

SB 191

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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1998



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COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 191

(By Senator ROSS, ET AL)



PASSED MARCH 12, 1998

In Effect NINETY DAYS FROM Passage

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OFFICE OF THE CLERK
SENATE OF WEST VIRGINIA

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COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 191

(SENATORS ROSS, ANDERSON, HELMICK,
LOVE AND BUCKALEW, *original sponsors*)

[Passed March 12, 1998; in effect ninety days from passage.]

AN ACT to repeal section thirteen, article four, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, three, five, six, seven, eight, nine, ten, twelve, fifteen and sixteen of said article; and to amend and reenact section thirty-one, article six, chapter thirty-three of said code, all relating to repealing the requirement that accident reports be confidential; revising accident reporting requirements; revising accident report forms; revising reporting requirements for garages; and revising reporting requirements to the commissioner of motor vehicles under certain motor vehicle insurance policies.

Be it enacted by the Legislature of West Virginia:

That section thirteen, article four, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections one, three, five, six, seven, eight, nine, ten, twelve, fifteen and sixteen of said article be amended and reenacted; and that section thirty-one, article six, chapter thirty-three of said code be amended and reenacted, all to read as follows:

**CHAPTER 17C. TRAFFIC REGULATIONS
AND LAWS OF THE ROAD.**

ARTICLE 4. ACCIDENTS.

§17C-4-1. Accidents involving death or personal injuries.

1 (a) The driver of any vehicle involved in an accident
2 resulting in injury to or death of any person shall immedi-
3 ately stop such vehicle at the scene of such accident or as
4 close thereto as possible but shall then forthwith return to
5 and in every event shall remain at the scene of the acci-
6 dent until he has fulfilled the requirements of section
7 three of this article. Every such stop shall be made with-
8 out obstructing traffic more than is necessary.

9 (b) Any person failing to stop or to comply with said
10 requirements under such circumstances shall upon
11 conviction be punished by imprisonment for not less than
12 thirty days nor more than one year or by fine of not less
13 than one hundred dollars nor more than five thousand
14 dollars, or by both such fine and imprisonment.

15 (c) The commissioner shall revoke the license or permit
16 to drive and any nonresident operating privilege of the
17 person so convicted for a period of one year.

§17C-4-3. Duty to give information and render aid.

1 The driver of any vehicle involved in an accident
2 resulting in injury to or death of any person or damage to
3 any vehicle which is driven or attended by any person
4 shall give his or her name, address and the registration

5 number of the vehicle he or she is driving and shall upon
6 request and if available exhibit his or her driver's license
7 to the person struck or the driver or occupant of or person
8 attending any vehicle collided with and shall render to
9 any person injured in such accident reasonable assistance,
10 including the carrying, or the making arrangements for
11 the carrying of such person to a physician, surgeon or
12 hospital for medical or surgical treatment if it is apparent
13 that such treatment is necessary or if such carrying is
14 requested by the injured person.

§17C-4-5. Duty upon striking fixtures upon a highway.

1 The driver of any vehicle involved in an accident
2 resulting only in damage to fixtures or other property
3 legally upon or adjacent to a highway shall take reason-
4 able steps to locate and notify the owner or person in
5 charge of such property of such fact and of his or her
6 name and address and of the registration number of the
7 vehicle he or she is driving and shall upon request and if
8 available exhibit his or her driver's license and shall make
9 report of such accident when and as required in section
10 seven of this article.

§17C-4-6. Immediate reports of accidents.

1 The driver of a vehicle involved in an accident resulting
2 in injury to or death of any person or total property
3 damage to an apparent extent of two hundred fifty dollars
4 or more shall immediately by the quickest means of
5 communication, whether oral or written, give notice of
6 such accident to the local police department if such
7 accident occurs within a municipality, otherwise to the
8 office of the county sheriff or the nearest office of the
9 West Virginia state police.

§17C-4-7. Written reports of accidents.

1 Every law-enforcement officer who, in the regular
2 course of duty, investigates a motor vehicle accident
3 occurring on the public highways of this state resulting in

4 bodily injury to or death of any person or total property
5 damage to an apparent extent of two hundred fifty dollars
6 or more shall, either at the time of and at the scene of the
7 accident or thereafter by interviewing participants or
8 witnesses shall, within twenty-four hours after completing
9 such investigation, forward a written report of such
10 accident to the division. The division shall prepare a form
11 for such accident report and, after approval of such form
12 by the commissioner, the superintendent of the West
13 Virginia state police and the commissioner of highways,
14 shall supply copies of such form to police departments,
15 sheriffs and other appropriate law-enforcement agencies.
16 Every accident report required under the provisions of this
17 section shall be made on such form.

