

Date 3-28-79

Time 7:15 p.m.

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1979



ENROLLED

HOUSE BILL No. 1351

(By Mr. Tompkins & Mrs. Shiflet)



Passed March 10, 1979

In Effect July 1, 1979 ~~Passage~~



No. 1351

ENROLLED

H. B. 1351

(By MR. TOMPKINS and MR. SHIFLET)

[Passed March 10, 1979; in effect July 1, 1979.]

AN ACT to amend and reenact section five, article three, chapter seventeen-d of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two, seven, twelve and sixteen, article four of said chapter; to amend and reenact section thirty-one, article six, chapter thirty-three of said code; and to further amend said article six by adding thereto a new section, designated section thirty-one-a, all relating to the motor vehicle safety responsibility law; requirements as to policy or bond; proof of financial responsibility, motor vehicle liability insurance; policy limits; uninsured motorist coverage; conditions of recovery; rights and liabilities of insurer; rates.

Be it enacted by the Legislature of West Virginia:

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

**CHAPTER 17D. MOTOR VEHICLE SAFETY
RESPONSIBILITY LAW.**

ARTICLE 3. SECURITY FOLLOWING ACCIDENT.

§17D-3-5. Requirements as to policy or bond.

1 (a) No policy or bond shall be effective under section four

2 of this article unless issued by an insurance company or surety
3 company authorized to do business in this state, except as
4 provided in subsection (b) of this section, nor unless such
5 policy or bond is subject, if the accident has resulted in bodily
6 injury or death, to a limit, exclusive of interest and costs, of
7 not less than twenty thousand dollars because of bodily injury
8 to or death of one person in any one accident, and subject to
9 said limit for one person, to a limit of not less than forty
10 thousand dollars because of bodily injury to or death of two
11 or more persons in any one accident, and, if the accident has
12 resulted in injury to, or destruction of property, to a limit of
13 not less than ten thousand dollars because of injury to or
14 destruction of property of others in any one accident.

15 (b) No policy or bond shall be effective under section four
16 of this article with respect to any vehicle which was not
17 registered in this state or was a vehicle which was registered
18 elsewhere than in this state at the effective date of the policy
19 or bond or the most recent renewal thereof, unless the insur-
20 ance company or surety company issuing such policy or bond
21 is authorized to do business in this state, or if said company is
22 not authorized to do business in this state, unless it shall
23 execute a power of attorney authorizing the commissioner to
24 accept service on its behalf of notice or process in any action
25 upon such policy or bond arising out of such accident.

26 (c) Upon receipt of notice of such accident from the com-
27 missioner, the insurance company or surety company named in
28 such notice shall notify the commissioner in such manner as
29 he may require in case such a policy or bond was not in effect
30 at the time of such accident.

ARTICLE 4. PROOF OF FINANCIAL RESPONSIBILITY FOR THE FUTURE.

§17D-4-2. "Proof of financial responsibility" construed.

1 The term "proof of financial responsibility" as used in this
2 chapter shall mean: Proof of ability to respond in damages for
3 liability, on account of accident occurring subsequent to the
4 effective date of said proof, arising out of the ownership, oper-
5 ation, maintenance, or use of a motor vehicle, trailer or semi-
6 trailer in the amount of twenty thousand dollars because of

7 bodily injury to or death of one person in any one accident,
8 and, subject to said limit for one person, in the amount of
9 forty thousand dollars because of bodily injury to or death of
10 two or more persons in any one accident, and in the amount of
11 ten thousand dollars because of injury to or destruction of
12 property of others in any one accident.

§17D-4-7. Payment sufficient to satisfy requirements.

1 (a) Judgments herein referred to shall, for the purpose of
2 this chapter only, be deemed satisfied:

3 (1) When twenty thousand dollars has been credited upon
4 any judgment or judgments rendered in excess of that amount
5 because of bodily injury to or death of one person as the
6 result of any one accident; or

7 (2) When, subject to such limit of twenty thousand dollars
8 because of bodily injury to or death of one person, the sum of
9 forty thousand dollars has been credited upon any judgment
10 or judgments rendered in excess of that amount because of
11 bodily injury to or death of two or more persons as the result
12 of any one accident; or

13 (3) When ten thousand dollars has been credited upon any
14 judgment or judgments rendered in excess of that amount be-
15 cause of injury to or destruction of property of others as a
16 result of any one accident.

