

APPROVED AND SIGNED BY THE GOVERNOR

Date 3-29-82

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1982



ENROLLED

Committee Substitute for
SENATE BILL NO. 288

(By Mr. Colombo, et al)



PASSED March 13, 1982

In Effect April 1, 1982 ~~Passage~~



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ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 288

(BY MR. COLOMBO, MR. WHITE AND MR. HECK)

[Passed March 13, 1982; in effect April 1, 1982.]

AN ACT to amend and reenact sections three and seven, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two, three, four, five, six, seven, eight and nine, article two-a, and section five, article three, chapter seventeen-d of said code; and to amend and reenact section thirty-one, article six, and section one, article six-a, chapter thirty-three of said code, all relating to motor vehicle insurance or other security; requirement of minimum level of security for registration and operation of a motor vehicle in this state; application for registration; deleting requirement of certificate of insurance upon application; statement of insurance or proof of security; random sample verification of statements; penalties for providing false information or proof of security; fees; department to refuse registration or certificate of title upon failure of applicant to present statement of insurance or proof of security; security upon motor vehicles; exclusions for certain government vehicles; providing that owners or registrants of periodic use or seasonal motor vehicles may maintain insurance only for the portion of the year in actual use; defining "periodic use or seasonal vehicle"; requiring proof of insurance to be carried in vehicle; defining "proof of insurance"; notice of cancellation or nonrenewal of insurance policy; providing for notice to commissioner of motor vehicles within five days after cancellation or termination of insurance

policy and certain exceptions; investigations to include inquiry regarding insurance or security; law-enforcement officer or court to notify commissioner of motor vehicles upon failure of operator to provide proof of security; suspension or revocation of operator's or chauffeur's license or vehicle registration; notice; hearing; rules and regulations; deleting reference to commissioner of insurance; criminal penalties; making uninsured motorist coverage optional if waived in writing; providing for option to purchase uninsured and underinsured motorists coverage up to limits of liability insurance; commissioner of insurance to review uninsured and underinsured insurance rate structure and report to Legislature; providing for ten days' notice to insured upon cancellation of automobile liability policy for failure of consideration upon initial issuance of policy.

Be it enacted by the Legislature of West Virginia:

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

**CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION,
REGISTRATION, CERTIFICATE OF TITLE, AND
ANTI-THEFT PROVISIONS.**

**ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION;
ISSUANCE OF CERTIFICATE OF TITLE.**

**§17A-3-3. Application for registration; statement of insurance
or other proof of security to accompany
application; criminal penalties; fees; special
revolving fund.**

- 1 (a) Every owner of a vehicle subject to registration
- 2 hereunder shall make application to the department for the
- 3 registration thereof upon the appropriate form or forms
- 4 furnished by the department and every such application shall
- 5 bear the signature of the owner or his authorized agent,
- 6 written with pen and ink, and said application shall contain:

7 (1) The name, bona fide residence and mailing address of
8 the owner, the county in which he resides, or business
9 address of the owner if a firm, association, or corporation.

10 (2) A description of the vehicle including, insofar as the
11 hereinafter specified data may exist with respect to a given
12 vehicle, the make, model, type of body, the manufacturer's
13 serial or identification number or other number as
14 determined by the commissioner.

15 (3) In the event a motor vehicle is designated, constructed,
16 converted, or rebuilt for the transportation of property, the
17 application shall include a statement of its declared gross
18 weight if such motor vehicle is to be used alone, or if such
19 motor vehicle is to be used in combination with other
20 vehicles the application for registration of such motor vehicle
21 shall include a statement of the combined declared gross
22 weight of such motor vehicle and the vehicles to be drawn by
23 such motor vehicle; declared gross weight being the weight
24 declared by the owner to be the actual combined weight of
25 the vehicle or combination of vehicles and load when
26 carrying the maximum load which the owner intends to place
27 thereon; and the application for registration of each such
28 vehicle shall also include a statement of the distance between
29 the first and last axles of that vehicle or combination of
30 vehicles. The declared gross weight stated in the application
31 shall not exceed the permissible gross weight for the axle
32 spacing listed therein as determined by the table of
33 permissible gross weights contained in chapter seventeen-c
34 of this code; and any vehicle registered for a declared gross
35 weight as stated in the application shall be subject to the
36 single-axle load limit set forth in chapter seventeen-c of this
37 code.

