WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1967

ENROLLED
SENATE BILL NO. 43

(By Mr. [Signature])

PASSED  March 7  1967

In Effect Sixty days from Passage

FILED IN THE OFFICE
ROBERT D. BAILEY
SECRETARY OF STATE
THIS DATE 3-15-67
ENROLLED

Senate Bill No. 43

(By Mr. Moreland and Mr. McKown)

[Passed March 7, 1967; in effect ninety days from passage.]

AN ACT to amend article six, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirty-one, relating to provisions in a motor vehicle liability policy and requiring that such policies include an omnibus clause and coverage for loss by uninsured motorists.

Be it enacted by the Legislature of West Virginia:

That article six, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section thirty-one, to read as follows:
ARTICLE 6. THE INSURANCE POLICY.

§33-6-31. Motor vehicle policy to include an omnibus clause and uninsured motorists coverage.

(a) No policy or contract of bodily injury liability insurance, or of property damage liability insurance, covering liability arising from the ownership, maintenance or use of any motor vehicle, shall be issued or delivered in this state to the owner of such vehicle, or shall be issued or delivered by any insurer licensed in this state upon any motor vehicle for which a certificate of title has been issued by the department of motor vehicles of this state, unless it shall contain a provision insuring the named insured and any other person, except a bailee for hire and any persons specifically excluded by any restrictive endorsement attached to the policy, responsible for the use of or using the motor vehicle with the consent, expressed or implied, of the named insured or his spouse against liability for death or bodily injury sustained, or loss or damage occasioned within the coverage of the policy or contract as a result of negligence in the operation or use of such vehicle by the named insured or by any
such person: Provided, That in any such automobile liability insurance policy or contract, or endorsement thereto, if coverage resulting from the use of a non-owned automobile is conditioned upon the consent of the owner of such motor vehicle, the word "owner" shall be construed to include the custodian of such non-owned motor vehicles.

(b) Nor shall any such policy or contract be so issued or delivered unless it shall contain an endorsement or provisions undertaking to pay the insured all sums which he shall be legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle, within limits which shall be no less than the requirements of section two, article four, chapter seventeen-d of the code of West Virginia, as amended from time to time: Provided, That such endorsement or provisions may exclude the first three hundred dollars of property damage resulting from the negligence of an uninsured motorist.

(c) As used in this section, the term "bodily injury" shall include death resulting therefrom, and the term "named insured" shall mean the person named as such in the declarations of the policy or contract and shall also in-
clue such person's spouse if a resident of the same house-
hold, and the term "insured" shall mean the named insured
and, while resident of the same household, the spouse of
any such named insured, and relatives of either, while in a
motor vehicle or otherwise, and any person, except a bailee
for hire, who uses, with the consent, express or implied, of
the named insured, the motor vehicle to which the policy
applies or the personal representative of any of the above;
and the term "uninsured motor vehicle" shall mean a
motor vehicle as to which there is no (i) bodily injury lia-
bility insurance and property damage liability insurance
both in the amounts specified by section two, article four,
chapter seventeen-d as amended from time to time, or (ii)
there is such insurance, but the insurance company writing
the same denies coverage thereunder, or (iii) there is no
certificate of self insurance issued in accordance with the
provision of section two, article six, chapter seventeen-d of
the code of West Virginia. A motor vehicle shall be deemed
to be uninsured if the owner or operator thereof be unknown:
Provided, That recovery under the endorsement or provi-
sions shall be subject to the conditions hereinafter set forth.
(d) Any insured intending to rely on the coverage required by paragraph (b) of this section shall, if any action be instituted against the owner or operator of an uninsured motor vehicle, cause a copy of the summons and a copy of the complaint to be served upon the insurance company issuing the policy, in the manner prescribed by law, as though such insurance company were a named party defendant; such company shall thereafter have the right to file pleadings and to take other action allowable by law in the name of the owner, or operator, or both, of the uninsured motor vehicle or in its own name. Nothing in this paragraph shall prevent such owner or operator from employing counsel of its own choice and taking any action in his own interest in connection with such proceeding.