17 (b) *Provided, however,* That payments made in settlement
18 of any claims because of bodily injury, death, or property
19 damage arising from such accident shall be credited in reduc-
20 tion of the amounts provided for in this section.

§17D-4-12. "Motor vehicle liability policy" defined; scope and provisions of policy.

1 (a) A "motor vehicle liability policy" as said term is used
2 in this chapter shall mean an "owner's policy" or an "operator's
3 policy" of liability insurance certified as provided in section
4 ten or section eleven of this article as proof of financial re-
5 sponsibility, and issued, except as otherwise provided in section
6 eleven, by an insurance carrier duly authorized to transact

7 business in this state, to or for the benefit of the person named
8 therein as insured.

9 (b) Such owner's policy of liability insurance:

10 (1) Shall designate by explicit description or by appropriate
11 reference all vehicles with respect to which coverage is thereby
12 to be granted; and

13 (2) Shall insure the person named therein and any other
14 person, as insured, using any such vehicle or vehicles with the
15 express or implied permission of such named insured, against
16 loss from the liability imposed by law for damages arising out
17 of the ownership, operation, maintenance, or use of such
18 vehicle or vehicles within the United States of America or the
19 Dominion of Canada, subject to limits exclusive of interest and
20 costs, with respect to each such vehicle, as follows: twenty
21 thousand dollars because of bodily injury to or death of one
22 person in any one accident and, subject to said limit for one
23 person, forty thousand dollars because of bodily injury to or
24 death of two or more persons in any one accident, and ten
25 thousand dollars because of injury to or destruction of prop-
26 erty of others in any one accident.

27 (c) Such operator's policy of liability insurance shall insure
28 the person named as insured therein against loss from the
29 liability imposed upon him by law for damages arising out of
30 the use by him of any motor vehicle not owned by him, within
31 the same territorial limits and subject to the same limits of
32 liability as are set forth above with respect to an owner's
33 policy or liability insurance.

34 (d) Such motor vehicle liability policy shall state the name
35 and address of the named insured, the coverage afforded by
36 the policy, the premium charged therefor, the policy period,
37 and the limits of liability, and shall contain an agreement or
38 be endorsed that insurance is provided thereunder in accor-
39 dance with the coverage defined in this chapter as respects
40 bodily injury and death or property damage, or both, and is
41 subject to all the provisions of this chapter.

42 (e) Such motor vehicle liability policy need not insure any
43 liability under any workmen's compensation law nor any

44 liability on account of bodily injury to or death of an employee
45 of the insured while engaged in the employment, other than
46 domestic, of the insured, or while engaged in the operation,
47 maintenance, or repair of any such vehicle nor any liability
48 for damage to property owned by, rented to, in charge of, or
49 transported by the insured.

50 (f) Every motor vehicle liability policy shall be subject to
51 the following provisions which need not be contained therein:

52 (1) The liability of the insurance carrier with respect to the
53 insurance required by this chapter shall become absolute
54 whenever injury or damage covered by said motor vehicle lia-
55 bility policy occurs; said policy may not be canceled or annull-
56 ed as to such liability by an agreement between the insurance
57 carrier and the insured after the occurrence of the injury or
58 damage; no statement made by the insured or on his behalf
59 and no violation of said policy shall defeat or void said policy.

60 (2) The satisfaction by the insured of a judgment for such
61 injury or damage shall not be a condition precedent to the
62 right or duty of the insurance carrier to make payment on
63 account of such injury or damage.

64 (3) The insurance carrier shall have the right to settle any
65 claim covered by the policy, and if such settlement is made in
66 good faith, the amount thereof shall be deductible from the
67 limits of liability specified in subdivision two of subsection (b)
68 of this section.

