WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1995

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ENROLLED

SENATE BILL NO. 309

(Originating in the Committee on
(By Senator Banking & Insurance)

PASSED March 8, 1995
In Effect 90 days from Passage
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Senate Bill No. 309

(Originating in the Committee on Banking and Insurance.)

[Passed March 8, 1995, 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 the determination of the total amount of coverage available to an insured.

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 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. 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 section two, article four, chapter seventeen-d 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 require-
ments of section two, article four, chapter seventeen-d of this code, 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 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. Regardless of whether motor vehicle coverage is offered and provided to an insured through a multiple vehicle insurance policy or contract, or in separate single vehicle insurance policies or contracts, no insurer or insurance company providing a bargained for discount for multiple motor vehicles with respect to underinsured motor vehicle coverage shall be treated differently from any other insurer or insurance company utilizing a single insurance policy or contract for multiple covered vehicles for purposes of determining the total amount of coverage available to an 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
85 limits of that insurance are either: (i) Less than limits
86 the insured carried for underinsured motorists' coverage;
87 or (ii) has been reduced by payments to others injured in
88 the accident to limits less than limits the insured carried
89 for underinsured motorists' coverage. No sums payable
90 as a result of underinsured motorists' coverage shall be
91 reduced by payments made under the insured's policy or
92 any other policy.
93 (c) As used in this section, the term "bodily injury"
94 shall include death resulting therefrom and the term
95 "named insured" shall mean the person named as such
96 in the declarations of the policy or contract and shall
97 also include such person's spouse if a resident of the
98 same household and the term "insured" shall mean the
99 named insured and, while resident of the same house-
100 hold, the spouse of any such named insured and relatives
101 of either, while in a motor vehicle or otherwise, and any
102 person, except a bailee for hire, who uses, with the
103 consent, expressed or implied, of the named insured, the
104 motor vehicle to which the policy applies or the personal
105 representative of any of the above; and the term "unin-
106 sured motor vehicle" shall mean a motor vehicle as to
107 which there is no: (i) Bodily injury liability insurance
108 and property damage liability insurance both in the
109 amounts specified by section two, article four, chapter
110 seventeen-d of this code, as amended from time to time;
111 or (ii) there is such insurance, but the insurance company
112 writing the same denies coverage thereunder; or (iii)
113 there is no certificate of self-insurance issued in accor-
114 dance with the provisions of said section. A motor
115 vehicle shall be deemed to be uninsured if the owner or
116 operator thereof be unknown: Provided, That recovery
117 under the endorsement or provisions shall be subject to
118 the conditions hereinafter set forth.
119 (d) Any insured intending to rely on the coverage
120 required by subsection (b) of this section shall, if any
121 action be instituted against the owner or operator of an
122 uninsured or underinsured motor vehicle, cause a copy
123 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 underin-
sured 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;

(ii) Notify the insurance company, within sixty days
after such accident, that the insured or his legal repre-
sentative 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 insur-
ance 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 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, 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 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 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 under-
insured motorist 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.
That 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 is approved this the 11th day of March, 1995.

Governor
PRESENTED TO THE
GOVERNOR
Date 3/10/95
Time 3:54 PM