38 (4) Each such applicant shall state whether such vehicle is
39 or is not to be used in the public transportation of passengers
40 or property, or both, for compensation, and if so used, or to be
41 used, the applicants shall so certify, and shall, as a condition
42 precedent to the registration of such vehicle, obtain a
43 certificate of convenience, or permit from the public service
44 commission.

45 (5) A statement under penalty of false swearing that
46 liability insurance is in effect within limits which shall be no
47 less than the requirement of section two, article four, chapter
48 seventeen-d of this code, which statement shall contain the

49 name of the applicant's insurer, the name of the agent or
50 agency which issued the policy and the effective date of the
51 policy, and such other information as may be required by the
52 commissioner of motor vehicles, or that the applicant has
53 qualified as a self-insurer meeting the requirements of section
54 two, article six, chapter seventeen-d of the code and that as a
55 self-insurer he has complied with the minimum security
56 requirements as established in section two, article four of said
57 chapter seventeen-d, or that such applicant has submitted
58 bond or other security approved by the commissioner of
59 motor vehicles which shall provide the equivalent of the
60 policy of insurance herein specified, or that the applicant has
61 submitted the required cash or other securities with the state
62 treasurer as set forth in the provisions of section sixteen,
63 article four of said chapter seventeen-d of this code.

64 In the case of a periodic use or seasonal vehicle, as defined
65 in section three, article two-a, chapter seventeen-d, the owner
66 may provide, in lieu of other statements required by this
67 section, a statement, under penalty of false swearing, that
68 liability insurance is in effect during the portion of the year
69 the vehicle is in actual use, within limits which shall be no
70 less than the requirements of section two, article four, chapter
71 seventeen-d of this code, and other information relating to the
72 seasonal use, on a form designed and provided by the
73 department.

74 The department shall periodically select for verification, on
75 a random sample basis, not fewer than one percent of the
76 statements of liability insurance required by this section.
77 When a statement is selected for verification, the department
78 shall forward the information provided on the statement to
79 the listed insurer. The insurer shall notify the department,
80 within thirty calendar days, whether or not the information is
81 correct.

82 The department may select for verification any statement of
83 liability insurance submitted by a person who has previously
84 been convicted of violating the provisions of section three,
85 article two-a, chapter seventeen-d of this code, or whose
86 statements of liability insurance have previously been found
87 to be incorrect. The department may also determine the
88 correctness of information relating to proof of other security
89 satisfying the requirements of this section.

90 If any person making an application required under the
91 provision of this section, therein knowingly provides false

92 information, false proof of security or a false statement of
93 insurance, or if any person, including an applicant's
94 insurance agent, knowingly counsels, advises, aids or abets
95 another in providing false information, false proof of security,
96 or a false statement of insurance in such application, he is
97 guilty of a misdemeanor, and, upon conviction thereof, shall
98 be fined not more than five hundred dollars, or be imprisoned
99 in the county jail for a period not to exceed fifteen days, or
100 both fined and imprisoned, and in addition to such fine or
101 imprisonment shall have his operator's or chauffeur's license
102 and vehicle registration suspended for a period of six months.

103 (6) Such further information as may reasonably be
104 required by the department to enable it to determine whether
105 the vehicle is lawfully entitled to registration.

106 (7) Each such application for registration shall be
107 accompanied by the fees hereafter provided, and an
108 additional fee of one dollar for each motor vehicle for which
109 the applicant seeks registration, such fee to be deposited in a
110 special revolving fund for the operation by the department of
111 its functions established by the provisions of article two-a,
112 chapter seventeen-d of this code.

§17A-3-7. Grounds for refusing registration or certificate of title.

