

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1996

ENROLLED

Com. Sub. For
HOUSE BILL No. HH90

(By Delegates Talbott, Gallagher, Clement,
Trump, Preece, Kelley and Kallou)

Passed March 9, 1996

In Effect Ninety Days From Passage

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 4490

(BY DELEGATES TALBOTT, GALLAGHER, CLEMENTS,
TRUMP, PREECE, KELLEY AND KALLAI)

[Passed March 9, 1996; in effect ninety days from passage.]

AN ACT to amend and reenact section three, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section seven, article nine of said chapter; to amend and reenact section nine, article three, chapter seventeen-b of said code; to amend and reenact section six, article two-a, chapter seventeen-d of said code; and to amend and reenact section one, article six-a, chapter thirty-three of said code, all relating to surrender of registration plate or notification upon cancelling insurance coverage; establishing a verification process; changing random sample methods; misdemeanor penalties; suspension of motor vehicle registration; judicial review of suspension; reinstatement fees; providing that courts require current documentation of insurance; and requiring notice of insurance cancellation by registered or certified mail.

Be it enacted by the Legislature of West Virginia:

That section three, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section seven, article nine of said chapter be amended and reenacted; that section nine, article three, chapter seventeen-b of said code be amended and

reenacted; that section six, article two-a, chapter seventeen-d of said code be amended and reenacted; and that 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
ANTITHEFT PROVISIONS.**

**ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION;
ISSUANCE OF CERTIFICATES OF TITLE.**

**§17A-3-3. Application for registration; statement of insurance
or other proof of security to accompany appli-
cation; criminal penalties; fees; special revolv-
ing fund.**

1 Every owner of a vehicle subject to registration under
2 this article shall make application to the division for the
3 registration of the vehicle upon the appropriate form or
4 forms furnished by the division and every such applica-
5 tion shall bear the signature of the owner or his or her
6 authorized agent, written with pen and ink, and the appli-
7 cation shall contain:

8 (a) The name, bona fide residence and mailing ad-
9 dress of the owner, the county in which he or she resides,
10 or business address of the owner if a firm, association or
11 corporation.

12 (b) A description of the vehicle including, insofar as
13 the data specified in this section may exist with respect to a
14 given vehicle, the make, model, type of body, the manu-
15 facturer's serial or identification number or other number
16 as determined by the commissioner.

17 (c) In the event a motor vehicle is designed, construct-
18 ed, converted or rebuilt for the transportation of property,
19 the application shall include a statement of its declared
20 gross weight if the motor vehicle is to be used alone, or if
21 the motor vehicle is to be used in combination with other
22 vehicles, the application for registration of the motor vehi-
23 cle shall include a statement of the combined declared
24 gross weight of the motor vehicle and the vehicles to be
25 drawn by the motor vehicle; declared gross weight being

26 the weight declared by the owner to be the actual com-
27 bined weight of the vehicle or combination of vehicles and
28 load when carrying the maximum load which the owner
29 intends to place on the vehicle; and the application for
30 registration of each vehicle shall also include a statement
31 of the distance between the first and last axles of that vehi-
32 cle or combination of vehicles.

33 The declared gross weight stated in the application
34 shall not exceed the permissible gross weight for the axle
35 spacing listed in the application as determined by the table
36 of permissible gross weights contained in chapter
37 seventeen-c of this code; and any vehicle registered for a
38 declared gross weight as stated in the application is subject
39 to the single-axle load limit set forth in chapter
40 seventeen-c of this code.

41 (d) Each applicant shall state whether the vehicle is or
42 is not to be used in the public transportation of passengers
43 or property, or both, for compensation, and if used for
44 compensation, or to be used, the applicants shall certify
45 that the vehicle is used for compensation, and shall, as a
46 condition precedent to the registration of such vehicle,
47 obtain a certificate of convenience, or permit from the
48 public service commission.

