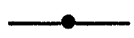


No: 86

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1988



ENROLLED

COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 86

(By Senator Kaufman, et al)



PASSED MARCH 12, 1988

In Effect 90 days from Passage



ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 86

(SENATORS KAUFMAN, JACKSON AND FANNING, *original sponsors*)

[Passed March 12, 1988; in effect ninety days from passage.]

AN ACT to amend and reenact section thirty-one, article six, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to motor vehicle insurance; omnibus clause; uninsured and underinsured motorists' coverage; conditions for recovery; rights and liabilities of insurer; setoff prohibited; and specific exclusion by restrictive endorsement effective regarding cancellation of policy for specified reasons and mandatory liability requirement of chapter seventeen-d, article four, section two of the code.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. THE INSURANCE POLICY.

§33-6-31. Motor vehicle policy; 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,

3 covering liability arising from the ownership, maintenance
4 or use of any motor vehicle, shall be issued or delivered in
5 this state to the owner of such vehicle, or shall be issued or
6 delivered by any insurer licensed in this state upon any
7 motor vehicle for which a certificate of title has been issued
8 by the department of motor vehicles of this state, unless it
9 shall contain a provision insuring the named insured and
10 any other person, except a bailee for hire and any persons
11 specifically excluded by any restrictive endorsement
12 attached to the policy, responsible for the use of or using the
13 motor vehicle with the consent, expressed or implied, of the
14 named insured or his spouse against liability for death or
15 bodily injury sustained, or loss or damage occasioned
16 within the coverage of the policy or contract as a result of
17 negligence in the operation or use of such vehicle by the
18 named insured or by such person: *Provided*, That in any
19 such automobile liability insurance policy or contract, or
20 endorsement thereto, if coverage resulting from the use of a
21 non-owned automobile is conditioned upon the consent of
22 the owner of such motor vehicle, the word "owner" shall be
23 construed to include the custodian of such non-owned
24 motor vehicles. Notwithstanding any other provision of this
25 code, if the owner of a policy receives a notice of
26 cancellation pursuant to article six-a of this chapter and the
27 reason for the cancellation is a violation of law by a person
28 insured under the policy, said owner may by restrictive
29 endorsement specifically exclude the person who violated
30 the law and the restrictive endorsement shall be effective in
31 regard to the total liability coverage provided under the
32 policy, including coverage provided pursuant to the
33 mandatory liability requirements of chapter seventeen-d,
34 article four, section two of this code, but nothing in such
35 restrictive endorsement shall be construed to abrogate the
36 "family purpose doctrine".

37 (b) Nor shall any such policy or contract be so issued or
38 delivered unless it shall contain an endorsement or
39 provisions undertaking to pay the insured all sums which he
40 shall be legally entitled to recover as damages from the
41 owner or operator of an uninsured motor vehicle, within
42 limits which shall be no less than the requirements of
43 section two, article four, chapter seventeen-d of the code of
44 West Virginia, as amended from time to time: *Provided*,
45 That such policy or contract shall provide an option to the

46 insured with appropriately adjusted premiums to pay the
47 insured all sums which he shall be legally entitled to recover
48 as damages from the owner or operator of an uninsured
49 motor vehicle up to an amount of one hundred thousand
50 dollars because of bodily injury to or death of one person in
51 any one accident, and, subject to said limit for one person, in
52 the amount of three hundred thousand dollars because of
53 bodily injury to or death of two or more persons in any one
54 accident, and in the amount of fifty thousand dollars
55 because of injury to or destruction of property of others in
56 any one accident: *Provided, however,* That such
57 endorsement or provisions may exclude the first three
58 hundred dollars of property damage resulting from the
59 negligence of an uninsured motorist: *Provided further,*
60 That such policy or contract shall provide an option to the
61 insured with appropriately adjusted premiums to pay the
62 insured all sums which he shall legally be entitled to recover
63 as damages from the owner or operator of an uninsured or
64 underinsured motor vehicle up to an amount not less than
65 limits of bodily injury liability insurance and property
66 damage liability insurance purchased by the insured
67 without setoff against the insured's policy or any other
68 policy. "Underinsured motor vehicle" means a motor
69 vehicle with respect to the ownership, operation, or use of
70 which there is liability insurance applicable at the time of
71 the accident, but the limits of that insurance are either (i)
72 less than limits the insured carried for underinsured
73 motorists' coverage, or (ii) has been reduced by payments to
74 others injured in the accident to limits less than limits the
75 insured carried for underinsured motorists' coverage. No
76 sums payable as a result of underinsured motorists'
77 coverage shall be reduced by payments made under the
78 insured's policy or any other policy.