1 The department shall refuse registration or issuance of a
2 certificate of title or any transfer of registration upon any of
3 the following grounds:

4 (1) That the application contains any false or fraudulent
5 statement or that the applicant has failed to furnish required
6 information or reasonable additional information requested
7 by the department or that the applicant is not entitled to the
8 issuance of a certificate of title or registration of the vehicle
9 under this chapter;

10 (2) That the applicant fails to present a statement of
11 insurance or proof of other security as required pursuant to
12 the provisions of section three of this article;

13 (3) That the vehicle is mechanically unfit or unsafe to be
14 operated or moved upon the highways;

15 (4) That the department has reasonable grounds to believe
16 that the vehicle is a stolen or embezzled vehicle or that the
17 granting of registration or the issuance of certificate of title
18 would constitute a fraud against the rightful owner or other
19 person having a valid lien upon such vehicle;

- 20 (5) That the registration of the vehicle stands suspended
21 or revoked for any reason as provided in the motor vehicle
22 laws of this state;
23 (6) That the required fee has not been paid.

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

ARTICLE 2A. SECURITY UPON MOTOR VEHICLES.

§17D-2A-2. Scope of article.

1 This article applies to the operation of all motor vehicles
2 required to be registered to have proof of security pursuant to
3 article three, chapter seventeen-a of this code, with the
4 exception of motor vehicles owned by the state, any of its
5 political subdivisions or by the federal government.

§17D-2A-3. Required security; exceptions.

1 Every owner or registrant of a motor vehicle required to be
2 registered and licensed in this state shall maintain security as
3 hereinafter provided in effect continuously throughout the
4 registration or licensing period except in case of a periodic
5 use or seasonal vehicle, in which case the owner or registrant
6 is required to maintain security upon the vehicle only for the
7 portion of the year the vehicle is in actual use. As used in this
8 section, a periodic use or seasonal vehicle means a
9 recreational vehicle, antique motor vehicle, motorcycle or
10 other motor vehicle which is stored part of the year and used
11 seasonally.

12 Every nonresident owner or registrant of a motor vehicle,
13 which is operated upon any road or highway of this state, and
14 which has been physically present within this state for more
15 than thirty days during the preceding three hundred
16 sixty-five days, shall thereafter maintain security as
17 hereinafter provided in effect continuously throughout the
18 period such motor vehicle remains within this state.

19 No person shall knowingly drive or operate upon any road
20 or highway in this state any motor vehicle upon which
21 security is required by the provisions of this article unless
22 such security is in effect.

23 Such security shall be provided by one of the following
24 methods:

25 (a) By an insurance policy delivered or issued for the
26 delivery in this state by an insurance company authorized to
27 issue vehicle liability and property insurance policies in this

28 state within limits which shall be no less than the
 29 requirements of section two, article four, and section five,
 30 article three, chapter seventeen-d of this code, or

31 (b) By any other method approved by the commissioner of
 32 the department of motor vehicles of this state as affording
 33 security equivalent to that offered by a policy of insurance,
 34 including qualification as a self-insurer under the provisions
 35 of section two, article six, chapter seventeen-d, or

36 (c) By depositing with the state treasurer such cash or
 37 other securities in the manner set forth in section sixteen,
 38 article four, chapter seventeen-d of this code.

39 The requirements of this section apply to every registered
 40 and licensed vehicle upon the next application for renewal of
 41 license following the effective date of this section: *Provided*,
 42 That this article shall not apply to any motor vehicle owned
 43 by the state or by a political subdivision of this state, nor to
 44 any motor vehicle owned by the federal government.

§17D-2A-4. Certificate of insurance.

1 (a) All insurance carriers transacting insurance in this
 2 state shall supply a certificate to the insured or to any person
 3 subject to the registration provisions of article three, chapter
 4 seventeen-a of this code, certifying that there is in effect a
 5 motor vehicle liability policy upon such motor vehicle in
 6 accordance with the provisions of article three of chapter
 7 seventeen-a of this code. The certificate shall give its effective
 8 date and the effective date of the policy and, unless the policy
 9 is issued to a person who is not the owner of a motor vehicle,
 10 must designate by explicit description, in such detail as the
 11 commissioner of the department of motor vehicles shall by
 12 rule require all motor vehicles covered and all replacement
 13 vehicles of similar classification. The certificate must specify
 14 for each vehicle listed therein, that there is a minimum
 15 liability insurance coverage not less than the requirements of
 16 section two, article four, and section five, article three,
 17 chapter seventeen-d of this code.

