

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1972



## ENROLLED

HOUSE BILL No. 730

(By Mr. Myles)



PASSED March 9 1972

In Effect from Passage



FILED IN THE OFFICE  
JOHN D. ROCKEFELLER, IV  
SECRETARY OF STATE

THIS DATE 3-29-72

730

**ENROLLED**  
**House Bill No. 730**  
(By MR. MYLES)

[Passed March 9, 1972; in effect from passage.]

AN ACT to amend and reenact section thirty-one, article six, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to uninsured motorist insurance coverage.

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

That section thirty-one, article six, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 6. THE INSURANCE POLICY.**

**§33-6-31. Motor vehicle policy to include an omnibus clause and uninsured motorists coverage; conditions for recovery under endorsement; rights and liabilities of insurer.**

1     (a) No policy or contract of bodily injury liability  
2     insurance, or of property damage liability insurance, cov-  
3     ering liability arising from the ownership, maintenance  
4     or use of any motor vehicle, shall be issued or delivered  
5     in this state to the owner of such vehicle, or shall be  
6     issued or delivered by any insurer licensed in this state  
7     upon any motor vehicle for which a certificate of title  
8     has been issued by the department of motor vehicles of  
9     this state, unless it shall contain a provision insuring the  
10    named insured and any other person, except a bailee  
11    for hire and any persons specifically excluded by any  
12    restrictive endorsement attached to the policy, respon-

13 sible for the use of or using the motor vehicle with the  
14 consent, expressed or implied, of the named insured or  
15 his spouse against liability for death or bodily injury  
16 sustained, or loss or damage occasioned within the cov-  
17 erage of the policy or contract as a result of negligence  
18 in the operation or use of such vehicle by the named in-  
19 sured or by such person: *Provided*, That in any such  
20 automobile liability insurance policy or contract, or en-  
21 dorsement thereto, if coverage resulting from the use of  
22 a nonowned automobile is conditioned upon the consent  
23 of the owner of such motor vehicle, the word "owner"  
24 shall be construed to include the custodian of such non-  
25 owned motor vehicles.

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

38 (c) As used in this section, the term "bodily injury"  
39 shall include death resulting therefrom, and the term  
40 "named insured" shall mean the person named as such  
41 in the declarations of the policy or contract and shall  
42 also include such person's spouse if a resident of the same  
43 household, and the term "insured" shall mean the named  
44 insured and, while resident of the same household, the  
45 spouse of any such named insured, and relatives of either,  
46 while in a motor vehicle or otherwise, and any person, ex-  
47 cept a bailee for hire, who uses, with the consent,  
48 expressed or implied, of the named insured, the motor  
49 vehicle to which the policy applies or the personal rep-  
50 resentative of any of the above; and the term "unin-  
51 sured motor vehicle" shall mean a motor vehicle as to  
52 which there is no (i) bodily injury liability insurance  
53 and property damage liability insurance both in the

54 amounts specified by section two, article four, chapter  
55 seventeen-d, as amended from time to time, or (ii) there  
56 is such insurance, but the insurance company writing  
57 the same denies coverage thereunder, or (iii) there is no  
58 certificate of self insurance issued in accordance with the  
59 provision of section two, article six, chapter seventeen-d  
60 of the code of West Virginia. A motor vehicle shall be  
61 deemed to be uninsured if the owner or operator thereof  
62 be unknown: *Provided*, That recovery under the en-  
63 dorsement or provisions shall be subject to the condi-  
64 tions hereinafter set forth.

65 (d) Any insured intending to rely on the coverage  
66 required by subsection (b) of this section shall, if any  
67 action be instituted against the owner or operator of an  
68 uninsured motor vehicle, cause a copy of the summons  
69 and a copy of the complaint to be served upon the insur-  
70 ance company issuing the policy, in the manner pre-  
71 scribed by law, as though such insurance company were  
72 a named party defendant; such company shall thereafter  
73 have the right to file pleadings and to take other action  
74 allowable by law in the name of the owner, or operator,  
75 or both, of the uninsured motor vehicle or in its own  
76 name. Nothing in this subsection shall prevent such  
77 owner or operator from employing counsel of its own  
78 choice and taking any action in his own interest in con-  
79 nection with such proceeding.

