WEST VIRGINIA LEGISLATURE
SEVENTY-NINTH LEGISLATURE
REGULAR SESSION, 2010

ENROLLED
COMMITTEE SUBSTITUTE
FOR
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 394
(SENATORS UNGER, MCCABE, CHAFIN AND
PLYMALE, original sponsors)

[Passed March 13, 2010; in effect ninety days from passage.]
ENROLLED

COMMITTEE SUBSTITUTE

FOR

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 394

(SENATORS UNGER, McCabe, Chafin
AND PLYMALE, original sponsors)

[Passed March 13, 2010; in effect ninety days from passage.]

AN ACT to amend and reenact §17A-3-3 of the Code of West Virginia, 1931, as amended; to amend and reenact §17D-2A-1, §17D-2A-2, §17D-2A-3, §17D-2A-6, §17D-2A-7 and §17D-2A-8 of said code; to amend said code by adding thereto a new section, designated §17D-2A-6a; and to amend said code by adding thereto a new section, designated §33-6-31g, all relating to authorizing the Division of Motor Vehicles to use an electronic insurance verification program to identify uninsured noncommercial motor vehicles; surrendering registration plate to division when required security dropped by owner or registrant; requiring insurance companies licensed to do business in this state to participate in an electronic insurance verification program developed by the motor vehicles commissioner; providing requirements for an electronic insurance verification
program; providing duties of the motor vehicles commis-
sioner relating to a program; setting forth duties of insurers
relating to a program; providing penalties for failing to
have the required security or knowingly operating a motor
vehicle without the required security by suspending the
owner's driver's license and revoking vehicle registration;
providing for a hearing; providing that any rules promul-
gated by the motor vehicles commissioner pertaining to a
program be consistent with the Insurance Industry Com-
mittee for Motor Vehicle Administration Model; and
authorizing the insurance commissioner to promulgate
rules and emergency rules, some of which may prescribe
penalties.

Be it enacted by the Legislature of West Virginia:

That §17A-3-3 of the Code of West Virginia, 1931, as
amended, be amended and reenacted; that §17D-2A-1, §17D-
2A-2, §17D-2A-3, §17D-2A-6, §17D-2A-7 and §17D-2A-8. of
said code be amended and reenacted; that said code be amended
by adding thereto a new section, designated §17D-2A-6a; and
that said code be amended by adding thereto a new section,
designated §33-6-31g, 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 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 busi-
ness address of the owner if a firm, association or corpora-
tion.

(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 may
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 that 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 the 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 may not be less than the requirement of section two, article four, chapter seventeen-d of this code, which shall contain the name and National Association of Insurance commissioners assigned code of the applicant’s insurer, the policy number, and any other information 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 that chapter. If the commissioner determines that the required security is not or was not in effect, he or she shall suspend the vehicle owner’s driver’s license and revoke the vehicle registration in accordance with the provisions of article two-a, chapter seventeen-d of this code.

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 that is reasonably required
by the division to enable it to determine whether the
vehicle is lawfully entitled to registration.

(g) Each application for registration shall be accompa-
nied by the fees provided in this article and an additional
fee of fifty cents for each motor vehicle for which the
applicant seeks registration.

(h) Revocation of a motor vehicle registration pursuant
to this section does 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.

§17D-2A-1. Purpose of article.

The purpose of this article is to promote the public
welfare by requiring every owner or registrant of a motor
vehicle licensed in this state or operated in this state to
maintain certain security during the registration period
for the vehicle and to provide the means for the Division
of Motor Vehicles, law enforcement and the judicial
branch to electronically verify evidence of current insur-
ance coverage at any time while a vehicle has a current
registration or is operated on the roads and highways.
§17D-2A-2. Scope of article.

1 This article applies to the operation of all motor vehicles required to be registered or operated on the roads and highways to have the security in effect, as provided in section two, article two of this chapter, with the exception of motor vehicles owned by the state, any of its political subdivisions or by the federal government.

7 For the purposes of this article, commercial auto coverage is defined as any coverage provided to an insured, regardless of number of vehicles or entity covered, under a commercial coverage form and rated from a commercial manual approved by the Department of Insurance. This article shall not apply to vehicles insured under commercial auto coverage; however, insurers of such vehicles may participate on a voluntary basis.


1 (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.

12 (b) The owner or registrant shall immediately surrender the registration plate to the Division of Motor Vehicles when he or she drops the required security during the registration period. An owner of a periodic use or seasonal vehicle may retain a registration plate subject to legislative rules promulgated by the commissioner.
(c) 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 the motor vehicle remains within this state.