(e) If the owner or operator of any motor vehicle which causes bodily injury or property damage to the insured be unknown, the insured, or someone in his behalf, in order for the insured to recover under the uninsured motorist endorsement or provision, shall:

(i) Within twenty-four hours report the accident to a
police, peace, or judicial officer, or to the commissioner of motor vehicles, unless the accident shall already have been investigated by a police officer; and

(ii) File with the insurance company, within thirty days after such accident, a statement under oath that the insured or his legal representative has a cause or causes of action arising out of such accident for damages against a person or persons whose identity is unknown and setting forth the facts in support thereof; and, upon written request of the insurance company communicated to the insured not later than five days after receipt of such statement under oath, shall make available for inspection the motor vehicle which the insured was occupying at the time of the accident; and

(iii) Upon trial establish that the motor vehicle which caused the bodily injury or property damage, whose operator is unknown, was a "hit and run" motor vehicle, meaning a motor vehicle which causes damage to the property of the insured arising out of physical contact of such motor vehicle therewith, or which causes bodily injury to the insured arising out of physical contact of
such motor vehicle with the insured or with a motor vehicle which the insured was occupying at the time of the accident. If the owner or operator of any motor vehicle causing bodily injury or property damage be unknown, an action may be instituted against the unknown defendant as “John Doe”, in the county in which the accident took place or in any other county in which such action would be proper under the provisions of article one, chapter fifty-six of this code; service of process may be made by delivery of a copy of the complaint and summons or other pleadings to the clerk of the court in which the action is brought, and service upon the insurance company issuing the policy shall be made as prescribed by law as though such insurance company were a party defendant. The insurance company shall have the right to file pleadings and take other action allowable by law in the name of John Doe.

(f) An insurer paying a claim under the endorsement or provisions required by paragraph (b) of this section shall be subrogated to the rights of the insured to whom such claim was paid against the person causing such in-
jury, death or damage to the extent that payment was made. The bringing of an action against the unknown owner or operator as John Doe or the conclusion of such an action shall not constitute a bar to the insured, if the identity of the owner or operator who caused the injury or damages complained of becomes known, from bringing an action against the owner or operator theretofore proceeded against as John Doe. Any recovery against such owner or operator shall be paid to the insurance company to the extent that such insurance company shall have paid the insured in the action brought against such owner or operator as John Doe, except that such insurance company shall pay its proportionate part of any reasonable costs and expenses incurred in connection therewith, including reasonable attorneys' fee. Nothing in an endorsement or provision made under this paragraph, nor any other provision of law, shall operate to prevent the joining, in an action against John Doe, of the owner or operator of the motor vehicle causing injury as a party defendant, and such joinder is hereby specifically authorized.

(g) No such endorsement or provisions shall contain
any provision requiring arbitration of any claim arising under any such endorsement or provisions, nor may anything be required of the insured except the establishment of legal liability, nor shall the insured be restricted or prevented in any manner from employing legal counsel or instituting legal proceedings.

(h) The provisions of paragraphs (a) and (b) of this section shall not apply to any policy of insurance to the extent that it covers the liability of an employer to his employees under any workmen’s compensation law.

(i) The commissioner of insurance shall formulate and require the use of standard policy provisions for the insurance required by this section, but use of such standard policy provisions may be waived by the commissioner in the circumstances set forth in section ten of this article.

(j) A motor vehicle shall be deemed to be uninsured within the meaning of this section, if there has been a valid bodily injury or property damage liability policy issued upon such vehicle, but which policy is uncollectible, in whole or in part, by reason of the insurance company issuing such policy upon such vehicle being insolvent or
having been placed in receivership. The right of subroga-
tion granted insurers under the provisions of subsection
(f) of this section, shall not apply as against any person or
persons who, is or becomes an uninsured motorist for the
reasons set forth in this subsection.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

William Tompkins  
Chairman Senate Committee

Clayton Davidson  
Chairman House Committee

Originated in the Senate.

To take effect 90 days from passage.

Howard Moyer  
Clerk of the Senate

Clerk of the House of Delegates

Howard E. Gore  
President of the Senate

Samuel J. Scholte  
Speaker House of Delegates

The within approved this the 15th day of March, 1967.

Hullie C. Smith  
Governor