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HB 644
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CLERK OF WEST VIRGINIA
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WEST VIRGINIA LEGISLATURE
Regular Session, 2006



ENROLLED

Committee Substitute for
SENATE BILL NO. 644

(By Senator Unger)



PASSED March 11, 2006

In Effect 90 days from Passage

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 644

(SENATOR UNGER, *original sponsor*)

[Passed March 11, 2006; in effect ninety days from passage.]

AN ACT to repeal §17D-4-15, §17D-4-16, §17D-4-17, §17D-4-18 and §17D-4-19 of the Code of West Virginia, 1931, as amended; to amend and reenact §17A-3-3 of said code; to amend and reenact §17D-2A-3, §17D-2A-6, §17D-2A-7 and §17D-2A-8 of said code; to amend and reenact §17D-5-3 of said code; and to amend and reenact §17D-6-2 of said code, all relating to mandatory security upon motor vehicles; repealing the option of substituting the posting of a bond or other security with the State Treasurer or the Commissioner of Motor Vehicles in lieu of a motor vehicle liability policy; changing the method of random sampling for determining compliance with the requirement to maintain security; changing the period of suspension of a driver's license for failure to maintain security; requiring the court to forward evidence of compliance to the Division of Motor Vehicles; providing a criminal penalty for providing false or fraudulent information related to mandatory security; requiring the

division to suspend the driver's license of any person upon a showing of forging or filing any false evidence or proof of mandatory security or information; and changing the requirements of obtaining a certificate of self insurance.

Be it enacted by the Legislature of West Virginia:

That §17D-4-15, §17D-4-16, §17D-4-17, §17D-4-18 and §17D-4-19 of the Code of West Virginia, 1931, as amended, be repealed; that §17A-3-3 of said code be amended and reenacted; that §17D-2A-3, §17D-2A-6, §17D-2A-7 and §17D-2A-8 of said code be amended and reenacted; that §17D-5-3 of said code be amended and reenacted; and that §17D-6-2 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 applica-
tion; criminal penalties; fees; special revolving
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 application
5 shall bear the signature of the owner or his or her autho-
6 rized agent, written with pen and ink, and the application
7 shall contain:

8 (a) The name, bona fide residence and mailing address of
9 the owner, the county in which he or she resides or busi-
10 ness address of the owner if a firm, association or corpora-
11 tion.

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

17 (c) In the event a motor vehicle is designed, constructed,
18 converted or rebuilt for the transportation of property, the
19 application shall include a statement of its declared gross
20 weight if the motor vehicle is to be used alone, or if the
21 motor vehicle is to be used in combination with other
22 vehicles, the application for registration of the motor
23 vehicle 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
32 vehicle or combination of vehicles.

33 The declared gross weight stated in the application shall
34 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
39 subject to the single-axle load limit set forth in said
40 chapter.

41 (d) Each applicant shall state whether the vehicle is or is
42 not to be used in the public transportation of passengers or
43 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 unless otherwise exempt from

49 this requirement in accordance with chapter twenty-four-
50 a of this code.

51 (e) A statement under penalty of false swearing that
52 liability insurance is in effect and will continue to be in
53 effect through the entire term of the vehicle registration
54 period within limits which shall be no less than the
55 requirement of section two, article four, chapter
56 seventeen-d of this code, which shall contain the name of
57 the applicant's insurer, the name of the agent or agency
58 which issued the policy and the effective date of the policy
59 and such other information as may be required by the
60 Commissioner of Motor Vehicles, or that the applicant has
61 qualified as a self-insurer meeting the requirements of
62 section two, article six of said chapter and that as a self-
63 insurer he or she has complied with the minimum security
64 requirements as established in section two, article four of
65 said chapter.

66 (1) *Intentional lapses of insurance coverage.* -

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

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

85 (C) The registration of any vehicle upon which insurance
86 coverage has been dropped or canceled under subpara-
87 graph (B) of this paragraph shall be reinstated upon
88 submission of current proof of insurance and payment of
89 the duplicate plate fee prescribed by this chapter.

90 (2) *Verification process.* -

91 The division may select any certificate of insurance,
92 owner's statement of insurance, motor vehicle registration
93 or any other form or document for verification of insur-
94 ance coverage with an insurance company.