69 (4) The policy, the written application therefor, if any, and
70 any rider or endorsement which does not conflict with the pro-
71 visions of this chapter shall constitute the entire contract be-
72 tween parties.

73 (g) Any policy which grants the coverage required for a
74 motor vehicle liability policy may also grant any lawful cover-
75 age in excess of or in addition to the coverage specified for a
76 motor vehicle liability policy and such excess or additional
77 coverage shall not be subject to the provisions of this chapter.
78 With respect to a policy which grants such excess or additional
79 coverage the term "motor vehicle liability policy" shall apply

80 only to that part of the coverage which is required by this
81 section.

82 (h) Any motor vehicle liability policy may provide that the
83 insured shall reimburse the insurance carrier for any payment
84 the insurance carrier would not have been obligated to make
85 under the terms of the policy except for the provisions of this
86 chapter.

87 (i) Any motor vehicle liability policy may provide for the
88 prorating of the insurance thereunder with other valid and col-
89 lectible insurance.

90 (j) The requirements for a motor vehicle liability policy
91 may be fulfilled by the policies of one or more insurance car-
92 riers which policies together meet such requirements.

93 (k) Any binder issued pending the issuance of a motor
94 vehicle policy shall be deemed to fulfill the requirements for
95 such a policy.

§17D-4-16. Money or securities as proof.

1 (a) Proof of financial responsibility may be evidenced by
2 the certificate of the state treasurer that the person named
3 therein has deposited with him forty thousand dollars in cash,
4 or securities such as may legally be purchased by savings banks
5 or for trust funds of a market value of forty thousand dollars.
6 The state treasurer shall not accept any such deposit and issue
7 a certificate therefor and the commissioner shall not accept
8 such certificate unless accompanied by evidence that there are
9 no unsatisfied judgments of any character against the deposi-
10 tor in the county where the depositor resides.

11 (b) Such deposit shall be held by the state treasurer to
12 satisfy, in accordance with the provisions of this chapter, any
13 execution on a judgment issued against such person making the
14 deposit, for damages, including damages for care and loss of
15 services, because of bodily injury to or death of any person,
16 or for damages because of injury to or destruction of property,
17 including the loss of use thereof, resulting from the ownership,
18 maintenance, use or operation of a motor vehicle, trailer or
19 semitrailer after such deposit was made.

CHAPTER 33. INSURANCE.

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 insur-
2 ance, or of property damage liability insurance, covering
3 liability arising from the ownership, maintenance or use
4 of any motor vehicle, shall be issued or delivered in this
5 state to the owner of such vehicle, or shall be issued or
6 delivered by any insurer licensed in this state upon any
7 motor vehicle for which a certificate of title has been issued
8 by the department of motor vehicles of this state, unless it
9 shall contain a provision insuring the named insured and
10 any other person, except a bailee for hire and any persons
11 specifically excluded by any restrictive endorsement attached
12 to the policy, responsible for the use of or using the motor
13 vehicle with the consent, expressed or implied, of the named
14 insured or his spouse against liability for death or bodily
15 injury sustained, or loss or damage occasioned within the
16 coverage of the policy or contract as a result of negligence
17 in the operation or use of such vehicle by the named insured
18 or by such person: *Provided*, That in any such automobile
19 liability insurance policy or contract, or endorsement thereto,
20 if coverage resulting from the use of a nonowned automo-
21 bile is conditioned upon the consent of the owner of such
22 motor vehicle, the word "owner" shall be construed to
23 include the custodian of such nonowned motor vehicles.