80 (e) If the owner or operator of any motor vehicle  
81 which causes bodily injury or property damage to the  
82 insured be unknown, the insured, or someone in his be-  
83 half, in order for the insured to recover under the unin-  
84 sured motorist endorsement or provision, shall:

85 (i) Within twenty-four hours after the insured dis-  
86 cover, and being physically able to report the occurrence  
87 of such accident, the insured, or someone in his behalf,  
88 shall report the accident to a police, peace or judicial  
89 officer, or to the commissioner of motor vehicles, unless  
90 the accident shall already have been investigated by a  
91 police officer; and

92 (ii) Notify the insurance company, within sixty days  
93 after such accident, that the insured or his legal repre-  
94 sentative has a cause or causes of action arising out of

95 such accident for damages against a person or persons  
96 whose identity is unknown and setting forth the facts  
97 in support thereof; and, upon written request of the in-  
98 surance company communicated to the insured not later  
99 than five days after receipt of such statement, shall  
100 make available for inspection the motor vehicle which  
101 the insured was occupying at the time of the accident;  
102 and

103 (iii) Upon trial establish that the motor vehicle,  
104 which caused the bodily injury or property damage,  
105 whose operator is unknown, was a "hit and run" motor  
106 vehicle, meaning a motor vehicle which causes damage  
107 to the property of the insured arising out of physical  
108 contact of such motor vehicle therewith, or which causes  
109 bodily injury to the insured arising out of physical con-  
110 tact of such motor vehicle with the insured or with a  
111 motor vehicle which the insured was occupying at the  
112 time of the accident. If the owner or operator of any  
113 motor vehicle causing bodily injury or property damage  
114 be unknown, an action may be instituted against the un-  
115 known defendant as "John Doe," in the county in which  
116 the accident took place or in any other county in which  
117 such action would be proper under the provisions of ar-  
118 ticle one, chapter fifty-six of this code; service of pro-  
119 cess may be made by delivery of a copy of the complaint  
120 and summons or other pleadings to the clerk of the court  
121 in which the action is brought, and service upon the in-  
122 surance company issuing the policy shall be made as  
123 prescribed by law as though such insurance company  
124 were a party defendant. The insurance company shall  
125 have the right to file pleadings and take other action  
126 allowable by law in the name of John Doe.

127 (f) An insurer paying a claim under the endorsement  
128 or provisions required by subsection (b) of this section  
129 shall be subrogated to the rights of the insured to whom  
130 such claim was paid against the person causing such  
131 injury, death or damage to the extent that payment was  
132 made. The bringing of an action against the unknown  
133 owner or operator as John Doe or the conclusion of such  
134 an action shall not constitute a bar to the insured, if the

135 identity of the owner or operator who caused the injury  
136 or damages complained of, becomes known, from bring-  
137 ing an action against the owner or operator theretofore  
138 proceeded against as John Doe. Any recovery against  
139 such owner or operator shall be paid to the insurance  
140 company to the extent that such insurance company  
141 shall have paid the insured in the action brought against  
142 such owner or operator as John Doe, except that such  
143 insurance company shall pay its proportionate part of  
144 any reasonable costs and expenses incurred in connection  
145 therewith, including reasonable attorney's fees. Nothing  
146 in an endorsement or provision made under this subsec-  
147 tion, nor any other provision of law, shall operate to pre-  
148 vent the joining, in an action against John Doe, of the  
149 owner or operator of the motor vehicle causing injury  
150 as a party defendant, and such joinder is hereby specifi-  
151 cally authorized.

152 (g) No such endorsement or provisions shall contain  
153 any provision requiring arbitration of any claim arising  
154 under any such endorsement or provision, nor may any-  
155 thing be required of the insured except the establishment  
156 of legal liability, nor shall the insured be restricted or  
157 prevented in any manner from employing legal counsel  
158 or instituting legal proceedings.

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

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

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

174 having been placed in receivership. The right of sub-  
175 rogation granted insurers under the provisions of sub-  
176 section (f) of this section shall not apply as against any  
177 person or persons who is or becomes an uninsured mo-  
178 torist for the reasons set forth in this subsection.

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

Russell H. Beall  
Chairman Senate Committee

Phyllis J. Kuttelge  
Chairman House Committee

Originated in the House.

Takes effect from passage.

Howard T. Baran  
Clerk of the Senate

C. A. Blankenship  
Clerk of the House of Delegates

E. Hans Mc Court  
President of the Senate

Lewis A. McManis  
Speaker House of Delegates

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

And A. Shaupe, Jr.  
Governor





PRESENTED TO THE  
GOVERNOR

DATE 3/16/72

TIME 2:10 p.m.

MAR 29 9 27 AM '72

OFFICE OF  
SECRETARY OF STATE  
STATE OF WEST VIRGINIA