49 (e) A statement under penalty of false swearing that
50 liability insurance is in effect and will continue to be in
51 effect through the entire term of the vehicle registration
52 period within limits which shall be no less than the re-
53 quirement of section two, article four, chapter seventeen-d
54 of this code, which shall contain the name of the appli-
55 cant's insurer, the name of the agent or agency which
56 issued the policy and the effective date of the policy, and
57 such other information as may be required by the com-
58 missioner of motor vehicles, or that the applicant has qual-
59 ified as a self-insurer meeting the requirements of section
60 two, article six, chapter seventeen-d of the code and that as
61 a self-insurer he or she has complied with the minimum
62 security requirements as established in section two, article
63 four, chapter seventeen-d, or that the applicant has submit-
64 ted bond or other security approved by the commissioner
65 of motor vehicles which shall provide the equivalent of the

66 policy of insurance specified in this section, or that the
67 applicant has submitted the required cash or other securi-
68 ties with the state treasurer as set forth in the provisions of
69 section sixteen, article four of said chapter seventeen-d of
70 this code.

71 (1) Intentional lapses of insurance coverage.

72 (A) In the case of a periodic use or seasonal vehicle, as
73 defined in section three, article two-a, chapter seventeen-d
74 of this code, the owner may provide, in lieu of other state-
75 ments required by this section, a statement, under penalty
76 of false swearing, that liability insurance is in effect during
77 the portion of the year the vehicle is in actual use, within
78 limits which shall be no less than the requirements of sec-
79 tion two, article four, chapter seventeen-d of this code, and
80 other information relating to the seasonal use, on a form
81 designed and provided by the division.

82 (B) Any registrant who prior to expiration of his or
83 her vehicle registration drops or cancels insurance cover-
84 age for any reason other than periodic or seasonal use
85 shall either surrender the registration plate or, shall by
86 certified mail notify the division of the cancellation. The
87 notice shall contain a statement under penalty of false
88 swearing that the vehicle will not be operated on the roads
89 or highways of this state.

90 (C) The registration of any vehicle upon which insur-
91 ance coverage has been dropped or canceled under para-
92 graph (B) shall be reinstated upon submission of current
93 proof of insurance and payment of the duplicate plate fee
94 prescribed by this chapter.

95 (2) Verification Process.

96 The division shall select no fewer than one percent of
97 the total number of motor vehicles registered annually for
98 a random sample verification of current insurance cover-
99 age. The division may also select an owners statement of
100 insurance submitted at the time of registration or registra-
101 tion renewal for verification.

102 Random sample verification of current insurance cov-
103 erage shall be conducted on a monthly basis. The basis

104 for each sample shall be the entire registered motor vehi-
105 cle base. The selection of a registration for random sam-
106 ple verification shall not preclude the registration from
107 being selected again in any subsequent month.

108 The division shall notify the registrant by regular mail
109 that he or she has twenty days to provide the division with
110 proof of insurance indicating current insurance coverage
111 on the indicated vehicle as of the date of the notice. The
112 information shall be verified with the indicated insurance
113 company as provided in this section or in the case of a
114 verification of the original owner's statement of insurance,
115 proof of insurance as of the date of submission of the
116 owner's statement.

117 When a statement or registration is selected for verifi-
118 cation, the division shall forward the information provided
119 by the registrant to the listed insurer. The insurer shall
120 notify the division, on a form required by the commis-
121 sioner, within twenty calendar days if the liability insur-
122 ance is or is not in effect, as required by this section.

123 The division may select for verification any statement
124 of liability insurance submitted by a person who has previ-
125 ously been convicted or whose registration or driver's
126 license has been suspended for violating the provisions of
127 section three, article two-a, chapter seventeen-d of this
128 code, or whose statements of liability insurance have previ-
129 ously been found to be incorrect. The division may also
130 determine the correctness of information relating to proof
131 of other security satisfying the requirements of this sec-
132 tion.

133 Following the twenty-day period, if the registrant has
134 not responded, or the division determines through the
135 verification process with the insurance company that there
136 is or was no liability insurance in effect, and the registrant
137 has not complied with the provisions of intentional lapse
138 of insurance then the commissioner shall send a notice of
139 pending suspension of the motor vehicle registration and
140 the suspension of the owner or owner's driver's license to
141 the registrant by certified mail. The notice of pending
142 suspension shall grant the registrant an additional twenty
143 days from the date of the mailing to provide current proof

144 of insurance as of the original notice date or other re-
145 requested information to the commissioner. Following this
146 additional twenty-day period, if the registrant fails to pro-
147 vide proof of current insurance coverage as of the date of
148 the original notice, an order of suspension shall be direct-
149 ed to the superintendent by the commissioner as provided
150 in section seven, article nine of this chapter.

