WEST VIRGINIA LEGISLATURE
Regular Session, 2006

ENROLLED
Committee Substitute for
SENATE BILL NO. 644

(By Senator Uager)

PASSED March 11, 2004

In Effect 90 days from Passage
ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 644

(SENIOR 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That §17D-4-15, §17D-4-16, §17D-4-17, §17D-4-18 and §17D-4-19 of the Code of West Virginia, 1931, as amended, be repealed; that §17A-3-3 of said code be amended and reenacted; that §17D-2A-3, §17D-2A-6, §17D-2A-7 and §17D-2A-8 of said code be amended and reenacted; that §17D-5-3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 application; criminal penalties; fees; special revolving fund.

Every owner of a vehicle subject to registration under this article shall make application to the division for the registration of the vehicle upon the appropriate form or forms furnished by the division and every such application shall bear the signature of the owner or his or her authorized agent, written with pen and ink, and the application shall contain:

(a) The name, bona fide residence and mailing address of the owner, the county in which he or she resides or business address of the owner if a firm, association or corporation.
(b) A description of the vehicle including, insofar as the
data specified in this section may exist with respect to a
given vehicle, the make, model, type of body, the manufac-
turer's serial or identification number or other number as
determined by the Commissioner.

(c) In the event a motor vehicle is designed, constructed,
converted or rebuilt for the transportation of property, the
application shall include a statement of its declared gross
weight if the motor vehicle is to be used alone, or if the
motor vehicle is to be used in combination with other
vehicles, the application for registration of the motor
vehicle shall include a statement of the combined declared
gross weight of the motor vehicle and the vehicles to be
drawn by the motor vehicle; declared gross weight being
the weight declared by the owner to be the actual com-
bined weight of the vehicle or combination of vehicles and
load when carrying the maximum load which the owner
intends to place on the vehicle; and the application for
registration of each vehicle shall also include a statement
of the distance between the first and last axles of that
vehicle or combination of vehicles.

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

(d) Each applicant shall state whether the vehicle is or is
not to be used in the public transportation of passengers or
property, or both, for compensation, and if used for
compensation, or to be used, the applicants shall certify
that the vehicle is used for compensation and shall, as a
condition precedent to the registration of such vehicle,
obtain a certificate of convenience or permit from the
Public Service Commission unless otherwise exempt from
this requirement in accordance with chapter twenty-four-
a of this code.

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

(1) *Intentional lapses of insurance coverage.* –

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

(B) Any registrant who prior to expiration of his or her
vehicle registration drops or cancels insurance coverage
for any reason other than periodic or seasonal use shall
either surrender the registration plate or shall, by certified
mail, notify the division of the cancellation. The notice
shall contain a statement under penalty of false swearing
that the vehicle will not be operated on the roads or
highways of this state.
(C) The registration of any vehicle upon which insurance coverage has been dropped or canceled under subparagraph (B) of this paragraph shall be reinstated upon submission of current proof of insurance and payment of the duplicate plate fee prescribed by this chapter.

(2) Verification process. –

The division may select any certificate of insurance, owner's statement of insurance, motor vehicle registration or any other form or document for verification of insurance coverage with an insurance company.

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

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

(i) The division shall send a notice by certified mail to the registered owner's address and to any lienholder noted on the certificate of title advising that unless the owner provides verifiable proof that the vehicle was insured on the date of verification or that the vehicle is or was not required to be registered, the owner's driver's license will be suspended for thirty days for a first offense and ninety days for a second or subsequent offense and the motor vehicle registration will be revoked until current verifiable proof of insurance is provided to the division: Provided, That the division shall suspend the driver's license of only one owner if a vehicle is registered in more than one name.
(ii) If, after the notice required in clause (i) of this subparagraph is given to the owner and the lienholder, the owner fails to provide proof of insurance, the driver's license suspension and motor vehicle registration revocation shall go into effect without further notice thirty days from the date of the notice.

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

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

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

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

(h) Revocation of a motor vehicle registration pursuant to this section shall not affect the perfection or priority of a lien or security interest attaching to the motor vehicle 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.


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

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

(c) No person shall knowingly drive or operate upon any road or highway in this state any motor vehicle upon which security is required by the provisions of this article unless such security is in effect.
(d) Such security shall be provided by one of the following methods:

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

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

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

(a) At the time of investigation of a motor vehicle offense or accident in this state by the State Police or other law-enforcement agency or when a vehicle is stopped by a law-enforcement officer for reasonable cause, the officer of the agency making the investigation shall inquire of the operator of any motor vehicle involved as to the existence upon the vehicle or vehicles of the proof of insurance or other security required by the provisions of this code and upon a finding by the law-enforcement agency, officer or agent thereof that the security required by the provisions of this article is not in effect, as to any vehicle, he or she shall notify the Division of Motor Vehicles of the finding within five days if no citation requiring a court appearance is issued: Provided, That the law-enforcement officer or agent may not stop vehicles solely to inquire as to the certificate of insurance.

(b) A defendant who is charged with a traffic offense that requires an appearance in court shall present the
court at the time of his or her appearance or subsequent appearance with proof that the defendant had security at the time of the traffic offenses as required by this article.

(c) If, as a result of the defendant's failure to show proof, the court determines that the defendant has violated this article, the court shall notify the Division of Motor Vehicles within five days. For purposes of this section, presentation of a certificate of insurance reflecting insurance to be in effect on the date in question shall constitute proof of surety.

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

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

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

(c) A person's driver's license shall be suspended for a period of thirty days if the person is operating a motor vehicle designated for off-highway use upon the roads and highways of this state without the required security in effect, if the motor vehicle is not properly registered and licensed or if the required security was canceled.
(d) The commissioner may withdraw a suspension of a driver's license provided that the commissioner is satisfied that there was not a violation of the provisions of required security related to operation of a motor vehicle upon the roads or highways of this state by such person. The commissioner may request additional information as needed in order to make such determination.

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

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

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

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

1 The Commissioner of the Division of Motor Vehicles is hereby authorized to promulgate rules, in accordance with chapter twenty-nine-a of this code, for the administration, 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 any evidence or proof of insurance, who files or offers for filing any such evidence of proof knowing or having reason to believe that it is forged or signed without authority or who provides false or fraudulent information is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars or imprisoned in jail for not more than one year, or both.

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

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

4 (d) If the commissioner determines that any person has provided false or fraudulent insurance information on any application, form or document to the division or has provided a fraudulently altered or forged evidence or proof of insurance to the division, the division shall suspend the person's driver's license for ninety days and revoke the
motor vehicle registration until genuine proof of insurance is provided to the division.

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

ARTICLE 6. GENERAL PROVISIONS.

§17D-6-2. Self-insurers.

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

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

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

(d) Upon not less than five days' notice and a hearing pursuant to the notice, the commissioner may upon reasonable grounds cancel a certificate of self-insurance. 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.

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 was approved this the Day of April, 2006.

Governor