95 (A) If the division verifies with an insurance company
96 that a motor vehicle was operated in this state without the
97 required security in effect based on information received
98 on an accident report, citation, court report or any other
99 evidence of motor vehicle operation, the division shall
100 proceed against the owner and driver in accordance with
101 section seven, article two-a, chapter seventeen-d of this
102 code.

103 (B) If the division selects a motor vehicle registration for
104 verification of insurance and determines that the owner of
105 a registered motor vehicle did or does not have the re-
106 quired security in effect at the time of verification, the
107 division shall proceed as follows:

108 (i) The division shall send a notice by certified mail to
109 the registered owner's address and to any lienholder noted
110 on the certificate of title advising that unless the owner
111 provides verifiable proof that the vehicle was insured on
112 the date of verification or that the vehicle is or was not
113 required to be registered, the owner's driver's license will
114 be suspended for thirty days for a first offense and ninety
115 days for a second or subsequent offense and the motor
116 vehicle registration will be revoked until current verifiable
117 proof of insurance is provided to the division: *Provided,*
118 That the division shall suspend the driver's license of only
119 one owner if a vehicle is registered in more than one name.

120 (ii) If, after the notice required in clause (i) of this
121 subparagraph is given to the owner and the lienholder, the
122 owner fails to provide proof of insurance, the driver's
123 license suspension and motor vehicle registration revoca-
124 tion shall go into effect without further notice thirty days
125 from the date of the notice.

126 (iii) The division shall reinstate the driver's license
127 without regard to the suspension period in this paragraph
128 and reinstate the motor vehicle registration upon submis-
129 sion of proof of current insurance coverage and payment
130 of the reinstatement fees provided in section nine, article
131 three, chapter seventeen-b of this code and section seven,
132 article nine of this chapter.

133 (3) If any person making an application required under
134 the provisions of this section, in the application knowingly
135 provides false information, false proof of security or a
136 false statement of insurance, or if any person, including an
137 applicant's insurance agent, knowingly counsels, advises,
138 aids or abets another in providing false information, false
139 proof of security, or a false statement of insurance in the
140 application he or she is guilty of a misdemeanor and, upon
141 conviction thereof, shall be fined not more than five
142 hundred dollars, or be imprisoned in jail for a period not
143 to exceed fifteen days, or both fined and imprisoned and,
144 in addition to the fine or imprisonment, shall have his or
145 her driver's license suspended for a period of ninety days
146 and vehicle registration revoked if applicable.

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

150 (g) Each application for registration shall be accompa-
151 nied by the fees provided in this article and an additional
152 fee of fifty cents for each motor vehicle for which the
153 applicant seeks registration, the fee to be deposited in a
154 special revolving fund for the operation by the division of

155 its functions established by the provisions of article two-a,
156 chapter seventeen-d of this code.

157 (h) Revocation of a motor vehicle registration pursuant
158 to this section shall not affect the perfection or priority of
159 a lien or security interest attaching to the motor vehicle
160 that is noted on the certificate of title to the motor vehicle.

CHAPTER 17D. MOTOR VEHICLE SAFETY RESPONSIBILITY LAW.

ARTICLE 2A. SECURITY UPON MOTOR VEHICLES.

§17D-2A-3. Required security; exceptions.

1 (a) Every owner or registrant of a motor vehicle required
2 to be registered and licensed in this state shall maintain
3 security as hereinafter provided in effect continuously
4 throughout the registration or licensing period except in
5 case of a periodic use or seasonal vehicle, in which case the
6 owner or registrant is required to maintain security upon
7 the vehicle only for the portion of the year the vehicle is in
8 actual use. As used in this section, a periodic use or
9 seasonal vehicle means a recreational vehicle, antique
10 motor vehicle, motorcycle or other motor vehicle which is
11 stored part of the year and used seasonally.

12 (b) Every nonresident owner or registrant of a motor
13 vehicle, which is operated upon any road or highway of
14 this state and which has been physically present within
15 this state for more than thirty days during the preceding
16 three hundred sixty-five days shall thereafter maintain
17 security as hereinafter provided in effect continuously
18 throughout the period such motor vehicle remains within
19 this state.

20 (c) No person shall knowingly drive or operate upon any
21 road or highway in this state any motor vehicle upon
22 which security is required by the provisions of this article
23 unless such security is in effect.