151 The commissioner shall suspend the motor vehicle
152 registration until current proof of insurance is received
153 and shall suspend the driver's license of the owner or own-
154 ers of the motor vehicle for a period of ninety days: *Pro-*
155 *vided*, That whenever the commissioner determines that
156 the vehicle was actually insured despite the receipt of a
157 notice from the insurer, or the license plate was surren-
158 dered to the division upon cancellation of coverage or that
159 the registrant complied with the intentional lapse of cover-
160 age notice provisions, the suspension shall be withdrawn
161 and any fees collected by the state shall be returned.

162 Upon the timely written request of a person whose
163 vehicle registration or driver's license is suspended under
164 the provisions of this section, the commissioner shall stay
165 the suspension, and afford the person an opportunity to be
166 heard. The written request must be filed with the commis-
167 sioner in person or by registered or certified mail, return
168 receipt requested, within ten days after receipt of a copy of
169 the order of suspension.

170 If the commissioner finds that the person whose vehi-
171 cle registration or driver's license was suspended was not in
172 violation of the provisions of this section, the commission-
173 er shall rescind his or her earlier order of suspension.

174 A copy of the commissioner's order made and entered
175 following the hearing shall be served on the person by
176 registered or certified mail, return receipt requested. Dur-
177 ing the pendency of any hearing, the revocation of the
178 person's license to operate a motor vehicle in this state
179 shall be stayed. If the commissioner shall, after hearing,
180 make and enter an order affirming the commissioner's
181 earlier order of revocation, the person shall be entitled to
182 judicial review as set forth in chapter twenty-nine-a of this
183 code. The commissioner shall not stay enforcement of the

184 order during the appeal. Pending the appeal, the court
185 may grant a stay or supersedeas of the order only upon
186 motion and hearing, and a finding by the court upon the
187 evidence presented, that there is a substantial probability
188 that the appellant shall prevail upon the merits, and the
189 appellant will suffer irreparable harm if the order is not
190 stayed: *Provided*, That in no event shall the stay or super-
191 sedeas of the order exceed thirty days.

192 (3) If any person making an application required
193 under the provisions of this section, in the application
194 knowingly provides false information, false proof of secu-
195 rity or a false statement of insurance, or if any person,
196 including an applicant's insurance agent, knowingly coun-
197 sels, advises, aids or abets another in providing false infor-
198 mation, false proof of security, or a false statement of
199 insurance in the application, he or she is guilty of a misde-
200 meanor, and, upon conviction thereof, shall be fined not
201 more than five hundred dollars, or be imprisoned in the
202 county or regional jail for a period not to exceed fifteen
203 days, or both fined and imprisoned, and in addition to the
204 fine or imprisonment shall have his or her operator's or
205 chauffeur's license and vehicle registration suspended for
206 a period of six months.

207 (f) Any further information as may reasonably be
208 required by the division to enable it to determine whether
209 the vehicle is lawfully entitled to registration.

210 (g) Each such application for registration shall be
211 accompanied by the fees provided in this article, and an
212 additional fee of fifty cents for each motor vehicle for
213 which the applicant seeks registration, the fee to be depos-
214 ited in a special revolving fund for the operation by the
215 division of its functions established by the provisions of
216 article two-a, chapter seventeen-d of this code.

**ARTICLE 9. OFFENSES AGAINST REGISTRATION LAWS AND
SUSPENSION OR REVOCATION OF REGISTRA-
TION.**

**§17A-9-7. Surrender of evidences of registration, etc., upon
cancellation, suspension or revocation; willful
failure or refusal to surrender; fee for reinstatement.**

1 Whenever the registration of a vehicle, a certificate of
2 title, a registration card, registration plate or plates, a tem-
3 porary registration plate or marker, the right to issue tem-
4 porary registration plates or markers, any nonresident or
5 other permit, or any license certificate or dealer special
6 plates issued under the provisions of article six of this
7 chapter, is canceled, suspended or revoked as authorized
8 in this chapter, the owner, holder or other person in pos-
9 session of the evidences of the registration, title, permit or
10 license or any special dealer plates shall, except as other-
11 wise provided in article six of this chapter, immediately
12 return the evidences of the registration, title, permit or
13 license that was canceled, suspended or revoked, together
14 with any dealer special plates relating to any license certifi-
15 cate, or any dealer special plate or plates if only the dealer
16 special plate is suspended, to the division: *Provided*, That
17 the owner or holder shall, before reinstatement, pay a fee
18 of ten dollars in addition to all other fees, which shall be
19 collected by the division and credited to a special revolv-
20 ing fund in the state treasury to be appropriated to the
21 division for use in enforcement of the provisions of this
22 code.