18 (b) The certificate provided pursuant to the provisions of
 19 this section or other proof of insurance shall be carried by the
 20 insured in the appropriate vehicle for use as proof of security:
 21 *Provided, however*, That an insured shall not be guilty of a
 22 violation of this subsection (b) if he furnishes proof that such
 23 insurance was in effect within five days of being cited for not
 24 carrying such certificate or other proof in such vehicle. As

25 used in this section, proof of insurance means a certificate of
26 insurance, an insurance policy, or a mechanically reproduced
27 copy of an insurance policy.

**§17D-2A-5. Cancellation of insurance policy; suspension of
registration; minimum policy term.**

1 (a) When a motor vehicle liability insurance policy has
2 been cancelled or terminated, the insurance company shall
3 notify the commissioner of motor vehicles within five days of
4 the effective date of cancellation or termination, unless the
5 insurance company has a statement in writing from the
6 insured that cancellation or termination will not result in the
7 operation of an uninsured vehicle upon the highways of this
8 state.

9 (b) Within fifteen days of receipt of notice of cancellation
10 or termination of insurance from the insurer, the
11 commissioner of motor vehicles shall give notice of pending
12 suspension of motor vehicle registration to the registrant. The
13 commissioner shall then suspend the registration of such
14 motor vehicle, unless the registrant, within twenty days of the
15 date of the mailing of the notice, furnishes the commissioner
16 of motor vehicles a certificate of insurance or other proof of
17 security: *Provided*, That the registrant shall be given notice
18 and afforded an opportunity for hearing and judicial review
19 thereof in accordance with the provisions of subsection (c),
20 section seven of this article.

21 (c) On or before the fifteenth day of January, one thousand
22 nine hundred eighty-three, and on or before the fifteenth day
23 of January, one thousand nine hundred eighty-four, the
24 commissioner of motor vehicles shall report to the
25 Legislature upon proceedings pursuant to this section. The
26 report shall include the total number of notices received from
27 insurers, the total number of notices of pending suspension
28 issued, and the total number of cases in which cancellation
29 was found to have resulted in a lapse of coverage upon a
30 vehicle operated upon the highways of this state during the
31 prior year.

32 (d) No policy of motor vehicle liability insurance issued or
33 delivered for issuance in this state shall be contracted for a
34 period of less than ninety days: *Provided*, That the insurance
35 commissioner may establish exceptions thereto by rules and
36 regulations to chapter twenty-nine-a.

§17D-2A-6. Investigation by duly authorized law-enforcement officer to include inquiry regarding required security; notice to department of motor vehicles.

1 At the time of investigation of a motor vehicle accident in
2 this state by the department of public safety or other
3 law-enforcement agency or when a vehicle is stopped by a
4 law-enforcement officer for reasonable cause, the officer of
5 such agency making such investigation shall inquire of the
6 operators of any motor vehicles involved as to the existence
7 upon such vehicle or vehicles of the proof of insurance or
8 other security required by the provisions of this code and
9 upon a finding by such law-enforcement agency, officer or
10 agent thereof that the security required by the provisions of
11 this article is not in effect, as to any such vehicle, he shall
12 notify the department of motor vehicles of such finding
13 within five days if no citation requiring a court appearance is
14 issued. A defendant, who is charged with a traffic offense that
15 requires an appearance in court, shall present the court at the
16 time of his or her appearance or subsequent appearance with
17 proof that the defendant had security at the time of the traffic
18 offense as required by this article. If, as a result of the
19 defendant's failure to show proof, the court determines that
20 the defendant has violated this article, it shall notify the
21 department of motor vehicles within five days.

§17D-2A-7. Suspension or revocation of license, registration; reinstatement.

