

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1972

ENROLLED

Committee Substitute for  
HOUSE BILL No. 538

(By Mr. Stepcoe)

PASSED March 9 1972

In Effect July 1, 1972 Passage

OFFICE OF  
SECRETARY OF STATE  
STATE OF WEST VIRGINIA

MAR 29 11 37 PM '72



FILED IN THE OFFICE  
JOHN B. COOPER, IV  
SECRETARY OF STATE  
THIS DATE 3-29-72

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**ENROLLED**  
COMMITTEE SUBSTITUTE  
FOR  
**House Bill No. 538**  
(By MR. STEPTOE)

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(Originating in the House Committee on the Judiciary)

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[Passed March 9, 1972; in effect July 1, 1972.]

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AN ACT to amend and reenact sections two and four, article three, chapter seventeen-d of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section fifteen, relating to the motor vehicle safety responsibility law; relating to the security required following a vehicular accident; relating to the determination of reasonable possibility of judgment against driver or owner; authorizing hearing upon request within prescribed time; making state administrative procedures act applicable, with certain exceptions; relating to the conduct of any such hearing by the commissioner of motor vehicles or a hearing examiner; relating to scope of any such hearing and the procedures following such hearing; relating to the right of judicial review; relating to the staying of certain orders pending hearing and judicial review; and specifying that findings, actions and orders and outcome of judicial review shall not be referred to in any way or be any evidence of negligence or due care in the trial of any civil action to recover damages.

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

That sections two and four, article three, chapter seventeen-d of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section fifteen, all to read as follows:

**ARTICLE 3. SECURITY FOLLOWING ACCIDENT.**

**§17D-3-2. Commissioner to determine amount of security required; notices; form of security.**

1 (a) The commissioner within not less than thirty nor  
2 more than ninety days after receipt of a report of an acci-  
3 dent as described in section one of this article shall take  
4 action as provided in this section. The commissioner shall  
5 determine the amount of security which he deems suf-  
6 ficient to satisfy any judgment or judgments against each  
7 owner or driver, for damages which may reasonably re-  
8 sult from such accident.

9 If the commissioner finds that there exists a reasonable  
10 possibility that a judgment may be rendered against any  
11 such driver or owner, he shall determine the amount of  
12 security deposit upon the basis of the reports or other  
13 evidence relative to such accident transmitted to him.  
14 The commissioner shall thereupon give written notice by  
15 certified mail to every such person that he is required to  
16 deposit security in an amount and within the time speci-  
17 fied in such notice, which time shall be not less than ten  
18 days after the giving of such notice, or that upon the  
19 expiration of said time an order of suspension as stated  
20 therein will become effective unless the person receiving  
21 said notice deposits such security or establishes his exemp-  
22 tion under other provisions of this chapter. Such notice  
23 shall also advise such person of his right to request a  
24 hearing as provided by section fifteen of this article.

25 (b) The security required under this article shall be  
26 in the form of money or its equivalent and in such amount  
27 as the commissioner may require but, in no case, in ex-  
28 cess of the limits specified in section five of this article  
29 in reference to the acceptable limits of a policy or bond.

30 (c) The commissioner shall not take action as required  
31 in this section in respect to drivers or owners who estab-  
32 lish exemption under succeeding sections of this chapter  
33 from the requirements as to security and suspension.

**§17D-3-4. Exceptions to requirement of security.**

1 (a) The requirements as to security and suspension  
2 in this article shall not apply:

3 (1) To the driver or owner if the owner had in effect  
4 at the time of the accident an automobile liability policy  
5 or bond with respect to the driver or the vehicle involved  
6 in the accident. Unless otherwise covered by insurance a  
7 driver shall not be exempt from the requirements as to  
8 security in the event it is established to the satisfaction of  
9 the commissioner that at the time of the accident the  
10 vehicle was being operated without the owner's permis-  
11 sion, expressed or implied, or was parked by a driver who  
12 had been operating such vehicle without such permis-  
13 sion.

14 (2) To the driver, if not the owner of the vehicle in-  
15 volved in the accident, if there was in effect at the time  
16 of the accident, an automobile liability policy or bond  
17 with respect to his driving of vehicles not owned by him.

18 (3) To a driver or owner whose liability for damages  
19 resulting from the accident is, in the judgment of the  
20 commissioner, covered by any other form of liability in-  
21 surance policy or bond.

22 (4) To the owner or driver in the event that such lia-  
23 bility as may arise from the driver's operation of the  
24 vehicle involved in the accident is, in the judgment of  
25 the commissioner, covered by some form of liability in-  
26 surance or bond which complies with the requirements  
27 set forth under section five of this article.

28 (5) To any person qualifying as a self-insurer under  
29 section two, article six of this chapter, or to any person  
30 operating a vehicle for such self-insurer.

31 (6) To any person under the jurisdiction of the public  
32 service commission who has qualified as a self-insurer.

33 (7) To a driver or owner against whom there is no  
34 reasonable possibility of judgment being rendered for

35 damages resulting from the accident, as determined by the  
36 commissioner or any subsequent hearing or appeals upon  
37 that issue.