(d) No person may knowingly drive or operate upon any road or highway any motor vehicle upon which security is required by the provisions of this article unless the required security is in effect.

(e) The 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 may not be 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.

(f) 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 crash 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 and, by an inquiry through the on-line insurance verification program established in accordance with section six-a of this article if available as to the existence upon the vehicle or vehicles of the evidence 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. 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 subject to verification by the court through the Division of Motor Vehicles or its agent or by an on-line insurance verification program if available.

(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.

§17D-2A-6a. Determining if required security is in effect.

(a) The commissioner may make a determination that the required security on a motor vehicle is not in effect based upon crash reports required under the provisions of article four, chapter seventeen-c of this code, reports or citations from law-enforcement agencies, citations or abstracts of conviction from courts or from information from an on-line electronic insurance verification program.
(b) The commissioner is authorized to develop and implement an electronic insurance verification program based upon a model established by the Insurance Industry Committee on Motor Vehicle Administration to electronically verify evidence of insurance coverage with insurance companies.

(c) The commissioner may contract with a third party vendor to act as his or her agent to develop the program, conduct the electronic verification process with insurance companies and to operate the program.

(d) If developed and implemented by the commissioner, the on-line insurance verification program shall:

(1) Be able to verify, on an on-demand basis minus reasonable down time for system maintenance as agreed upon by the division or its agent and the insurance carrier, the liability insurance status as of the time of the inquiry or at other times not exceeding six months prior unless otherwise agreed upon by the division or its agent and the insurance carrier or via other similar electronic system that is consistent with insurance industry and Insurance Industry Committee on Motor Vehicle Administration (IICMVA) recommendations and the specifications and standards of the IICMVA model;

(2) Be able to make insurance verification inquiries to insurers by using multiple data elements for greater matching accuracy including: National Association of Insurance Commissioner's (NAIC) code specific to each licensed insurance company, vehicle identification numbers and policy number or other data elements as otherwise agreed to by the division or its agent and the insurer.

(3) Provide sufficient measures for the security and integrity of data including a requirement that the information obtained through the operation of the program be only used for the sole use of the Division of Motor Vehicles or its
agent, law enforcement and the judiciary to effectuate the provisions of this article; and

(4) Utilize open and agreed upon data and data transmission standards and standard SML extensible markup language schema.

(e) If the commissioner develops and implements an online insurance verification program, each insurer shall:

(1) Cooperate with the Division of Motor Vehicles, or its agent in establishing and operating the program;

(2) Maintain the data necessary to verify the existence of mandatory liability insurance coverage provided to its customers pursuant to the required time period established for the on-line insurance verification program;

(3) Maintain the internet web service, pursuant to the requirements established under the online insurance verification program, through which online insurance verification can take place that includes the ability to respond to authorized inquiries on whether the vehicle is insured or the policy in effect on the requested date through the insurer's national insurance commissioners association code, vehicle identification number, insurance policy number or other data key or keys as otherwise agreed to by the division or its agent and the insurer;

(4) Provide security consistent with accepted insurance industry and United States motor vehicle agency standards pertinent to the transmission of personal data;

(5) Be immune from civil and administrative liability for good faith efforts to comply with the terms of the verification program; and

(6) As a condition of writing motor vehicle liability insurance in this state, insurance carriers shall cooperate with the division or its agent and the insurance commission
in establishing and maintaining an insurance verification system. Nothing prohibits an insurer from using the services of a third party vendor for facilitating the insurance verification program required by this section.

(f) If the commissioner develops and implements an online insurance verification program, the Division of Motor Vehicles or its agent as applicable shall:

(1) Consult and cooperate with insurers in establishing and operating the on-line insurance verification system;

(2) Designate and maintain a contact person for insurers during the establishment and implementation of the on-line insurance verification system;

(3) Conduct a pilot project to test the insurance verification system no less than eighteen months prior to final implementation;

(4) Establish and maintain the systems necessary to make verification requests to insurers using the data elements that the Division of Motor Vehicles or its agent and the insurer have agreed upon and are necessary to receive accurate responses from insurers;

(5) For all information transmitted and received, implement and maintain strict system and data security measures consistent with applicable standards. Data secured via the reporting system by either the division or its agent may not be shared with any party other than those permitted by state or federal privacy laws;

(6) Be responsible for keeping all interested state agencies informed on the implementation status, functionality, and planned or unplanned service interruptions; and

(7) Provide alternative methods of reporting for small insurers writing less than 500 non-commercial motor vehicle policies in the state as determined by the Division of Motor Vehicles or its agent;
Any information obtained by the division or its agent under the provisions of an electronic insurance system is for the sole use of the Division of Motor Vehicles or its agent, law enforcement and the judiciary to effectuate the provisions of this article and is exempt from disclosure under the provisions of article one, chapter twenty-nine-b and may not be considered a public record as defined in section two, article one, chapter twenty-nine-b of this code.