24 (b) Nor shall any such policy or contract be so issued
25 or delivered unless it shall contain an endorsement or
26 provisions undertaking to pay the insured all sums which he
27 shall be legally entitled to recover as damages from the
28 owner or operator of an uninsured motor vehicle, within
29 limits which shall be no less than the requirements of sec-
30 tion two, article four, chapter seventeen-d of the code of
31 West Virginia, as amended from time to time: *Provided*,
32 That such policy or contract shall provide an option to the
33 insured with appropriately adjusted premiums to pay the in-
34 sured all sums which he shall be legally entitled to recover

35 as damages from the owner or operator of an uninsured motor
36 vehicle up to an amount of one hundred thousand dollars be-
37 cause of bodily injury to or death of one person in any one
38 accident, and, subject to said limit for one person, in the
39 amount of three hundred thousand dollars because of bodily
40 injury to or death of two or more persons in any one accident,
41 and in the amount of fifty thousand dollars because of injury
42 to or destruction of property of others in any one accident:
43 *Provided, however,* That such endorsement or provisions may
44 exclude the first three hundred dollars of property damage
45 resulting from the negligence of an uninsured motorist.

46 (c) As used in this section, the term "bodily injury" shall
47 include death resulting therefrom, and the term "named in-
48 sured" shall mean the person named as such in the declara-
49 tions of the policy or contract and shall also include such per-
50 son's spouse if a resident of the same household, and the term
51 "insured" shall mean the named insured, and, while resident
52 of the same household, the spouse of any such named insured,
53 and relatives of either, while in a motor vehicle or otherwise,
54 and any person, except a bailee for hire, who uses, with the
55 consent, expressed or implied, of the named insured, the motor
56 vehicle to which the policy applies or the personal represen-
57 tative of any of the above; and the term "uninsured motor
58 vehicle" shall mean a motor vehicle as to which there is no
59 (i) bodily injury liability insurance and property damage lia-
60 bility insurance both in the amounts specified by section two,
61 article four, chapter seventeen-d, as amended from time to
62 time, or (ii) there is such insurance, but the insurance com-
63 pany writing the same denies coverage thereunder, or (iii) there
64 is no certificate of self-insurance issued in accordance with the
65 provision of section two, article six, chapter seventeen-d of the
66 code of West Virginia. A motor vehicle shall be deemed to be
67 uninsured if the owner or operator thereof be unknown:
68 *Provided,* That recovery under the endorsement or provisions
69 shall be subject to the conditions hereinafter set forth.

70 (d) Any insured intending to rely on the coverage required
71 by subsection (b) of this section shall, if any action be insti-
72 tuted against the owner or operator of an uninsured motor
73 vehicle, cause a copy of the summons and a copy of the com-

74 plaint to be served upon the insurance company issuing the
75 policy, in the manner prescribed by law, as though such in-
76 surance company were a named party defendant; such com-
77 pany shall thereafter have the right to file pleadings and to
78 take other action allowable by law in the name of the owner,
79 or operator, or both, of the uninsured motor vehicle or in its
80 own name.

81 Nothing in this subsection shall prevent such owner or
82 operator from employing counsel of its own choice and taking
83 any action in his own interest in connection with such pro-
84 ceeding.

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

90 (i) Within twenty-four hours after the insured discover, and
91 being physically able to report the occurrence of such accident,
92 the insured, or someone in his behalf, shall report the acci-
93 dent to a police, peace or judicial officer, or to the commis-
94 sioner of motor vehicles, unless the accident shall already have
95 been investigated by a police officer; and

96 (ii) Notify the insurance company, within sixty days after
97 such accident, that the insured or his legal representative has
98 a cause or causes of action arising out of such accident for
99 damages against a person or persons whose identity is unknown
100 and setting forth the facts in support thereof; and, upon writ-
101 ten request of the insurance company communicated to the in-
102 sured not later than five days after receipt of such statement,
103 shall make available for inspection the motor vehicle which
104 the insured was occupying at the time of the accident; and

105 (iii) Upon trial establish that the motor vehicle, which
106 caused the bodily injury or property damage, whose operator
107 is unknown, was a "hit and run" motor vehicle, meaning a
108 motor vehicle which causes damage to the property of the in-
109 sured arising out of physical contact of such motor vehicle
110 therewith, or which causes bodily injury to the insured arising