38 (b) When erroneous information is given to the  
39 commissioner with respect to the matters set forth in  
40 subdivisions (1), (2), (3) or (4) of subsection (a) of  
41 this section, he shall take appropriate action as herein-  
42 before provided in sections two and three of this article  
43 within fifty days after receipt by him of correct infor-  
44 mation with respect to such matters.

**§17D-3-15. Hearing procedures; judicial review.**

1 Upon the written request of a person from whom the  
2 commissioner has required security following the occur-  
3 rence of a vehicular accident, the commissioner shall af-  
4 ford the person an opportunity to be heard concerning  
5 such security requirement. Such written request must be  
6 filed with the commissioner in person or by registered or  
7 certified mail, return receipt requested, within ten days  
8 after receipt of a copy of the order of suspension. The  
9 hearing shall be before said commissioner or his au-  
10 thorized hearing examiner. All of the pertinent pro-  
11 visions of article five, chapter twenty-nine-a of this code  
12 shall apply to and govern the hearing and the administra-  
13 tive procedures in connection with and following such  
14 hearing with like effect as if the provisions of said  
15 article five were set forth in extenso in this section, except  
16 that in the case of a resident of this state the hearing  
17 shall be held in the county wherein the person resides  
18 unless the commissioner or the hearing examiner and  
19 such person agree that the hearing may be held in some  
20 other county. Any such hearing shall be held within  
21 twenty days after the date upon which the commissioner  
22 received the timely written request therefor, unless there  
23 is a postponement or continuance. The commissioner  
24 or the hearing examiner may postpone or continue any  
25 hearing on his own motion, or upon application of such  
26 person for good cause shown. For the purpose of con-  
27 ducting such hearing, the commissioner or the hearing  
28 examiner shall have the power and authority to issue  
29 subpoenas and subpoenas duces tecum in accordance

30 with the provisions of section one, article five, chapter  
31 twenty-nine-a of this code. The person requesting a  
32 hearing and the commissioner shall be the only parties  
33 in interest at such hearing. No other persons or their  
34 attorneys shall have the right to attend or be permitted  
35 to examine parties or witnesses.

36 The scope of such hearing shall be whether there is a  
37 reasonable possibility of judgment being rendered against  
38 the person requesting the hearing as a result of the acci-  
39 dent in question.

40 After such hearing and consideration of all of the testi-  
41 mony, evidence and record in the case, the commissioner  
42 or the hearing examiner shall make and enter an order  
43 affirming, rescinding or modifying the earlier order of  
44 the commissioner.

45 A copy of the order made and entered following the  
46 hearing shall be served upon such person by registered  
47 or certified mail, return receipt requested. During the  
48 pendency of any such hearing, the suspension of the  
49 operator's or chauffeur's license, or junior or probationary  
50 operator's license, or nonresident privilege to drive of  
51 such person, and of his vehicle registration, shall be  
52 stayed, and if the commissioner has possession of such  
53 person's operator's or chauffeur's license, or junior or  
54 probationary operator's license, or his vehicle registra-  
55 tion, the same shall be forthwith returned to him pend-  
56 ing the outcome of such hearing or any judicial review  
57 thereafter, as hereinafter provided.

58 If the commissioner or hearing examiner shall after  
59 hearing make and enter an order by which the person re-  
60 questing the hearing believes himself aggrieved, such per-  
61 son shall be entitled to judicial review thereof. All of the  
62 pertinent provisions of section four, article five, chapter  
63 twenty-nine-a of this code shall apply to and govern such  
64 review with like effect as if the provisions of said section  
65 four were set forth in extenso in this section. The judg-  
66 ment of the circuit court shall be final unless reversed on  
67 appeal to the supreme court of appeals, in accordance with  
68 the provisions of section one, article six, chapter twenty-  
69 nine-a of this code, except that notwithstanding the pro-  
70 visions of said section one, the petition seeking such review

71 must be filed with said supreme court of appeals within  
72 thirty days from the date of entry of the judgment of the  
73 circuit court. Notwithstanding any provisions in said  
74 chapter twenty-nine-a to the contrary, during the pen-  
75 dency of any appeal to the circuit court or supreme court  
76 of appeals, no security shall be required of such person,  
77 nor shall his operator's or chauffeur's license, or junior  
78 or probationary operator's license, or nonresident privi-  
79 lege to drive, or his vehicle registration, be suspended  
80 pending the outcome of such judicial review.

81 Neither the findings, actions and orders of the commis-  
82 sioner or hearing examiner resulting from any hearings  
83 nor any of the evidence introduced or testimony taken  
84 at such hearings nor the outcome of any judicial review  
85 shall be referred to in any way, and shall not be any  
86 evidence of the negligence or due care of either party,  
87 at the trial of any civil action to recover damages.

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

*Russell H. Beall*

Chairman Senate Committee

*Phyllis J. Rutledge*

Chairman House Committee

Originated in the House.

In Effect July 1, 1972.

*Howard E. Carlson*

Clerk of the Senate

*C. Blankenship*

Clerk of the House of Delegates

*E. Hans McCurt*

President of the Senate

*Lewis G. McManis*

Speaker House of Delegates

The within *approved* this the *27th*  
*March* day of \_\_\_\_\_, 1972.

*Arch A. Moore Jr.*

Governor



PRESENTED TO THE  
GOVERNOR

Date 3/16/72

Time 2:10 p.m.