1 (a) Any owner of a motor vehicle, subject to the provisions
2 of this article, who fails to have the required security in effect
3 at the time such vehicle is being operated upon the roads or
4 highways of this state, shall have his operator's or chauffeur's
5 license suspended by the commissioner of the department of
6 motor vehicles for a period of ninety days and shall have his
7 motor vehicle registration revoked until such time as he shall
8 present to the department of motor vehicles the proof of
9 security required by this article.

10 (b) Any person who knowingly operates a motor vehicle
11 upon the roads or highways of this state, which does not have
12 the security required by the provisions of this article, shall
13 have his operator's or chauffeur's license suspended by the
14 commissioner of the department of motor vehicles for a
15 period of ninety days.

16 (c) No person shall have his operator's or chauffeur's
17 license or motor vehicle registration suspended or revoked

18 under any provisions of this section unless he shall first be
19 given written notice of such suspension or revocation sent by
20 certified mail, at least twenty days prior to the effective date
21 of such suspension or revocation, and upon such person's
22 written request, sent by certified mail, he shall be afforded an
23 opportunity for a hearing thereupon as well as a stay of the
24 commissioner's order of suspension or revocation and an
25 opportunity for judicial review of such hearing as set forth in
26 the provisions of section fifteen, article three, chapter
27 seventeen-d of this code. Upon affirmation of the
28 commissioner's order, the owner or operator, as the case may
29 be, shall surrender such revoked license and/or registration or
30 have the same impounded in the manner set forth in the
31 provisions of section seven, article nine, chapter seventeen-a
32 of the code.

33 (d) Such suspended operator's or chauffeur's license shall
34 be reinstated following the period of suspension upon
35 compliance with the conditions set forth in this article and
36 such revoked motor vehicle registration shall be reissued
37 only upon lawful compliance with the provisions of this
38 article.

§17D-2A-8. Rules and regulations.

1 The commissioner of the department of motor vehicles is,
2 hereby authorized to promulgate such rules and regulations,
3 in accordance with chapter twenty-nine-a of this code, as he
4 deems necessary for the administration, operation and
5 enforcement of the provisions of this article.

§17D-2A-9. Criminal penalties.

1 In addition to any other penalty provided for violation of
2 any provision of this article, any person who violates any
3 provision of this article is guilty of a misdemeanor, and, upon
4 conviction thereof, shall be fined not less than two hundred
5 dollars nor more than five thousand dollars, or imprisoned in
6 the county jail not less than fifteen days nor more than one
7 year, or both fined and imprisoned.

8 The arrest procedures authorized in section four, article
9 nineteen, chapter seventeen-c of this code shall apply to the
10 enforcement of the provisions of this article.

ARTICLE 3. SECURITY FOLLOWING ACCIDENT.

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

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

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

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

27 (c) (1) Upon receipt of notice of such accident from the
28 commissioner, the insurance company or surety company
29 named in such notice or the authorized licensed agent or
30 representative of the company shall notify the commissioner
31 in such manner as he may require that coverage was in effect
32 at the time of such accident.

33 (2) Any insurance company, surety company or the agent
34 or representative of such company who provides the
35 notification to the commissioner as required by this
36 subsection, and therein knowingly provides false
37 information, is guilty of a misdemeanor, and, upon conviction
38 thereof, shall be fined not more than five hundred dollars, or
39 be imprisoned in the county jail for a period not to exceed
40 fifteen days, or both fined and imprisoned.

CHAPTER 33. INSURANCE.

ARTICLE 6. THE INSURANCE POLICY.

§33-6-31. Motor vehicle policy; omnibus clause; uninsured and underinsured 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, covering
3 liability arising from the ownership, maintenance or use of
4 any motor vehicle, shall be issued or delivered in this state to
5 the owner of such vehicle, or shall be issued or delivered by
6 any insurer licensed in this state upon any motor vehicle for
7 which a certificate of title has been issued by the department
8 of motor vehicles of this state, unless it shall contain a
9 provision insuring the named insured and any other person,
10 except a bailee for hire and any persons specifically excluded
11 by any restrictive endorsement attached to the policy,
12 responsible for the use of or using the motor vehicle with the
13 consent, expressed or implied, of the named insured or his
14 spouse against liability for death or bodily injury sustained,
15 or loss or damage occasioned within the coverage of the
16 policy or contract as a result of negligence in the operation or
17 use of such vehicle by the named insured or by such person:
18 *Provided*, That in any such automobile liability insurance
19 policy or contract, or endorsement thereto, if coverage
20 resulting from the use of a nonowned automobile is
21 conditioned upon the consent of the owner of such motor
22 vehicle, the word "owner" shall be construed to include the
23 custodian of such nonowned motor vehicles.