§17C-4-8. When driver unable to report.

1 Whenever the driver of a vehicle is physically incapable
2 of making an immediate report of an accident as required
3 in section six of this article and there was another occu-
4 pant in the vehicle at the time of the accident capable of
5 making a report, such occupant shall make or cause to be
6 made said report not made by the driver.

§17C-4-9. Accident report forms.

1 (a) The division shall prepare and upon request supply
2 to police departments, coroners, sheriffs, division of
3 natural resources, and other suitable agencies or individu-
4 als, forms for accident reports required hereunder, appro-
5 priate with respect to the persons required to make such
6 reports and the purposes to be served. The written reports
7 to be made by investigating officers shall call for suffi-
8 ciently detailed information to disclose with reference to
9 a traffic accident the cause, conditions then existing, and
10 the persons and vehicles involved.

11 (b) Every accident report required to be made in writing
12 shall be made on the appropriate form approved by the
13 division and shall contain all of the information required

14 therein unless not available.

15 (c) Every such report shall also contain information
16 sufficient to enable the commissioner to determine
17 whether the requirements for security upon motor vehicles
18 is in effect in accordance with chapter seventeen-d of this
19 code.

§17C-4-10. Penalty for failure to report.

1 The commissioner may suspend the license or permit to
2 drive and any nonresident operating privileges of any
3 person failing to report an accident as herein provided
4 under section six of this article until such report has been
5 filed. Any person convicted of failing to make a report as
6 required herein shall be punished as provided in section
7 one, article eighteen of this chapter.

§17C-4-12. Garages to report bullet damage.

1 The person in charge of any garage or repair shop to
2 which is brought any motor vehicle which shows evidence
3 of having been struck by any bullet, shall report to the
4 local law-enforcement agency within twenty-four hours
5 after such motor vehicle is received, giving the engine
6 number, registration number, and the name and address
7 of the owner or operator of such vehicle.

**§17C-4-15. Any incorporated city, town, etc., may require
accident reports.**

1 Any incorporated city, town, village or other municipal-
2 ity may by ordinance require that the driver of a vehicle
3 involved in an accident shall file with a designated city
4 department a report of such accident. All such reports
5 shall be for the confidential use of the city department.

**§17C-4-16. Accidents involving state and municipal property;
reports to be provided.**

1 Whenever a report of a motor vehicle accident prepared
2 by a member of the West Virginia state police, conserva-

3 tion officer of the division of natural resources, a member
4 of a county sheriff's department or a municipal police
5 officer, in the regular course of their duties, indicates that
6 as a result of such accident damage has occurred to any
7 bridge, sign, guardrail or other property, exclusive of
8 licensed motor vehicles, a copy of such report shall, in the
9 case of such property belonging to the division of high-
10 ways, be provided to the commissioner of the division of
11 highways, and, in the case of such property belonging to
12 a municipality, be provided to the mayor of that munici-
13 pality. The copies of such reports shall be provided to the
14 commissioner or mayor, as applicable, without cost to
15 them.

CHAPTER 33. INSURANCE.

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
8 issued by the division of motor vehicles of this state,
9 unless it shall contain a provision insuring the named
10 insured and any other person, except a bailee for hire and
11 any persons specifically excluded by any restrictive
12 endorsement attached to the policy, responsible for the use
13 of or using the motor vehicle with the consent, expressed
14 or implied, of the named insured or his or her spouse
15 against liability for death or bodily injury sustained or
16 loss or damage occasioned within the coverage of the
17 policy or contract as a result of negligence in the operation

18 or use of such vehicle by the named insured or by such
19 person: *Provided*, That in any such automobile liability
20 insurance policy or contract, or endorsement thereto, if
21 coverage resulting from the use of a nonowned automobile
22 is conditioned upon the consent of the owner of such
23 motor vehicle, the word "owner" shall be construed to
24 include the custodian of such nonowned motor vehicles.
25 Notwithstanding any other provision of this code, if the
26 owner of a policy receives a notice of cancellation pursu-
27 ant to article six-a of this chapter and the reason for the
28 cancellation is a violation of law by a person insured
29 under the policy, said owner may by restrictive endorse-
30 ment specifically exclude the person who violated the law
31 and the restrictive endorsement shall be effective in
32 regard to the total liability coverage provided under the
33 policy, including coverage provided pursuant to the
34 mandatory liability requirements of section two, article
35 four, chapter seventeen-d of this code, but nothing in such
36 restrictive endorsement shall be construed to abrogate the
37 "family purpose doctrine".