23 If any person willfully fails or refuses to return to the
24 division the evidences of the registration, title, permit or
25 license that have been canceled, suspended or revoked, or
26 any dealer special plates, when obligated so to do as pro-
27 vided in this section, the commissioner shall immediately
28 notify the superintendent of the state police who shall, as
29 soon as possible, secure possession of the evidence of
30 registration, title, permit or license or any special dealer
31 plates and return it to the division. The superintendent of
32 the state police shall make a report in writing to the com-
33 missioner, within two weeks after being notified by the
34 commissioner, as to the result of his or her efforts to se-
35 cure the possession and return of the evidences of registra-
36 tion, title, permit or license, or any dealer special plates.

37 For each registration, certificate of title, registration
38 card, registration plate or plates, temporary registration
39 plate or marker, permit, license certificate or dealer special
40 plate, which the owner, holder or other person in posses-
41 sion of the registration, title, permit or license or any spe-

42 cial dealer plates shall have willfully failed or refused, as
 43 provided in this section, to return to the division within ten
 44 days from the time that the cancellation, suspension or
 45 revocation becomes effective, and which has been certified
 46 to the superintendent of the state police as specified in this
 47 section, the owner or holder shall, before the registration,
 48 title, permit or license or any special dealer plates may be
 49 reinstated, if reinstatement is permitted, in addition to all
 50 other fees and charges, pay a fee of fifteen dollars, which
 51 shall be collected by the division of motor vehicles, paid
 52 into the state treasury and credited to the general fund to
 53 be appropriated to the state police for application in the
 54 enforcement of the road laws.

55 A total of twenty-five dollars may be collected on each
 56 reinstatement for each vehicle to which any cancellation,
 57 suspension or revocation relates: *Provided*, That when
 58 any motor vehicle registration is suspended for failure to
 59 maintain motor vehicle liability insurance the reinstatement
 60 fee is one hundred dollars, and if the vehicle owner
 61 fails to surrender the vehicle registration and the orders go
 62 to the state police, an additional fee of fifty dollars shall be
 63 required before the motor vehicle registration may be
 64 reinstated. A total of one hundred fifty dollars may be
 65 collected on each reinstatement of any motor vehicle registration
 66 canceled, suspended or revoked for failure to
 67 maintain motor vehicle liability insurance.

CHAPTER 17B. MOTOR VEHICLE DRIVER LICENSES.

ARTICLE 3. CANCELLATION, SUSPENSION OR REVOCATION OF LICENSES.

§17B-3-9. Surrender and return of license not required.

1 The division, upon suspending or revoking a license,
 2 shall not require that the license be surrendered to and be
 3 retained by the division. The surrender of a license shall
 4 not be a precondition to the commencement and tolling of
 5 any applicable period of suspension or revocation: *Provided*,
 6 That before the license may be reinstated, the licensee
 7 shall pay a fee of fifteen dollars, in addition to all
 8 other fees and charges, which shall be collected by the
 9 division and deposited in a special revolving fund to be

10 appropriated to the division for use in the enforcement of
11 the provisions of this section: *Provided, however, That*
12 when any license is suspended for failure to maintain
13 motor vehicle liability insurance, the reinstatement fee is
14 fifty dollars.

CHAPTER 17D. MOTOR VEHICLE SAFETY

RESPONSIBILITY LAW.

ARTICLE 2A. SECURITY UPON MOTOR VEHICLES.

§17D-2A-6. Investigation by duly authorized law-enforcement officer to include inquiry regarding required security; notice to division of motor vehicles.

1 At the time of investigation of a motor vehicle offense
2 or accident in this state by the state police or other
3 law-enforcement agency or when a vehicle is stopped by a
4 law-enforcement officer for reasonable cause, the officer
5 of the agency making the investigation shall inquire of
6 the operator of any motor vehicle involved as to the exis-
7 tence upon the vehicle of the proof of insurance or other
8 security required by the provisions of this code. Upon a
9 finding by the investigating law-enforcement agency,
10 officer or agent of the motor vehicle offense or accident
11 that the security required by the provisions of this article is
12 not in effect, as to any vehicle, he or she shall notify the
13 division of motor vehicles of his or her finding within five
14 days, if no citation requiring a court appearance is issued:
15 *Provided, That* the law-enforcement officer or agent shall
16 not stop vehicles solely to inquire as to the certificate of
17 insurance.