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

36 amount of one hundred thousand dollars because of bodily
37 injury to or death of one person in any one accident, and,
38 subject to said limit for one person, in the amount of three
39 hundred thousand dollars because of bodily injury to or death
40 of two or more persons in any one accident, and in the
41 amount of fifty thousand dollars because of injury to or
42 destruction of property of others in any one accident, unless
43 the insured waives such coverage in writing; and the writing
44 signed by the insured shall contain the following language:
45 "The commissioner of the department of motor vehicles of
46 the state of West Virginia has determined that there are many
47 operators of motor vehicles from in and out of the state who
48 do not have liability insurance. For this reason uninsured
49 motorist coverage is recommended to each and every West
50 Virginian." *Provided, however,* That such endorsement or
51 provisions may exclude the first three hundred dollars of
52 property damage resulting from the negligence of an
53 uninsured motorist: *Provided further,* That such policy or
54 contract shall provide an option to the insured with
55 appropriately adjusted premiums to pay the insured all sums
56 which he shall legally be entitled to recover as damages from
57 the owner or operator of an uninsured or underinsured motor
58 vehicle up to an amount not less than limits of bodily injury
59 liability insurance and property damage liability insurance
60 purchased by the insured. "Underinsured motor vehicle"
61 means a motor vehicle with respect to the ownership,
62 operation, or use of which there is liability insurance
63 applicable at the time of the accident, but the limits of that
64 insurance are either (i) less than limits the insured carried for
65 underinsured motorists' coverage, or (ii) has been reduced by
66 payments to others injured in the accident to limits less than
67 limits the insured carried for underinsured motorists'
68 coverage.

69 (c) As used in this section, the term "bodily injury" shall
70 include death resulting therefrom, and the term "named
71 insured" shall mean the person named as such in the
72 declarations of the policy or contract and shall also include
73 such person's spouse if a resident of the same household, and
74 the term "insured" shall mean the named insured, and, while
75 resident of the same household, the spouse of any such
76 named insured, and relatives of either, while in a motor
77 vehicle or otherwise, and any person, except a bailee for hire,
78 who uses, with the consent, expressed or implied, of the

79 named insured, the motor vehicle to which the policy applies
80 or the personal representative of any of the above; and the
81 term "uninsured motor vehicle" shall mean a motor vehicle
82 as to which there is no (i) bodily injury liability insurance and
83 property damage liability insurance both in the amounts
84 specified by section two, article four, chapter seventeen-d, as
85 amended from time to time, or (ii) there is such insurance, but
86 the insurance company writing the same denies coverage
87 thereunder, or (iii) there is no certificate of self-insurance
88 issued in accordance with the provision of section two, article
89 six, chapter seventeen-d of the code of West Virginia. A motor
90 vehicle shall be deemed to be uninsured if the owner or
91 operator thereof be unknown: *Provided*, That recovery under
92 the endorsement or provisions shall be subject to the
93 conditions hereinafter set forth.

94 (d) Any insured intending to rely on the coverage required
95 by subsection (b) of this section shall, if any action be
96 instituted against the owner or operator of an uninsured
97 motor vehicle, cause a copy of the summons and a copy of the
98 complaint to be served upon the insurance company issuing
99 the policy, in the manner prescribed by law, as though such
100 insurance company were a named party defendant; such
101 company shall thereafter have the right to file pleadings and
102 to take other action allowable by law in the name of the
103 owner, or operator, or both, of the uninsured motor vehicle or
104 in its own name.

105 Nothing in this subsection shall prevent such owner or
106 operator from employing counsel of his own choice and
107 taking any action in his own interest in connection with such
108 proceeding.