38 (b) Nor shall any such policy or contract be so issued or
39 delivered unless it shall contain an endorsement or
40 provisions undertaking to pay the insured all sums which
41 he shall be legally entitled to recover as damages from the
42 owner or operator of an uninsured motor vehicle, within
43 limits which shall be no less than the requirements of
44 section two, article four, chapter seventeen-d of this code,
45 as amended from time to time: *Provided*, That such policy
46 or contract shall provide an option to the insured with
47 appropriately adjusted premiums to pay the insured all
48 sums which he shall be legally entitled to recover as
49 damages from the owner or operator of an uninsured
50 motor vehicle up to an amount of one hundred thousand
51 dollars because of bodily injury to or death of one person
52 in any one accident and, subject to said limit for one
53 person, in the amount of three hundred thousand dollars
54 because of bodily injury to or death of two or more

55 persons in any one accident and in the amount of fifty
56 thousand dollars because of injury to or destruction of
57 property of others in any one accident: *Provided, however,*
58 That such endorsement or provisions may exclude the first
59 three hundred dollars of property damage resulting from
60 the negligence of an uninsured motorist: *Provided further,*
61 That such policy or contract shall provide an option to the
62 insured with appropriately adjusted premiums to pay the
63 insured all sums which he shall legally be entitled to
64 recover as damages from the owner or operator of an
65 uninsured or underinsured motor vehicle up to an amount
66 not less than limits of bodily injury liability insurance and
67 property damage liability insurance purchased by the
68 insured without setoff against the insured's policy or any
69 other policy. Regardless of whether motor vehicle cover-
70 age is offered and provided to an insured through a
71 multiple vehicle insurance policy or contract, or in
72 separate single vehicle insurance policies or contracts, no
73 insurer or insurance company providing a bargained for
74 discount for multiple motor vehicles with respect to
75 underinsured motor vehicle coverage shall be treated
76 differently from any other insurer or insurance company
77 utilizing a single insurance policy or contract for multiple
78 covered vehicles for purposes of determining the total
79 amount of coverage available to an insured.
80 "Underinsured motor vehicle" means a motor vehicle with
81 respect to the ownership, operation or use of which there
82 is liability insurance applicable at the time of the acci-
83 dent, but the limits of that insurance are either: (i) Less
84 than limits the insured carried for underinsured motorists'
85 coverage; or (ii) has been reduced by payments to others
86 injured in the accident to limits less than limits the
87 insured carried for underinsured motorists' coverage. No
88 sums payable as a result of underinsured motorists'
89 coverage shall be reduced by payments made under the
90 insured's policy or any other policy.

91 (c) As used in this section, the term "bodily injury" shall

92 include death resulting therefrom and the term "named
93 insured" shall mean the person named as such in the
94 declarations of the policy or contract and shall also
95 include such person's spouse if a resident of the same
96 household and the term "insured" shall mean the named
97 insured and, while resident of the same household, the
98 spouse of any such named insured and relatives of either,
99 while in a motor vehicle or otherwise, and any person,
100 except a bailee for hire, who uses, with the consent,
101 expressed or implied, of the named insured, the motor
102 vehicle to which the policy applies or the personal repre-
103 sentative of any of the above; and the term "uninsured
104 motor vehicle" shall mean a motor vehicle as to which
105 there is no: (i) Bodily injury liability insurance and
106 property damage liability insurance both in the amounts
107 specified by section two, article four, chapter seventeen-d
108 of this code, as amended from time to time; or (ii) there is
109 such insurance, but the insurance company writing the
110 same denies coverage thereunder; or (iii) there is no
111 certificate of self-insurance issued in accordance with the
112 provisions of said section. A motor vehicle shall be
113 deemed to be uninsured if the owner or operator thereof
114 be unknown: *Provided*, That recovery under the endorse-
115 ment or provisions shall be subject to the conditions
116 hereinafter set forth.

117 (d) Any insured intending to rely on the coverage
118 required by subsection (b) of this section shall, if any
119 action be instituted against the owner or operator of an
120 uninsured or underinsured motor vehicle, cause a copy of
121 the summons and a copy of the complaint to be served
122 upon the insurance company issuing the policy, in the
123 manner prescribed by law, as though such insurance
124 company were a named party defendant; such company
125 shall thereafter have the right to file pleadings and to take
126 other action allowable by law in the name of the owner, or
127 operator, or both, of the uninsured or underinsured motor
128 vehicle or in its own name.

