WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1982

ENROLLED
Committee Substitute for
SENATE BILL NO. 288

(By Mr. Columna, et al.)

PASSED March 13, 1982
In Effect April 1, 1982

APPROVED AND SIGNED BY THE GOVERNOR
Date 3-29-82
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.

(a) Every owner of a vehicle subject to registration hereunder shall make application to the department for the registration thereof upon the appropriate form or forms furnished by the department and every such application shall bear the signature of the owner or his authorized agent, written with pen and ink, and said application shall contain:
(1) The name, bona fide residence and mailing address of the owner, the county in which he resides, or business address of the owner if a firm, association, or corporation.

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

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

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

(5) A statement under penalty of false swearing that liability insurance is in effect within limits which shall be no less than the requirement of section two, article four, chapter seventeen-d of this code, which statement shall contain the...
name of the applicant's insurer, the name of the agent or agency which issued the policy and the effective date of the policy, and such other information as may be required by the commissioner of motor vehicles, or that the applicant has qualified as a self-insurer meeting the requirements of section two, article six, chapter seventeen-d of the code and that as a self-insurer he has complied with the minimum security requirements as established in section two, article four of said chapter seventeen-d, or that such applicant has submitted bond or other security approved by the commissioner of motor vehicles which shall provide the equivalent of the policy of insurance herein specified, or that the applicant has submitted the required cash or other securities with the state treasurer as set forth in the provisions of section sixteen, article four of said chapter seventeen-d of this code.

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

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

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

If any person making an application required under the provision of this section, therein knowingly provides false
information, false proof of security or a false statement of
insurance, or if any person, including an applicant’s
insurance agent, knowingly counsels, advises, aids or abets
another in providing false information, false proof of security,
or a false statement of insurance in such application, he is
guilty of a misdemeanor, and, upon conviction thereof, shall
be fined not more than five hundred dollars, or be imprisoned
in the county jail for a period not to exceed fifteen days, or
both fined and imprisoned, and in addition to such fine or
imprisonment shall have his operator’s or chauffeur’s license
and vehicle registration suspended for a period of six months.

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

(7) Each such application for registration shall be
accompanied by the fees hereafter provided, and an
additional fee of one dollar for each motor vehicle for which
the applicant seeks registration, such fee to be deposited in a
special revolving fund for the operation by the department of
its functions established by the provisions of article two-a,
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
certificate of title or any transfer of registration upon any of
the following grounds:

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

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

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

5 (4) That the department has reasonable grounds to believe
that the vehicle is a stolen or embezzled vehicle or that the
granting of registration or the issuance of certificate of title
would constitute a fraud against the rightful owner or other
person having a valid lien upon such vehicle;
That the registration of the vehicle stands suspended or revoked for any reason as provided in the motor vehicle laws of this state;

(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 required to be registered to have proof of security pursuant to article three, chapter seventeen-a of this code, with the exception of motor vehicles owned by the state, any of its political subdivisions or by the federal government.

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

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

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

23 Such security shall be provided by one of the following methods:
25 (a) By an insurance policy delivered or issued for the delivery in this state by an insurance company authorized to issue vehicle liability and property insurance policies in this
(a) By any other method approved by the commissioner of
the department of motor vehicles of this state as affording
security equivalent to that offered by a policy of insurance,
including qualification as a self-insurer under the provisions
of section two, article six, chapter seventeen-d, or
(c) By depositing with the state treasurer such cash or
other securities in the manner set forth in section sixteen,
article four, chapter seventeen-d of this code.

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


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

(b) The certificate provided pursuant to the provisions of
this section or other proof of insurance shall be carried by the
insured in the appropriate vehicle for use as proof of security:
Provided, however, That an insured shall not be guilty of a
violation of this subsection (b) if he furnishes proof that such
insurance was in effect within five days of being cited for not
carrying such certificate or other proof in such vehicle. As
used in this section, proof of insurance means a certificate of
insurance, an insurance policy, or a mechanically reproduced
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
been cancelled or terminated, the insurance company shall
notify the commissioner of motor vehicles within five days of
the effective date of cancellation or termination, unless the
insurance company has a statement in writing from the
insured that cancellation or termination will not result in the
operation of an uninsured vehicle upon the highways of this
state.
2 (b) Within fifteen days of receipt of notice of cancellation
or termination of insurance from the insurer, the
commissioner of motor vehicles shall give notice of pending
suspension of motor vehicle registration to the registrant. The
commissioner shall then suspend the registration of such
motor vehicle, unless the registrant, within twenty days of the
date of the mailing of the notice, furnishes the commissioner
of motor vehicles a certificate of insurance or other proof of
security: Provided, That the registrant shall be given notice
and afforded an opportunity for hearing and judicial review
thereof in accordance with the provisions of subsection (c),
section seven of this article.
3 (c) On or before the fifteenth day of January, one thousand
nine hundred eighty-three, and on or before the fifteenth day
of January, one thousand nine hundred eighty-four, the
commissioner of motor vehicles shall report to the
Legislature upon proceedings pursuant to this section. The
report shall include the total number of notices received from
insurers, the total number of notices of pending suspension
issued, and the total number of cases in which cancellation
was found to have resulted in a lapse of coverage upon a
vehicle operated upon the highways of this state during the
prior year.
4 (d) No policy of motor vehicle liability insurance issued or
delivered for issuance in this state shall be contracted for a
period of less than ninety days: Provided, That the insurance
commissioner may establish exceptions thereto by rules and
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.