24 (d) Such security shall be provided by one of the follow-
25 ing methods:

26 (1) By an insurance policy delivered or issued for the
27 delivery in this state by an insurance company authorized
28 to issue vehicle liability and property insurance policies in
29 this state within limits which shall be no less than the
30 requirements of section two, article four of this chapter; or

31 (2) By qualification as a self-insurer under the provisions
32 of section two, article six of this chapter.

33 (e) This article does not apply to any motor vehicle
34 owned by the state or by a political subdivision of this
35 state, nor to any motor vehicle owned by the federal
36 government.

**§17D-2A-6. Investigation by duly authorized law-enforcement
officer to include inquiry regarding required
security; notice by officer or court to Division of
Motor Vehicles.**

1 (a) At the time of investigation of a motor vehicle offense
2 or accident in this state by the State Police or other law-
3 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 the
6 operator of any motor vehicle involved as to the existence
7 upon the vehicle or vehicles of the proof of insurance or
8 other security required by the provisions of this code and
9 upon a finding by the law-enforcement agency, officer or
10 agent thereof that the security required by the provisions
11 of this article is not in effect, as to any vehicle, he or she
12 shall notify the Division of Motor Vehicles of the finding
13 within five days if no citation requiring a court appear-
14 ance is issued: *Provided*, That the law-enforcement officer
15 or agent may not stop vehicles solely to inquire as to the
16 certificate of insurance.

17 (b) A defendant who is charged with a traffic offense
18 that requires an appearance in court shall present the

19 court at the time of his or her appearance or subsequent
20 appearance with proof that the defendant had security at
21 the time of the traffic offenses as required by this article.

22 (c) If, as a result of the defendant's failure to show proof,
23 the court determines that the defendant has violated this
24 article, the court shall notify the Division of Motor Vehi-
25 cles within five days. For purposes of this section, presen-
26 tation of a certificate of insurance reflecting insurance to
27 be in effect on the date in question shall constitute proof
28 of surety.

**§17D-2A-7. Suspension or revocation of license, registration;
reinstatement.**

1 (a) Any owner of a motor vehicle, subject to the provi-
2 sions of this article, who fails to have the required security
3 in effect at the time such vehicle is being operated upon
4 the roads or highways of this state shall have his or her
5 driver's license suspended by the Commissioner of the
6 Division of Motor Vehicles for a period of thirty days and
7 shall have his or her motor vehicle registration revoked
8 until such time as he or she shall present to the Division of
9 Motor Vehicles the proof of security required by this
10 article: *Provided*, That if a motor vehicle is registered in
11 more than one name, the driver's license of only one of the
12 owners shall be suspended by the commissioner.

13 (b) Any person who knowingly operates a motor vehicle
14 upon the roads or highways of this state which does not
15 have the security required by the provisions of this article
16 shall have his or her driver's license suspended by the
17 commissioner for a period of thirty days.

18 (c) A person's driver's license shall be suspended for a
19 period of thirty days if the person is operating a motor
20 vehicle designated for off-highway use upon the roads and
21 highways of this state without the required security in
22 effect, if the motor vehicle is not properly registered and
23 licensed or if the required security was canceled.

24 (d) The commissioner may withdraw a suspension of a
25 driver's license provided that the commissioner is satisfied
26 that there was not a violation of the provisions of required
27 security related to operation of a motor vehicle upon the
28 roads or highways of this state by such person. The
29 commissioner may request additional information as
30 needed in order to make such determination.

31 (e) No person shall have his or her driver's license
32 suspended or motor vehicle registration revoked under any
33 provisions of this section unless he or she and any
34 lienholder noted on the certificate of title shall first be
35 given written notice of such suspension or revocation sent
36 by certified mail, at least thirty days prior to the effective
37 date of such suspension or revocation, and upon such
38 person's written request, sent by certified mail, he or she
39 shall be afforded an opportunity for a hearing thereupon
40 as well as a stay of the commissioner's order of suspension
41 or revocation and an opportunity for judicial review of
42 such hearing. Upon affirmation of the commissioner's
43 order, the period of suspension or revocation shall com-
44 mence to run.

45 (f) Such suspended driver's license shall be reinstated
46 following the period of suspension upon compliance with
47 the conditions set forth in this article and such revoked
48 motor vehicle registration shall be reissued only upon
49 lawful compliance with the provisions of this article.

