

SB 0309

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WEST VIRGINIA LEGISLATURE

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REGULAR SESSION, 1995

ENROLLED

SENATE BILL NO. 309
(ORIGINATING IN THE COMMITTEE ON
(By ~~Senator~~ BANKING & INSURANCE)

PASSED MARCH 8, 1995
In Effect 90 DAYS FROM Passage

ENROLLED

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
- 2 insurance, or of property damage liability insurance,
- 3 covering liability arising from the ownership, mainte-
- 4 nance or use of any motor vehicle, shall be issued or
- 5 delivered in this state to the owner of such vehicle, or

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

39 (b) Nor shall any such policy or contract be so issued or
40 delivered unless it shall contain an endorsement or
41 provisions undertaking to pay the insured all sums which
42 he shall be legally entitled to recover as damages from
43 the owner or operator of an uninsured motor vehicle,
44 within limits which shall be no less than the require-

45 ments of section two, article four, chapter seventeen-d of
46 this code, as amended from time to time: *Provided*, That
47 such policy or contract shall provide an option to the
48 insured with appropriately adjusted premiums to pay the
49 insured all sums which he shall be legally entitled to
50 recover as damages from the owner or operator of an
51 uninsured motor vehicle up to an amount of one hundred
52 thousand dollars because of bodily injury to or death of
53 one person in any one accident and, subject to said limit
54 for one person, in the amount of three hundred thousand
55 dollars because of bodily injury to or death of two or
56 more persons in any one accident and in the amount of
57 fifty thousand dollars because of injury to or destruction
58 of property of others in any one accident: *Provided*,
59 *however*, That such endorsement or provisions may
60 exclude the first three hundred dollars of property
61 damage resulting from the negligence of an uninsured
62 motorist: *Provided further*, That such policy or contract
63 shall provide an option to the insured with appropriately
64 adjusted premiums to pay the insured all sums which he
65 shall legally be entitled to recover as damages from the
66 owner or operator of an uninsured or underinsured
67 motor vehicle up to an amount not less than limits of
68 bodily injury liability insurance and property damage
69 liability insurance purchased by the insured without
70 setoff against the insured's policy or any other policy.
71 Regardless of whether motor vehicle coverage is offered
72 and provided to an insured through a multiple vehicle
73 insurance policy or contract, or in separate single vehicle
74 insurance policies or contracts, no insurer or insurance
75 company providing a bargained for discount for multiple
76 motor vehicles with respect to underinsured motor
77 vehicle coverage shall be treated differently from any
78 other insurer or insurance company utilizing a single
79 insurance policy or contract for multiple covered vehi-
80 cles for purposes of determining the total amount of
81 coverage available to an insured. "Underinsured motor
82 vehicle" means a motor vehicle with respect to the
83 ownership, operation, or use of which there is liability
84 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

124 upon the insurance company issuing the policy, in the
125 manner prescribed by law, as though such insurance
126 company were a named party defendant; such company
127 shall thereafter have the right to file pleadings and to
128 take other action allowable by law in the name of the
129 owner, or operator, or both, of the uninsured or underin-
130 sured motor vehicle or in its own name.

131 Nothing in this subsection shall prevent such owner or
132 operator from employing counsel of his own choice and
133 taking any action in his own interest in connection with
134 such proceeding.

135 (e) If the owner or operator of any motor vehicle which
136 causes bodily injury or property damage to the insured
137 be unknown, the insured, or someone in his behalf, in
138 order for the insured to recover under the uninsured
139 motorist endorsement or provision, shall:

140 (i) Within twenty-four hours after the insured discover,
141 and being physically able to report the occurrence of
142 such accident, the insured, or someone in his behalf,
143 shall report the accident to a police, peace or judicial
144 officer, or to the commissioner of motor vehicles, unless
145 the accident shall already have been investigated by a
146 police officer;

147 (ii) Notify the insurance company, within sixty days
148 after such accident, that the insured or his legal repre-
149 sentative has a cause or causes of action arising out of
150 such accident for damages against a person or persons
151 whose identity is unknown and setting forth the facts in
152 support thereof; and, upon written request of the insur-
153 ance company communicated to the insured not later
154 than five days after receipt of such statement, shall make
155 available for inspection the motor vehicle which the
156 insured was occupying at the time of the accident; and