18 A defendant, who is charged with a traffic offense that
19 requires an appearance in court, shall present the court at
20 the time of his or her appearance or subsequent appear-
21 ance with proof that the defendant had security in effect at
22 the time of the traffic offense as required by this article.
23 The court shall not base its decision solely on the presen-
24 tation of a certificate of insurance as defined in section
25 four, article twenty-four of this chapter. The court shall
26 require current documentation from the defendant's insur-
27 ance company or agent that the defendant in fact was

28 insured at the time of the offense. If, as a result of the
29 defendant's failure to show proof, the court determines
30 that the defendant has violated this article, it shall notify
31 the division of motor vehicles within five days.

CHAPTER 33. INSURANCE.

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

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

1 No insurer once having issued or delivered a policy
2 providing automobile liability insurance in this state insur-
3 ing a private passenger automobile shall, after the policy
4 has been in effect for sixty days, or in case of renewal
5 effective immediately, issue or cause to issue a notice of
6 cancellation during the term of the policy except for one
7 or more of the reasons specified in this section:

8 (a) The named insured fails to discharge when due any
9 of his or her obligations in connection with the payment
10 of premium for the policy or any installment of the pre-
11 mium;

12 (b) The policy was obtained through material misrep-
13 resentation;

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

16 (d) The named insured or any other operator, either
17 resident in the same household or who customarily oper-
18 ates an automobile insured under the policy:

19 (1) Has had his or her operator's license suspended or
20 revoked during the policy period including suspension or
21 revocation for failure to comply with the provisions of
22 article five-a, chapter seventeen-c of this code, regarding
23 consent for a chemical test for intoxication: *Provided,*
24 That when a license is suspended for sixty days by the
25 commissioner of motor vehicles because a person did
26 drive a motor vehicle while under the age of twenty-one
27 years with an alcohol concentration in his or her blood of
28 two hundredths of one percent or more, by weight, but less

29 than ten hundredths of one percent, by weight, pursuant to
30 subsection (1), section two, article five-a, chapter
31 seventeen-c of this code, the suspension shall not be
32 grounds for cancellation; or

33 (2) Is or becomes subject to epilepsy or heart attacks,
34 and the individual cannot produce a certificate from a
35 physician testifying to his or her ability to operate a motor
36 vehicle.

37 (e) The named insured or any other operator, either
38 resident in the same household or who customarily oper-
39 ates an automobile insured under such policy is convicted
40 of or forfeits bail during the policy period for any of the
41 following:

42 (1) Any felony or assault involving the use of a motor
43 vehicle;

44 (2) Negligent homicide arising out of the operation of
45 a motor vehicle;

46 (3) Operating a motor vehicle while under the influ-
47 ence of alcohol or of any controlled substance or while
48 having an alcohol concentration in his blood of ten hun-
49 dredths of one percent or more, by weight;

50 (4) Leaving the scene of a motor vehicle accident in
51 which the insured is involved without reporting as required
52 by law;

53 (5) Theft of a motor vehicle or the unlawful taking of
54 a motor vehicle;

55 (6) Making false statements in an application for a
56 motor vehicle operator's license;

57 (7) A third violation, committed within a period of
58 twelve months, of any moving traffic violation which con-
59 stitutes a misdemeanor, whether or not the violations were
60 repetitious of the same offense or were different offenses.
61 Notwithstanding any of the provisions of this section to
62 the contrary, no insurance company may cancel a policy
63 of automobile liability insurance without first giving the
64 insured thirty days' notice, by registered or certified mail,
65 of its intention to cancel: *Provided*, That cancellation of

66 the insurance policy by the insurance carrier for failure of
67 consideration to be paid by the insured upon initial issu-
68 ance of the insurance policy is effective upon the expira-
69 tion of ten days' notice of cancellation to the insured.

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

Randy Schoonover
Chairman Senate Committee

Randy Seacrest
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Barrett A. Helms
Clerk of the Senate

Gregory M. Bray
Clerk of the House of Delegates

Carl Ray Smith
President of the Senate

Robert L. Calvert
Speaker of the House of Delegates

The within is approved this the 15th
day of April, 1996.

Gaston Caperton
Governor

PRESENTED TO THE

GOVERNOR

Date 3/28/46

Time 10:02 am