50 (g) If the commissioner has previously suspended the
51 person's driver's license for any reason related to failure to
52 maintain insurance on a motor vehicle within the previous
53 five years, the period of suspension shall be for a period of
54 ninety days.

55 (h) Revocation of a motor vehicle registration pursuant
56 to this section shall not affect the perfection or priority of
57 a lien or security interest attaching to the motor vehicle
58 that is noted on the certificate of title to the motor vehicle.

§17D-2A-8. Rules.

1 The Commissioner of the Division of Motor Vehicles is
2 hereby authorized to promulgate rules, in accordance with
3 chapter twenty-nine-a of this code, for the administration,
4 operation and enforcement of the provisions of this article.

ARTICLE 5. VIOLATION OF PROVISIONS OF CHAPTER; PENALTIES.

**§17D-5-3. Forgery; suspension of license or registration; penalty
for violations of chapter.**

1 (a) Any person who forges or, without authority, signs
2 any evidence or proof of insurance, who files or offers for
3 filing any such evidence of proof knowing or having reason
4 to believe that it is forged or signed without authority or
5 who provides false or fraudulent information is guilty of
6 a misdemeanor and, upon conviction thereof, shall be fined
7 not more than one thousand dollars or imprisoned in jail
8 for not more than one year, or both.

9 (b) Any person who violates any provision of this
10 chapter for which no penalty is otherwise provided is
11 guilty of a misdemeanor and, upon conviction thereof,
12 shall be fined not more than five hundred dollars or
13 imprisoned in jail not more than ninety days, or both.

14 (c) The commissioner shall suspend the person's driver's
15 license for a period of ninety days and shall revoke the
16 motor vehicle registration upon receipt of a conviction
17 under subsection (a) of this section: *Provided*, That the
18 motor vehicle registration may be reinstated upon current
19 proof of the security required by this chapter.

20 (d) If the commissioner determines that any person has
21 provided false or fraudulent insurance information on any
22 application, form or document to the division or has
23 provided a fraudulently altered or forged evidence or proof
24 of insurance to the division, the division shall suspend the
25 person's driver's license for ninety days and revoke the

26 motor vehicle registration until genuine proof of insurance
27 is provided to the division.

28 (e) The person shall be afforded due process in accor-
29 dance with the provisions of section seven, article two-a of
30 this chapter.

ARTICLE 6. GENERAL PROVISIONS.

§17D-6-2. Self-insurers.

1 (a) Any person in whose name more than twenty-five
2 vehicles are registered may qualify as a self-insurer by
3 annually obtaining a certificate of self-insurance issued by
4 the commissioner as provided in subsection (b) of this
5 section.

6 (b) The commissioner may, in his or her discretion, upon
7 the application of such a person, issue a certificate of self-
8 insurance when he or she is satisfied that such person is
9 possessed and will continue to be possessed of ability to
10 pay judgments obtained against such person. The commis-
11 sioner may not issue a certificate of self-insurance unless
12 the applicant is listed as the registered owner of the motor
13 vehicles and the applicant files an itemized financial
14 statement that reflects a minimum of one million dollars
15 in total assets. The listed assets must be wholly owned by
16 the applicant.

17 (c) A self-insured applicant, under the provisions of this
18 section, shall notify the commissioner upon his or her
19 filing of a petition for bankruptcy and shall comply with
20 the provisions of section ten, article four, chapter
21 seventeen-a of this code related to the issuance of salvage
22 certificates and the determination of a vehicle as a total
23 loss.

24 (d) Upon not less than five days' notice and a hearing
25 pursuant to the notice, the commissioner may upon
26 reasonable grounds cancel a certificate of self-insurance.
27 Failure to pay any judgment within thirty days after such

28 judgment shall have become final, shall constitute a
29 reasonable ground for the cancellation of a certificate of
30 self-insurance.

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

.....*Randy White*.....
Chairman Senate Committee

.....*R. Bean*.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

.....*Harrell Holmes*.....
Clerk of the Senate

.....*Greg M. Smith*.....
Clerk of the House of Delegates

.....*Carl R. Smith*.....
President of the Senate

.....*John S. ...*.....
Speaker House of Delegates

The within *is approved* this the *5th*
Day of *April* 2006.

.....*[Signature]*.....
Governor

PRESENTED TO THE
GOVERNOR

APR 03 2006

Time 2:03 pm