157 (iii) Upon trial establish that the motor vehicle, which
158 caused the bodily injury or property damage, whose
159 operator is unknown, was a "hit and run" motor vehicle,
160 meaning a motor vehicle which causes damage to the

161 property of the insured arising out of physical contact of
162 such motor vehicle therewith, or which causes bodily
163 injury to the insured arising out of physical contact of
164 such motor vehicle with the insured or with a motor
165 vehicle which the insured was occupying at the time of
166 the accident. If the owner or operator of any motor
167 vehicle causing bodily injury or property damage be
168 unknown, an action may be instituted against the
169 unknown defendant as "John Doe", in the county in
170 which the accident took place or in any other county in
171 which such action would be proper under the provisions
172 of article one, chapter fifty-six of this code; service of
173 process may be made by delivery of a copy of the com-
174 plaint and summons or other pleadings to the clerk of the
175 court in which the action is brought, and service upon
176 the insurance company issuing the policy shall be made
177 as prescribed by law as though such insurance company
178 were a party defendant. The insurance company shall
179 have the right to file pleadings and take other action
180 allowable by law in the name of John Doe.

181 (f) An insurer paying a claim under the endorsement or
182 provisions required by subsection (b) of this section shall
183 be subrogated to the rights of the insured to whom such
184 claim was paid against the person causing such injury,
185 death or damage to the extent that payment was made.
186 The bringing of an action against the unknown owner or
187 operator as John Doe or the conclusion of such an action
188 shall not constitute a bar to the insured, if the identity of
189 the owner or operator who caused the injury or damages
190 complained of, becomes known, from bringing an action
191 against the owner or operator theretofore proceeded
192 against as John Doe. Any recovery against such owner
193 or operator shall be paid to the insurance company to the
194 extent that such insurance company shall have paid the
195 insured in the action brought against such owner or
196 operator as John Doe, except that such insurance com-
197 pany shall pay its proportionate part of any reasonable
198 costs and expenses incurred in connection therewith,
199 including reasonable attorney's fees. Nothing in an

200 endorsement or provision made under this subsection,
201 nor any other provision of law, shall operate to prevent
202 the joining, in an action against John Doe, of the owner
203 or operator of the motor vehicle causing injury as a party
204 defendant, and such joinder is hereby specifically
205 authorized.

206 (g) No such endorsement or provisions shall contain
207 any provision requiring arbitration of any claim arising
208 under any such endorsement or provision, nor may
209 anything be required of the insured except the establish-
210 ment of legal liability, nor shall the insured be restricted
211 or prevented in any manner from employing legal
212 counsel or instituting legal proceedings.

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

217 (i) The commissioner of insurance shall formulate and
218 require the use of standard policy provisions for the
219 insurance required by this section, but use of such
220 standard policy provisions may be waived by the com-
221 missioner in the circumstances set forth in section ten of
222 this article.

223 (j) A motor vehicle shall be deemed to be uninsured
224 within the meaning of this section, if there has been a
225 valid bodily injury or property damage liability policy
226 issued upon such vehicle, but which policy is uncollect-
227 ible in whole or in part, by reason of the insurance
228 company issuing such policy upon such vehicle being
229 insolvent or having been placed in receivership. The
230 right of subrogation granted insurers under the provi-
231 sions of subsection (f) of this section shall not apply as
232 against any person or persons who is or becomes an
233 uninsured motorist for the reasons set forth in this
234 subsection.

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

237 prescribed herein, nor shall this section be construed as
238 preventing any insurer from incorporating in such terms,
239 conditions and exclusions as may be consistent with the
240 premium charged.

241 (l) The insurance commissioner shall review on an
242 annual basis the rate structure for uninsured and under-
243 insured motorists coverage as set forth in subsection (b)
244 of this section and shall report to the Legislature on said
245 rate structure on or before the fifteenth day of January,
246 one thousand nine hundred eighty-three, and on or
247 before the fifteenth day of January of each of the next
248 two succeeding years.

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

Randy L. Donovan
.....
Chairman Senate Committee

Ernest C. Moore
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Barrett E. Adams
.....
Clerk of the Senate

Donald L. Kopp
.....
Clerk of the House of Delegates

Carl Ray Tomblin
.....
President of the Senate

Ruth S. Han
.....
Speaker House of Delegates

The within *is approved* this the *16th*.....

day of *March*....., 1995.

Gaston Caperton
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/10/95

Time 3:51 PM