109 (e) If the owner or operator of any motor vehicle which
110 causes bodily injury or property damage to the insured be
111 unknown, the insured, or someone in his behalf, in order for
112 the insured to recover under the uninsured motorist
113 endorsement or provision, shall:

114 (i) Within twenty-four hours after the insured discover,
115 and being physically able to report the occurrence of such
116 accident, the insured, or someone in his behalf, shall report
117 the accident to a police, peace or judicial officer, or to the
118 commissioner of motor vehicles, unless the accident shall
119 already have been investigated by a police officer; and

120 (ii) Notify the insurance company, within sixty days after
121 such accident, that the insured or his legal representative has
122 a cause or causes of action arising out of such accident for
123 damages against a person or persons whose identity is
124 unknown and setting forth the facts in support thereof; and,
125 upon written request of the insurance company
126 communicated to the insured not later than five days after
127 receipt of such statement, shall make available for inspection
128 the motor vehicle which the insured was occupying at the
129 time of the accident; and

130 (iii) Upon trial establish that the motor vehicle, which
131 caused the bodily injury or property damage, whose operator
132 is unknown, was a "hit and run" motor vehicle, meaning a
133 motor vehicle which causes damage to the property of the
134 insured arising out of physical contact of such motor vehicle
135 therewith, or which causes bodily injury to the insured
136 arising out of physical contact of such motor vehicle with the
137 insured or with a motor vehicle which the insured was
138 occupying at the time of the accident. If the owner or operator
139 of any motor vehicle causing bodily injury or property
140 damage be unknown, an action may be instituted against the
141 unknown defendant as "John Doe," in the county in which
142 the accident took place or in any other county in which such
143 action would be proper under the provisions of article one,
144 chapter fifty-six of this code; service of process may be made
145 by delivery of a copy of the complaint and summons or other
146 pleadings to the clerk of the court in which the action is
147 brought, and service upon the insurance company issuing the
148 policy shall be made as prescribed by law as though such
149 insurance company were a party defendant. The insurance
150 company shall have the right to file pleadings and take other
151 action allowable by law in the name of John Doe.

152 (f) An insurer paying a claim under the endorsement or
153 provisions required by subsection (b) of this section shall be
154 subrogated to the rights of the insured to whom such claim
155 was paid against the person causing such injury, death or
156 damage to the extent that payment was made. The bringing of
157 an action against the unknown owner or operator as John
158 Doe or the conclusion of such an action shall not constitute a
159 bar to the insured, if the identity of the owner or operator who
160 caused the injury or damages complained of, becomes
161 known, from bringing an action against the owner or operator
162 theretofore proceeded against as John Doe. Any recovery

163 against such owner or operator shall be paid to the insurance
164 company to the extent that such insurance company shall
165 have paid the insured in the action brought against such
166 owner or operator as John Doe, except that such insurance
167 company shall pay its proportionate part of any reasonable
168 costs and expenses incurred in connection therewith,
169 including reasonable attorney's fees. Nothing in an
170 endorsement or provision made under this subsection, nor
171 any other provision of law, shall operate to prevent the
172 joining, in an action against John Doe, of the owner or
173 operator of the motor vehicle causing injury as a party
174 defendant, and such joinder is hereby specifically authorized.

175 (g) No such endorsement or provisions shall contain any
176 provision requiring arbitration of any claim arising under any
177 such endorsement or provision, nor may anything be
178 required of the insured except the establishment of legal
179 liability, nor shall the insured be restricted or prevented in
180 any manner from employing legal counsel or instituting legal
181 proceedings.

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

186 (i) The commissioner of insurance shall formulate and
187 require the use of standard policy provisions for the
188 insurance required by this section, but use of such standard
189 policy provisions may be waived by the commissioner in the
190 circumstances set forth in section ten of this article.

191 (j) A motor vehicle shall be deemed to be uninsured
192 within the meaning of this section, if there has been a valid
193 bodily injury or property damage liability policy issued upon
194 such vehicle, but which policy is uncollectible in whole or in
195 part, by reason of the insurance company issuing such policy
196 upon such vehicle being insolvent or having been placed in
197 receivership. The right of subrogation granted insurers under
198 the provisions of subsection (f) of this section shall not apply
199 as against any person or persons who is or becomes an
200 uninsured motorist for the reasons set forth in this
201 subsection.