79 (c) As used in this section, the term "bodily injury" shall
80 include death resulting therefrom, and the term "named
81 insured" shall mean the person named as such in the
82 declarations of the policy or contract and shall also include
83 such person's spouse if a resident of the same household,
84 and the term "insured" shall mean the named insured, and,
85 while resident of the same household, the spouse of any such
86 named insured, and relatives of either, while in a motor
87 vehicle or otherwise, and any person, except a bailee for
88 hire, who uses, with the consent, expressed or implied, of

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

105 (d) Any insured intending to rely on the coverage
106 required by subsection (b) of this section shall, if any action
107 be instituted against the owner or operator of an uninsured
108 or underinsured motor vehicle, cause a copy of the summons
109 and a copy of the complaint to be served upon the insurance
110 company issuing the policy, in the manner prescribed by
111 law, as though such insurance company were a named party
112 defendant; such company shall thereafter have the right to
113 file pleadings and to take other action allowable by law in
114 the name of the owner, or operator, or both, of the uninsured
115 or underinsured motor vehicle or in its own name.

116 Nothing in this subsection shall prevent such owner or
117 operator from employing counsel of his own choice and
118 taking any action in his own interest in connection with
119 such proceeding.

120 (e) If the owner or operator of any motor vehicle which
121 causes bodily injury or property damage to the insured be
122 unknown, the insured, or someone in his behalf, in order for
123 the insured to recover under the uninsured motorist
124 endorsement or provision, shall:

125 (i) Within twenty-four hours after the insured discover,
126 and being physically able to report the occurrence of such
127 accident, the insured, or someone in his behalf, shall report
128 the accident to a police, peace or judicial officer, or to the
129 commissioner of motor vehicles, unless the accident shall
130 already have been investigated by a police officer; and

131 (ii) Notify the insurance company, within sixty days

132 after such accident, that the insured or his legal
133 representative has a cause or causes of action arising out of
134 such accident for damages against a person or persons
135 whose identity is unknown and setting forth the facts in
136 support thereof; and, upon written request of the insurance
137 company communicated to the insured not later than five
138 days after receipt of such statement, shall make available
139 for inspection the motor vehicle which the insured was
140 occupying at the time of the accident; and

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

164 (f) An insurer paying a claim under the endorsement or
165 provisions required by subsection (b) of this section shall be
166 subrogated to the rights of the insured to whom such claim
167 was paid against the person causing such injury, death or
168 damage to the extent that payment was made. The bringing
169 of an action against the unknown owner or operator as John
170 Doe or the conclusion of such an action shall not constitute
171 a bar to the insured, if the identity of the owner or operator
172 who caused the injury or damages complained of, becomes
173 known, from bringing an action against the owner or

174 operator theretofore proceeded against as John Doe. Any
175 recovery against such owner or operator shall be paid to the
176 insurance company to the extent that such insurance
177 company shall have paid the insured in the action brought
178 against such owner or operator as John Doe, except that
179 such insurance company shall pay its proportionate part of
180 any reasonable costs and expenses incurred in connection
181 therewith, including reasonable attorney's fees. Nothing in
182 an endorsement or provision made under this subsection,
183 nor any other provision of law, shall operate to prevent the
184 joining, in an action against John Doe, of the owner or
185 operator of the motor vehicle causing injury as a party
186 defendant, and such joinder is hereby specifically
187 authorized.

188 (g) No such endorsement or provisions shall contain any
189 provision requiring arbitration of any claim arising under
190 any such endorsement or provision, nor may anything be
191 required of the insured except the establishment of legal
192 liability, nor shall the insured be restricted or prevented in
193 any manner from employing legal counsel or instituting
194 legal proceedings.

195 (h) The provisions of subsections (a) and (b) of this
196 section shall not apply to any policy of insurance to the
197 extent that it covers the liability of an employer to his
198 employees under any workers' compensation law.

199 (i) The commissioner of insurance shall formulate and
200 require the use of standard policy provisions for the
201 insurance required by this section, but use of such standard
202 policy provisions may be waived by the commissioner in the
203 circumstances set forth in section ten of this article.

204 (j) A motor vehicle shall be deemed to be uninsured
205 within the meaning of this section, if there has been a valid
206 bodily injury or property damage liability policy issued
207 upon such vehicle, but which policy is uncollectable in
208 whole or in part, by reason of the insurance company
209 issuing such policy upon such vehicle being insolvent or
210 having been placed in receivership. The right of
211 subrogation granted insurers under the provisions of
212 subsection (f) of this section shall not apply as against any
213 person or persons who is or becomes an uninsured motorist
214 for the reasons set forth in this subsection.

215 (k) Nothing contained herein shall prevent any insurer
216 from also offering benefits and limits other than those

217 prescribed herein, nor shall this section be construed as
218 preventing any insurer from incorporating in such terms,
219 conditions and exclusions as may be consistent with the
220 premium charged.

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

Handwritten signature and text, likely a date and name, appearing at the bottom of the page.

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

Gene O. Allison
.....
Chairman Senate Committee

Bernard V. Kelly
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Todd C. Willis
.....
Clerk of the Senate

Donald J. Kepp
.....
Clerk of the House of Delegates

Don Tomblin
.....
President of the Senate

W. R. C. C.
.....
Speaker House of Delegates

The within *approved* this the *30th*
day of *March* 1988.

Arthur A. Shaffer
.....
Governor



PRESENTED TO THE

GOVERNOR

Date 3/22/88

Time 11:29 AM

RECEIVED

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OFFICE OF JUSTICE
SECRETARY OF STATE