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
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 cancelation 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. 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
non-owned 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 non-owned
motor vehicles. Notwithstanding any other provision of this
code, if the owner of a policy receives a notice of
cancellation pursuant to article six-a of this chapter and the
reason for the cancellation is a violation of law by a person
insured under the policy, said owner may by restrictive
endorsement specifically exclude the person who violated
the law and the restrictive endorsement shall be effective in
regard to the total liability coverage provided under the
policy, including coverage provided pursuant to the
mandatory liability requirements of chapter seventeen-d,
article four, section two of this code, but nothing in such
restrictive endorsement shall be construed to abrogate the
"family purpose doctrine".

(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: 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
without setoff against the insured's policy or any other
policy. "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. No
sums payable as a result of underinsured motorists'
coverage shall be reduced by payments made under the
insured's policy or any other policy.

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

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

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

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within .................this the ............... 30th day of ............... 1988.

Governor