129 Nothing in this subsection shall prevent such owner or
130 operator from employing counsel of his or her own choice
131 and taking any action in his or her own interest in connec-
132 tion with such proceeding.

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

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

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

154 (iii) Upon trial establish that the motor vehicle, which
155 caused the bodily injury or property damage, whose
156 operator is unknown, was a "hit and run" motor vehicle,
157 meaning a motor vehicle which causes damage to the
158 property of the insured arising out of physical contact of
159 such motor vehicle therewith, or which causes bodily
160 injury to the insured arising out of physical contact of
161 such motor vehicle with the insured or with a motor
162 vehicle which the insured was occupying at the time of the
163 accident. If the owner or operator of any motor vehicle
164 causing bodily injury or property damage be unknown, an

165 action may be instituted against the unknown defendant
166 as "John Doe", in the county in which the accident took
167 place or in any other county in which such action would
168 be proper under the provisions of article one, chapter
169 fifty-six of this code; service of process may be made by
170 delivery of a copy of the complaint and summons or other
171 pleadings to the clerk of the court in which the action is
172 brought, and service upon the insurance company issuing
173 the policy shall be made as prescribed by law as though
174 such insurance company were a party defendant. The
175 insurance company shall have the right to file pleadings
176 and take other action allowable by law in the name of
177 John Doe.

178 (f) An insurer paying a claim under the endorsement or
179 provisions required by subsection (b) of this section shall
180 be subrogated to the rights of the insured to whom such
181 claim was paid against the person causing such injury,
182 death or damage to the extent that payment was made.
183 The bringing of an action against the unknown owner or
184 operator as John Doe or the conclusion of such an action
185 shall not constitute a bar to the insured, if the identity of
186 the owner or operator who caused the injury or damages
187 complained of, becomes known, from bringing an action
188 against the owner or operator theretofore proceeded
189 against as John Doe. Any recovery against such owner or
190 operator shall be paid to the insurance company to the
191 extent that such insurance company shall have paid the
192 insured in the action brought against such owner or
193 operator as John Doe, except that such insurance company
194 shall pay its proportionate part of any reasonable costs
195 and expenses incurred in connection therewith, including
196 reasonable attorney's fees. Nothing in an endorsement or
197 provision made under this subsection, nor any other
198 provision of law, shall operate to prevent the joining, in an
199 action against John Doe, of the owner or operator of the
200 motor vehicle causing injury as a party defendant, and
201 such joinder is hereby specifically authorized.

202 (g) No such endorsement or provisions shall contain any
203 provision requiring arbitration of any claim arising under
204 any such endorsement or provision, nor may anything be
205 required of the insured except the establishment of legal
206 liability, nor shall the insured be restricted or prevented
207 in any manner from employing legal counsel or instituting
208 legal proceedings.

209 (h) The provisions of subsections (a) and (b) of this
210 section shall not apply to any policy of insurance to the
211 extent that it covers the liability of an employer to his or
212 her employees under any workers' compensation law.

213 (i) The commissioner of insurance shall formulate and
214 require the use of standard policy provisions for the
215 insurance required by this section, but use of such stan-
216 dard policy provisions may be waived by the commis-
217 sioner in the circumstances set forth in section ten of this
218 article.

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

230 (k) Nothing contained herein shall prevent any insurer
231 from also offering benefits and limits other than those
232 prescribed herein, nor shall this section be construed as
233 preventing any insurer from incorporating in such terms,
234 conditions and exclusions as may be consistent with the
235 premium charged.

236 (l) The insurance commissioner shall review on an

237 annual basis the rate structure for uninsured and
238 underinsured motorists' coverage as set forth in subsec-
239 tion (b) of this section and shall report to the Legislature
240 on said rate structure on or before the fifteenth day of
241 January, one thousand nine hundred eighty-three, and on
242 or before the fifteenth day of January of each of the next
243 two succeeding years.

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

Randy Schoover
.....
Chairman Senate Committee.

Nick Frantusa
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Barrell Edwards
.....
Clerk of the Senate

Gregory M. Gray
.....
Clerk of the House of Delegates

Earl Ray Tomblin
.....
President of the Senate

Phil
.....
Speaker House of Delegates

The within *approved* this the *6th*
day of *April*, 1998.

[Signature]
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/24/98

Time 3:05 pm