any motor vehicle as  
10 requisite; but shall not include the state or any political sub-  
10-a division thereof.

11 (c) "Motor vehicle" shall mean and include any self-pro-  
12 pelled vehicle, including motorcycles and tractors, and trailers,  
13 not operated exclusively upon stationary tracks.

14 (d) "Vehicle" shall mean every device in, upon or by which  
15 any person or property is or may be transported or drawn upon  
16 a highway, except devices moved by human power or used ex-  
17 clusively upon stationary rails or tracks.

18 (e) "Nonresident" shall mean every person who is not a  
19 resident of this state.

20 (f) "Owner" shall mean a person who holds the legal title  
21 of a vehicle or in the event a vehicle is the subject of an  
22 agreement for the conditional sale or lease thereof with the  
23 right of purchase upon performance of the conditions stated  
24 in the agreement and with an immediate right of possession  
25 vested in the conditional vendee or lessee, or in the event a  
26 mortgagor of a vehicle is entitled to possession, then such  
27 conditional vendee or lessee or mortgagor shall be deemed the  
28 owner for the purpose of this article.

29 (g) "Street," "road" or "highway" shall mean the entire  
30 width between property lines of every way or place of whatever  
31 nature when any part thereof is open to the use of the public,  
32 as a matter of right, for purposes of vehicular traffic.

33 (h) "State" shall mean any state of the United States, the  
34 District of Columbia, or any province of the Dominion of  
35 Canada.

36 (i) "Province" shall mean any province of the Dominion of  
37 Canada.

Sec. 17. The commissioner shall administer and enforce the  
2 provisions of this article and he is hereby authorized to adopt  
3 and enforce such rules and regulations as may be necessary for  
4 the administration of the provisions of this article.

Sec. 18. Nothing herein shall be construed as preventing the  
2 plaintiff in any action at law from relying for security upon  
3 the other processes provided by law.

Sec. 19. If any part, subdivision or section of this article  
2 shall be deemed unconstitutional, the validity of its remaining  
3 provisions shall not be affected thereby.

Sec. 20. This act shall not have a retroactive effect and  
2 shall not apply to any judgment or cause of action arising out  
3 of an accident occurring prior to the effective date of this act.

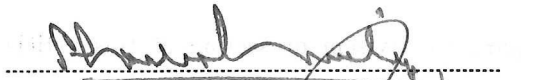
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


  
 Chairman Senate Committee

  
 Chairman House Committee

Originated in the Senate

Takes effect from passage.

  
 Clerk of the Senate

  
 Clerk of the House of Delegates

  
 President of the Senate

  
 Speaker House of Delegates

The within.....this the.....

day of....., 1935.

.....  
 Governor

5 hereby repealed.

Filed in the office of the Secretary of State  
 of West Virginia. **MAR 15 1935**

Wm. S. O'BRIEN,  
 Secretary of State

I certify that the foregoing act, having been presented to the Governor for his approval, and not having been returned by him to the House of the Legislature in which it originated within the time prescribed by the constitution of the state, has become a law without his approval.

This the 15th day of March,  
1935.....

  
\_\_\_\_\_  
SECRETARY OF STATE