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

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

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

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

(c) No person shall have his operator’s or chauffeur’s license or motor vehicle registration suspended or revoked
under any provisions of this section unless he shall first be
given written notice of such suspension or revocation sent by
certified mail, at least twenty days prior to the effective date
of such suspension or revocation, and upon such person’s
written request, sent by certified mail, he shall be afforded an
opportunity for a hearing thereupon as well as a stay of the
commissioner’s order of suspension or revocation and an
opportunity for judicial review of such hearing as set forth in
the provisions of section fifteen, article three, chapter
seventeen-d of this code. Upon affirmation of the
commissioner’s order, the owner or operator, as the case may
be, shall surrender such revoked license and/or registration or
have the same impounded in the manner set forth in the
provisions of section seven, article nine, chapter seventeen-a
of the code.
(d) Such suspended operator’s or chauffeur’s license shall
be reinstated following the period of suspension upon
compliance with the conditions set forth in this article and
such revoked motor vehicle registration shall be reissued
only upon lawful compliance with the provisions of this
article.
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
deems necessary for the administration, operation and
enforcement of the provisions of this article.
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
11 of this article unless issued by an insurance company or
2 surety company authorized to do business in this state,
3 except as provided in subsection (b) of this section, nor unless
4 such policy or bond is subject, if the accident has resulted in
5 bodily injury or death, to a limit, exclusive of interest and
6 costs, of not less than 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, to a limit of not less
9 than forty thousand dollars because of bodily injury to or
10 death of two or more persons in any one accident, and, if the
11 accident has resulted in injury to, or destruction of property,
12 to a limit of not less than ten thousand dollars because of
13 injury to or destruction of property of others in any one
14 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 or
19 bond or the most recent renewal thereof, unless the insurance
20 company or surety company issuing such policy or bond is
21 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) (1) Upon receipt of notice of such accident from the
27 commissioner, the insurance company or surety company
28 named in such notice or the authorized licensed agent or
29 representative of the company shall notify the commissioner
30 in such manner as he may require that coverage was in effect
31 at the time of such accident.
32 (2) Any insurance company, surety company or the agent
33 or representative of such company who provides the
34 notification to the commissioner as required by this
35 subsection, and therein knowingly provides false
36 information, is guilty of a misdemeanor, and, upon conviction
37 thereof, shall be fined not more than five hundred dollars, or
38 be imprisoned in the county jail for a period not to exceed
39 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.

(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 as damages from the owner or operator of an uninsured motor vehicle up to an
amount of one hundred thousand dollars because 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, unless
the insured waives such coverage in writing; and the writing
signed by the insured shall contain the following language:
“The commissioner of the department of motor vehicles of
the state of West Virginia has determined that there are many
operators of motor vehicles from in and out of the state who
do not have liability insurance. For this reason uninsured
motorist coverage is recommended to each and every West
Virginian.”: 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: Provided further, 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 legally be entitled to recover as damages from
the owner or operator of an uninsured or underinsured motor
vehicle up to an amount not less than limits of bodily injury
liability insurance and property damage liability insurance
purchased by the insured. “Underinsured motor vehicle”
means a motor vehicle with respect to the ownership,
operation, or use of which there is liability insurance
applicable at the time of the accident, but the limits of that
insurance are either (i) less than limits the insured carried for
underinsured motorists’ coverage, or (ii) has been reduced by
payments to others injured in the accident to limits less than
limits the insured carried for underinsured motorists’
coverage.

(c) As used in this section, the term “bodily injury” shall
include death resulting therefrom, and the term “named
insured” shall mean the person named as such in the
declarations of the policy or contract and shall also include
such person’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 representative 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 liability 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 company 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 instituted against the owner or operator of an uninsured motor vehicle, cause a copy of the summons and a copy of the complaint to be served upon the insurance company issuing the policy, in the manner prescribed by law, as though such insurance company were a named party defendant; such company 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 his own choice and taking any action in his own interest in connection with such proceeding.

(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 endorsement 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 accident to a police, peace or judicial officer, or to the commissioner 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 written request of the insurance company communicated to the insured 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 insured 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 insulated 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 theretofore 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
defendant, 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 subsections (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 insurers 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 construed as
preventing any insurer from incorporating in such terms,
conditions and exclusions as may be consistent with the premium charged.

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

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

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

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

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

(b) The policy was obtained through material misrepresentation;

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

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

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

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

(e) The named insured or any other operator, either resident in the same household or who customarily operates an automobile insured under such policy is convicted of or forfeits bail during the policy period for any of the following:
(1) Any felony or assault involving the use of a motor vehicle;
(2) Negligent homicide arising out of the operation of a motor vehicle;
(3) Operating a motor vehicle while under the influence of alcohol or of any controlled substance or while having an alcohol concentration in his blood of ten one-hundredths of one percent (.10) or more by weight;
(4) Leaving the scene of a motor vehicle accident in which the insured is involved without reporting as required by law;
(5) Theft of a motor vehicle or the unlawful taking of a motor vehicle;
(6) Making false statements in an application for a motor vehicle operator's license;
(7) A third violation, committed within a period of twelve months, of any moving traffic violation which constitutes a misdemeanor, whether or not the violations were repetitious of the same offense or were different offenses.
Notwithstanding any of the provisions of this section to the contrary, no insurance company may cancel a policy of automobile liability insurance without first giving the insured thirty days’ notice of its intention to cancel: Provided, That cancellation of the insurance policy by the insurance carrier for failure of consideration to be paid by the insured upon initial issuance of the insurance policy is effective upon the 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. Baxley
Chairman Senate Committee

Tony E. Whitlow
Chairman House Committee

Originated in the Senate.

To take effect April 1, 1982.

J. S. West
Clerk of the Senate

O. D. Blankenship
Clerk of the House of Delegates

Nana K. McGraw
President of the Senate

Speaker House of Delegates

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

Governor