(h) Not more than two years after the establishment of an on-line insurance verification program, the Division of Motor Vehicles, after consultation with insurers, shall report to the Legislature as to the costs of the program incurred by the division, insurers and the public and the effectiveness of the program in reducing the number of uninsured motor vehicles.

§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 registered or being operated upon the roads or highways shall have his or her driver’s license suspended by the commissioner of the division of motor vehicles and shall have his or her motor vehicle registration revoked as follows:

(1) For the first offense, the commissioner shall suspend the driver’s license and vehicle registration until such time as he or she presents current proof of insurance on all currently registered vehicles: Provided, That if an owner complies with the provisions of this subdivision, and pays a penalty fee of $200 before the effective date, the driver’s license suspension of thirty days shall not be imposed and the vehicle registration revocation shall be not imposed and no reinstatement fees are required.
(2) For the second offense within five years, the commissioner shall suspend the owner's driver's license for a period of thirty days and shall revoke the owner's vehicle registration until he or she presents to the Division of Motor Vehicles the proof of security required by this article.

(3) For the third or subsequent offense within five years, the commissioner shall suspend the owner's driver's license for a period of ninety days and revoke the vehicle registration until such time as he or she presents current proof of insurance.

(4) If the motor vehicle is titled and registered in more than one name, the commissioner shall suspend the driver's license of only one of the owners.

(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 subject to the following:

(1) For the first offense, the commissioner shall suspend the driver's license until such time as he or she presents current proof of insurance on all currently registered vehicles: Provided, That if a driver complies with the provisions of this section and pays a penalty fee of $200 before the effective date of the driver's license suspension, the thirty day driver's license suspension shall not be imposed and no reinstatement fees are required.

(2) For the second offense within five years, the commissioner shall suspend the driver's license for a period of thirty days.

(3) For the third or subsequent offense within five years, the commissioner shall suspend the person's driver's license for a period of ninety days.
(c) A person’s driver’s license shall be suspended in accordance with subsection (b) of this section 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.

(d) The commissioner may withdraw a suspension of a driver’s license or revocation of a motor vehicle registration and refund any penalty or reinstatement fees at any time 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) A person may not 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 is first 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 that person’s written request, 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. The request for a hearing shall be made within ten days from the date of receipt of the notice of driver’s license suspension or motor vehicle registration revocation. The scope of the hearing is limited to questions of identity or whether or not there was insurance in effect at the time of the event causing the commissioner’s action. Upon affirmation of the commissioner’s order, the period of suspension, revocation or other penalty commences to run.

(f) A suspended driver’s license is reinstated following the period of suspension upon compliance with the conditions set forth in this article and a revoked motor vehicle regis-
Revocation of a motor vehicle registration pursuant to this section does 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.

(h) Any owner or driver of a motor vehicle determined by an electronic insurance verification program to be uninsured shall be assessed the same criminal and administrative sanctions prescribed in this chapter subject to the following;

(1) Any person who is assessed a penalty prescribed by this section has the same procedural due process provided by this chapter or by rules promulgated by the division to show that there was not a violation and provide for the exoneration of any penalties or records; and

(2) The commissioner may accept a binder, an identification card or a declaration page from a policy as evidence of insurance pending electronic verification to stay a pending administrative sanction.


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. Any rules or procedures which pertain to an electronic insurance verification program shall be consistent with the provisions and intent of the standards and specifications of the Insurance Industry Committee for Motor Vehicle Administration Model.

CHAPTER 33. INSURANCE.

ARTICLE 6. THE INSURANCE POLICY.
§33-6-31g. Electronic insurance verification program; insurer's duty to cooperate.

(a) If the Division of Motor Vehicles establishes an electronic insurance verification program in accordance with the provisions of section six-a, article two-a, chapter seventeen-cl of this code, any insurance company that issues or delivers in this state a policy or contract of bodily injury liability insurance or of property damage liability insurance covering liability arising from the ownership, maintenance or use of any motor vehicle, or upon any motor vehicle for which a certificate of title has been issued by the Division of Motor Vehicles of this state, shall comply with the requirements of the program.

(b) The insurance commissioner may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code as necessary to implement the provisions of this section, and may initially promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code. Such rules may prescribe penalties, including fines and other administrative sanctions, that may be imposed by the commissioner for a company's failure to comply with requirements of the electronic insurance verification program.
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 is approved this the 31st Day of

Governor