WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1979

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ENROLLED

HOUSE BILL No. 1351

(By Mr. Tompkins and Mr. Shiflet)

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

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

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

ARTICLE 4. PROOF OF FINANCIAL RESPONSIBILITY FOR THE FUTURE.

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

The term “proof of financial responsibility” as used in this chapter shall mean: Proof of ability to respond in damages for liability, on account of accident occurring subsequent to the effective date of said proof, arising out of the ownership, operation, maintenance, or use of a motor vehicle, trailer or semi-trailer in the amount of twenty thousand dollars because of
§17D-4-7. Payment sufficient to satisfy requirements.

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

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

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

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

(b) Provided, however, That payments made in settlement of any claims because of bodily injury, death, or property damage arising from such accident shall be credited in reduction of the amounts provided for in this section.

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

(a) A “motor vehicle liability policy” as said term is used in this chapter shall mean an “owner’s policy” or an “operator’s policy” of liability insurance certified as provided in section ten or section eleven of this article as proof of financial responsibility, and issued, except as otherwise provided in section eleven, by an insurance carrier duly authorized to transact.
business in this state, to or for the benefit of the person named therein as insured.

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

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

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

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

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

(e) Such motor vehicle liability policy need not insure any liability under any workmen's compensation law nor any
liability on account of bodily injury to or death of an employee of the insured while engaged in the employment, other than domestic, of the insured, or while engaged in the operation, maintenance, or repair of any such vehicle nor any liability for damage to property owned by, rented to, in charge of, or transported by the insured.

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

(1) The liability of the insurance carrier with respect to the insurance required by this chapter shall become absolute whenever injury or damage covered by said motor vehicle liability policy occurs; said policy may not be canceled or annulled as to such liability by an agreement between the insurance carrier and the insured after the occurrence of the injury or damage; no statement made by the insured or on his behalf and no violation of said policy shall defeat or void said policy.

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

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

(4) The policy, the written application therefor, if any, and any rider or endorsement which does not conflict with the provisions of this chapter shall constitute the entire contract between parties.

(g) Any policy which grants the coverage required for a motor vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy and such excess or additional coverage shall not be subject to the provisions of this chapter. With respect to a policy which grants such excess or additional coverage the term "motor vehicle liability policy" shall apply
only to that part of the coverage which is required by this section.

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

(i) Any motor vehicle liability policy may provide for the prorating of the insurance thereunder with other valid and collectible insurance.

(j) The requirements for a motor vehicle liability policy may be fulfilled by the policies of one or more insurance carriers which policies together meet such requirements.

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

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

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

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

(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 such person: Provided, That in any such automobile liability insurance policy or contract, or endorsement thereto, if coverage resulting from the use of a nonowned 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 nonowned 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 policy or contract shall provide an option to the insured with appropriately adjusted premiums to pay the insured all sums which he shall be legally entitled to recover.
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as damages from the owner or operator of an uninsured motor
vehicle up to an amount of one hundred thousand dollars be-
cause of bodily injury to or death of one person in any one
accident, and, subject to said limit for one person, in the
amount of three hundred thousand dollars because of bodily
injury to or death of two or more persons in any one accident,
and in the amount of fifty thousand dollars because of injury
to or destruction of property of others in any one accident:
Provided, however, 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 in-
sured” shall mean the person named as such in the declara-
tions of the policy or contract and shall also include such per-
son’s spouse if a resident of the same household, 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, expressed or implied, of the named insured, the motor
vehicle to which the policy applies or the personal representa-
tive 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 liability insurance and property damage lia-
bility 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 com-
pany 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 provisions
shall be subject to the conditions hereinafter set forth.

(d) Any insured intending to rely on the coverage required
by subsection (b) of this section shall, if any action be insti-
tuted against the owner or operator of an uninsured motor
vehicle, cause a copy of the summons and a copy of the com-
plaint to be served upon the insurance company issuing the 
policy, in the manner prescribed by law, as though such in-
surance company were a named party defendant; such com-
pany 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 subsection 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 pro-
ceeding.

(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 endorse-
ment or provision, shall:

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

(ii) Notify the insurance company, within sixty days after 
such accident, 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 writ-
ten request of the insurance company communicated to the in-
ursed not later than five days after receipt of such statement, 
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 in-
ured 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 subsection (b) of this section shall be subrogated to the rights of the insured to whom such claim was paid against the person causing such injury, 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 there-fore 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 attorney's fees. Nothing in an endorsement or provision made under this subsection, 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 de-fendant, 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 provision, 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 subsection (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 subrogation granted insured 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.

(k) Nothing contained herein shall prevent any insurer from also offering benefits and limits other than those prescribed herein, nor shall this section be constructed as preventing any insurer from incorporating in such terms, conditions and exclusions as may be consistent with the premium charged.

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

Rates charged by insurers for the minimum uninsured motorist coverage required under the provisions of section thirty-one, of this article, shall be separate from the rates charged by an insurer for the optional limits afforded the 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

Chairman House Committee

Originated in the House.

Takes effect July 1, 1979.

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

W.A. Learning
Clerk of the House of Delegates

M.C. Bozarth
President of the Senate

J. M. Lee, Jr.
Speaker House of Delegates

The within is approved this the 20th day of March, 1979.

Governor