111 out of physical contact of such motor vehicle with the insured
112 or with a motor vehicle which the insured was occupying at the
113 time of the accident. If the owner or operator of any motor
114 vehicle causing bodily injury or property damage be unknown,
115 an action may be instituted against the unknown defendant as
116 "John Doe", in the county in which the accident took place or
117 in any other county in which such action would be proper
118 under the provisions of article one, chapter fifty-six of this
119 code; service of process may be made by delivery of a copy of
120 the complaint and summons or other pleadings to the clerk of
121 the court in which the action is brought, and service upon
122 the insurance company issuing the policy shall be made as
123 prescribed by law as though such insurance company were a
124 party defendant. The insurance company shall have the right
125 to file pleadings and take other action allowable by law in the
126 name of John Doe.

127 (f) An insurer paying a claim under the endorsement or
128 provisions required by subsection (b) of this section shall be
129 subrogated to the rights of the insured to whom such claim
130 was paid against the person causing such injury, death or dam-
131 age to the extent that payment was made. The bringing of an
132 action against the unknown owner or operator as John Doe
133 or the conclusion of such an action shall not constitute a bar
134 to the insured, if the identity of the owner or operator who
135 caused the injury or damages complained of, becomes known,
136 from bringing an action against the owner or operator there-
137 tofore proceeded against as John Doe. Any recovery against
138 such owner or operator shall be paid to the insurance company
139 to the extent that such insurance company shall have paid the
140 insured in the action brought against such owner or operator
141 as John Doe, except that such insurance company shall pay its
142 proportionate part of any reasonable costs and expenses in-
143 curred in connection therewith, including reasonable attorney's
144 fees. Nothing in an endorsement or provision made under this
145 subsection, nor any other provision of law, shall operate to
146 prevent the joining, in an action against John Doe, of the owner
147 or operator of the motor vehicle causing injury as a party de-
148 fendant, and such joinder is hereby specifically authorized.

149 (g) No such endorsement or provisions shall contain any

150 provision requiring arbitration of any claim arising under any
151 such endorsement or provision, nor may anything be required
152 of the insured except the establishment of legal liability, nor
153 shall the insured be restricted or prevented in any manner
154 from employing legal counsel or instituting legal proceedings.

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

159 (i) The commissioner of insurance shall formulate and re-
160 quire the use of standard policy provisions for the insurance
161 required by this section, but use of such standard policy pro-
162 visions may be waived by the commissioner in the circum-
163 stances set forth in section ten of this article.

164 (j) A motor vehicle shall be deemed to be uninsured within
165 the meaning of this section, if there has been a valid bodily
166 injury or property damage liability policy issued upon such
167 vehicle, but which policy is uncollectible in whole or in part,
168 by reason of the insurance company issuing such policy upon
169 such vehicle being insolvent or having been placed in receiv-
170 ership. The right of subrogation granted insured under the
171 provisions of subsection (f) of this section shall not apply as
172 against any person or persons who is or becomes an uninsured
173 motorist for the reasons set forth in this subsection.

174 (k) Nothing contained herein shall prevent any insurer
175 from also offering benefits and limits other than those pre-
176 scribed herein, nor shall this section be constructed as pre-
177 venting any insurer from incorporating in such terms, condi-
178 tions and exclusions as may be consistent with the premium
179 charged.

§33-6-31a. Uninsured motorist coverage—rates.

1 Rates charged by insurers for the minimum uninsured
2 motorist coverage required under the provisions of section
3 thirty-one, of this article, shall be separate from the rates
4 charged by an insurer for the optional limits afforded the
5 policy holder under said section.

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

James L. Davis
Chairman Senate Committee

Clarence C. Chuston Jr.
Chairman House Committee

Originated in the House.

Takes effect July 1, 1979.

J. C. Willson, Jr.
Clerk of the Senate

W. Blankenship
Clerk of the House of Delegates

H. B. ...
President of the Senate

W. G. Lee, Jr.
Speaker House of Delegates

The within is approved this the 28
day of March, 1979.

John D. Rorley
Governor

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DEPT. OF STATE