

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1967

ENROLLED

SENATE BILL NO. 43

(By Mr. Moreland and Mr. McKinn)

PASSED March 7, 1967

In Effect Ninety days from Passage

FILED IN THE OFFICE

ROBERT D. BAILEY

SECRETARY OF STATE

THIS DATE 3-15-67

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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

19 such person: *Provided*, That in any such automobile liabil-
20 ity insurance policy or contract, or endorsement thereto, if
21 coverage resulting from the use of a non-owned automomo-
22 bile is conditioned upon the consent of the owner of such
23 motor vehicle, the word "owner" shall be construed to in-
24 clude the custodian of such non-owned motor vehicles.

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

36 (c) As used in this section, the term "bodily injury"
37 shall include death resulting therefrom, and the term
38 "named insured" shall mean the person named as such in
39 the declarations of the policy or contract and shall also in-

40 clude such person's spouse if a resident of the same house-
41 hold, and the term "insured" shall mean the named insured
42 and, while resident of the same household, the spouse of
43 any such named insured, and relatives of either, while in a
44 motor vehicle or otherwise, and any person, except a bailee
45 for hire, who uses, with the consent, express or implied, of
46 the named insured, the motor vehicle to which the policy
47 applies or the personal representative of any of the above;
48 and the term "uninsured motor vehicle" shall mean a
49 motor vehicle as to which there is no (i) bodily injury lia-
50 bility insurance and property damage liability insurance
51 both in the amounts specified by section two, article four,
52 chapter seventeen-d as amended from time to time, or (ii)
53 there is such insurance, but the insurance company writing
54 the same denies coverage thereunder, or (iii) there is no
55 certificate of self insurance issued in accordance with the
56 provision of section two, article six, chapter seventeen-d of
57 the code of West Virginia. A motor vehicle shall be deemed
58 to be uninsured if the owner or operator thereof be unknown:
59 *Provided*, That recovery under the endorsement or provi-
60 sions shall be subject to the conditions hereinafter set forth.

61 (d) Any insured intending to rely on the coverage re-
62 quired by paragraph (b) of this section shall, if any ac-
63 tion be instituted against the owner or operator of an
64 uninsured motor vehicle, cause a copy of the summons
65 and a copy of the complaint to be served upon the insur-
66 ance company issuing the policy, in the manner prescribed
67 by law, as though such insurance company were a named
68 party defendant; such company shall thereafter have the
69 right to file pleadings and to take other action allowable
70 by law in the name of the owner, or operator, or both, of
71 the uninsured motor vehicle or in its own name. Nothing
72 in this paragraph shall prevent such owner or operator
73 from employing counsel of its own choice and taking any
74 action in his own interest in connection with such pro-
75 ceeding.

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

81 (i) Within twenty-four hours report the accident to a

82 police, peace, or judicial officer, or to the commissioner of
83 motor vehicles, unless the accident shall already have
84 been investigated by a police officer; and

85 (ii) File with the insurance company, within thirty
86 days after such accident, a statement under oath that the
87 insured or his legal representative has a cause or causes
88 of action arising out of such accident for damages against
89 a person or persons whose identity is unknown and setting
90 forth the facts in support thereof; and, upon written re-
91 quest of the insurance company communicated to the in-
92 sured not later than five days after receipt of such state-
93 ment under oath, shall make available for inspection the
94 motor vehicle which the insured was occupying at the
95 time of the accident; and

96 (iii) Upon trial establish that the motor vehicle which
97 caused the bodily injury or property damage, whose op-
98 erator is unknown, was a "hit and run" motor vehicle,
99 meaning a motor vehicle which causes damage to the
100 property of the insured arising out of physical contact of
101 such motor vehicle ^ethrew_hith, or which causes bodily
102 injury to the insured arising out of physical contact of

103 such motor vehicle with the insured or with a motor
104 vehicle which the insured was occupying at the time of
105 the accident. If the owner or operator of any motor
106 vehicle causing bodily injury or property damage be un-
107 known, an action may be instituted against the unknown
108 defendant as "John Doe", in the county in which the
109 accident took place or in any other county in which such
110 action would be proper under the provisions of article
111 one, chapter fifty-six of this code; service of process may
112 be made by delivery of a copy of the complaint and
113 summons or other pleadings to the clerk of the court in
114 which the action is brought, and service upon the insur-
115 ance company issuing the policy shall be made as pre-
116 scribed by law as though such insurance company were
117 a party defendant. The insurance company shall have the
118 right to file pleadings and take other action allowable by
119 law in the name of John Doe.

120 (f) An insurer paying a claim under the endorsement
121 or provisions required by paragraph (b) of this section
122 shall be subrogated to the rights of the insured to whom
123 such claim was paid against the person causing such in-

124 jury, death or damage to the extent that payment was
125 made. The bringing of an action against the unknown
126 owner or operator as John Doe or the conclusion of such
127 an action shall not constitute a bar to the insured, if the
128 identity of the owner or operator who caused the injury
129 or damages complained of becomes known, from bringing
130 an action against the owner or operator theretofore pro-
131 ceeded against as John Doe. Any recovery against such
132 owner or operator shall be paid to the insurance company
133 to the extent that such insurance company shall have
134 paid the insured in the action brought against such owner
135 or operator as John Doe, except that such insurance com-
136 pany shall pay its proportionate part of any reasonable
137 costs and expenses incurred in connection therewith, in-
138 cluding reasonable attorneys' fee. Nothing in an endorse-
139 ment or provision made under this paragraph, nor any
140 other provision of law, shall operate to prevent the join-
141 ing, in an action against John Doe, of the owner or opera-
142 tor of the motor vehicle causing injury as a party defend-
143 ant, and such joinder is hereby specifically authorized.

144 (g) No such endorsement or provisions shall contain

145 any provision requiring arbitration of any claim arising
146 under any such endorsement or provisions, nor may any-
147 thing be required of the insured except the establishment
148 of legal liability, nor shall the insured be restricted or
149 prevented in any manner from employing legal counsel or
150 instituting legal proceedings.

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

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

160 (j) A motor vehicle shall be deemed to be uninsured
161 within the meaning of this section, if there has been a
162 valid bodily injury or property damage liability policy
163 issued upon such vehicle, but which policy is uncollectible,
164 in whole or in part, by reason of the insurance company
165 issuing such policy upon such vehicle being insolvent or

166 having been placed in receivership. The right of subroga-
167 tion granted insurers under the provisions of subsection
168 (f) of this section, shall not apply as against any person or
169 persons who, is or becomes an uninsured motorist for the
170 reasons set forth in this subsection.

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

William Tomp
Chairman Senate Committee

Clayton Davidson
Chairman House Committee

Originated in the Senate.

To take effect 90 days from passage.

Howard Meyer
Clerk of the Senate

W. B. Blankenship
Clerk of the House of Delegates

Howard E. Carr
President of the Senate

H. L. S. White
Speaker House of Delegates

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

Hubert C. Smith
Governor



PRESENTED TO THE
GOVERNOR

Date 3/13/67

Time 12:50p.m.