202 (k) Nothing contained herein shall prevent any insurer
203 from also offering benefits and limits other than those
204 prescribed herein, nor shall this section be construed as
205 preventing any insurer from incorporating in such terms,

206 conditions and exclusions as may be consistent with the
207 premium charged.

208 (l) The insurance commissioner shall review on an annual
209 basis the rate structure for uninsured and underinsured
210 motorists' coverage as set forth in subsection (b) of this
211 section, and shall report to the Legislature on said rate
212 structure on or before the fifteenth day of January, one
213 thousand nine hundred eighty-three, and on or before the
214 fifteenth day of January of each of the next two succeeding
215 years.

**ARTICLE 6A. CANCELLATION OR NONRENEWAL OF
AUTOMOBILE LIABILITY POLICIES.**

**§33-6A-1. Cancellation prohibited except for specified reasons;
notice.**

1 No insurer once having issued or delivered a policy
2 providing automobile liability insurance in this state insuring
3 a private passenger automobile shall, after the policy has
4 been in effect for sixty days, or in case of renewal effective
5 immediately, issue or cause to issue a notice of cancellation
6 during the term of the policy except for one or more of the
7 following specified reasons:

8 (a) The named insured fails to discharge when due any of
9 his obligations in connection with the payment of premium
10 for such policy or any installment thereof;

11 (b) The policy was obtained through material
12 misrepresentation;

13 (c) The insured violates any of the material terms and
14 conditions of the policy;

15 (d) The named insured or any other operator, either
16 resident in the same household or who customarily operates
17 an automobile insured under such policy:

18 (1) Has had his operator's license suspended or revoked
19 during the policy period including suspension or revocation
20 for failure to comply with the provisions of article five-a,
21 chapter seventeen-c of this code, regarding consent for
22 chemical test for intoxication; or

23 (2) Is or becomes subject to epilepsy or heart attacks, and
24 such individual cannot produce a certificate from a physician
25 testifying to his ability to operate a motor vehicle.

26 (e) The named insured or any other operator, either
27 resident in the same household or who customarily operates
28 an automobile insured under such policy is convicted of or
29 forfeits bail during the policy period for any of the following:

- 30 (1) Any felony or assault involving the use of a motor
31 vehicle;
- 32 (2) Negligent homicide arising out of the operation of a
33 motor vehicle;
- 34 (3) Operating a motor vehicle while under the influence of
35 alcohol or of any controlled substance or while having an
36 alcohol concentration in his blood of ten one-hundredths of
37 one percent (.10) or more by weight;
- 38 (4) Leaving the scene of a motor vehicle accident in which
39 the insured is involved without reporting as required by law;
- 40 (5) Theft of a motor vehicle or the unlawful taking of a
41 motor vehicle;
- 42 (6) Making false statements in an application for a motor
43 vehicle operator's license;
- 44 (7) A third violation, committed within a period of twelve
45 months, of any moving traffic violation which constitutes a
46 misdemeanor, whether or not the violations were repetitious
47 of the same offense or were different offenses.
48 Notwithstanding any of the provisions of this section to the
49 contrary, no insurance company may cancel a policy of
50 automobile liability insurance without first giving the insured
51 thirty days' notice of its intention to cancel: *Provided*, That
52 cancellation of the insurance policy by the insurance carrier
53 for failure of consideration to be paid by the insured upon
54 initial issuance of the insurance policy is effective upon the
55 expiration of ten days' notice of cancellation to the insured.

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

R. P. Bayler
Chairman Senate Committee

Tony E. Whitlow
Chairman House Committee

Originated in the Senate.

To take effect April 1, 1982.

Todd C. Wylie
Clerk of the Senate

Ch Blankenship
Clerk of the House of Delegates

Nancy J. McRae
President of the Senate

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

The within *is approved* this the *29* day of *March*, 1982.

John P. Royce
Governor



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SECY. OF STATE