WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2015

ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 2790

(By Delegate(s) Westfall, Waxman, Shott and Frich)

Passed March 11, 2015

In effect ninety days from passage.
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COMMITTEE SUBSTITUTE

for

H. B. 2790

(By Delegate(s) Westfall, Waxman, Shott and Frich)

[Passed March 11, 2015; in effect ninety days from passage.]

AN ACT to amend and reenact §17D-4-2, §17D-4-7 and §17D-4-12 of the Code of West Virginia, 1931, as amended; to amend and reenact §33-6-31 and §31-6-31d of said code; and to amend said code by adding thereto a new section, designated §33-6-31h, all relating to proof of financial responsibility limits for motor vehicles; increasing the minimum amounts of proof required; providing that insurers are not required to offer new or increased uninsured or underinsured motor vehicle coverage when coverage is increased to meet the increased requirements of proof of financial responsibility; providing that insurers who issue policies with named driver exclusions are not required to provide any coverage upon an insured vehicle covering the excluded driver,
notwithstanding the requirements of proof of financial responsibility.

Be it enacted by the Legislature of West Virginia:

That §17D-4-2, §17D-4-7 and §17D-4-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §33-6-31 and §33-6-31d of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §33-6-31h, all to read as follows:

CHAPTER 17D. MOTOR VEHICLE SAFETY RESPONSIBILITY LAW.

ARTICLE 4. PROOF OF FINANCIAL RESPONSIBILITY FOR THE FUTURE.

§17D-4-2. “Proof of financial responsibility” defined.

(a)“Proof of financial responsibility” means proof of ability to respond in damages for liability, on account of accident occurring subsequent to the effective date of the proof, arising out of the ownership, operation, maintenance or use of a motor vehicle, trailer or semitrailer in the amount of $20,000 because of bodily injury to or death of one person in any one accident, and, subject to the limit for one person, in the amount of $40,000 because of bodily injury to or death of two or more persons in any one accident, and in the amount of $10,000 because of injury to or destruction of property of others in any one accident.

(b) Beginning January 1, 2016, “proof of financial responsibility” means proof of ability to respond in damages for liability, on account of accident occurring subsequent to the effective date of the proof, arising out of the ownership, operation, maintenance, or use of a motor vehicle, trailer or
semitrailer in the amount of $25,000 because of bodily injury to
or death of one person in any one accident, and, subject to the
limit for one person, in the amount of $50,000 because of bodily
injury to or death of two or more persons in any one accident,
and in the amount of $25,000 because of injury to or destruction
of property of others in any one accident: Provided, That proof
of financial responsibility provided by an insurance policy in
effect on December 31, 2015 in the minimum amounts required
in subdivision (a) of this section shall continue to provide
adequate proof of financial responsibility required by this
chapter until the policy expires or is renewed.

17D-4-7. Payments sufficient to satisfy requirements.

(a) Judgments herein referred to shall, for the purpose of this
chapter only, are deemed satisfied:

(1) When $20,000 has been credited upon any judgment or
judgments rendered in excess of that amount because of bodily
injury to or death of one person as the result of any one accident; or

(2) When, subject to such limit of $20,000 because of bodily
injury to or death of one person, the sum of $40,000 has been
credited upon any judgment or judgments rendered in excess of
that amount because of bodily injury to or death of two or more
persons as the result of any one accident; or

(3) When $10,000 has been credited upon any judgment or
judgments rendered in excess of that amount because of injury
to or destruction of property of others as a result of any one
accident.

(b) Notwithstanding the provisions of subsection (a) of this
section, judgments herein referred to that are rendered upon a
cause of action that arose on or after January 1, 2016, for the
purpose of this chapter only, are deemed satisfied:
20 (1) When $25,000 has been credited upon any judgment or
judgments rendered in excess of that amount because of bodily
injury to or death of one person as the result of any one accident; or

24 (2) When, subject to such limit of $25,000 because of bodily
injury to or death of one person, the sum of $50,000 has been
credited upon any judgment or judgments rendered in excess of
that amount because of bodily injury to or death of two or more
persons as the result of any one accident; or

29 (3) When $25,000 has been credited upon any judgment or
judgments rendered in excess of that amount because of injury
to or destruction of property of others as a result of any one
accident.

33 (c) Payments made in settlement of any claims because of
bodily injury, death or property damage arising from such
accident shall be credited in reduction of the amounts provided
for in this section.

§17D-4-12. “Motor vehicle liability policy” defined; scope and
provisions of policy.

1 (a) A “motor vehicle liability policy” as the term is used in
this chapter means an “owner’s policy” or an “operator’s policy”
of liability insurance certified as provided in section ten or
section eleven of this article as proof of financial responsibility,
and issued, except as otherwise provided in section eleven, by an
insurance carrier duly authorized to transact business in this
state, to or for the benefit of the person named therein as insured.

8 (b) Such owner’s policy of liability insurance:

9 (1) Shall designate by explicit description or by appropriate
reference all vehicles with respect to which coverage is thereby
to be granted; and
(2) Shall insure the person named therein and any other person, as insured, using any such vehicle or vehicles with the express or implied permission of such named insured, against loss from the liability imposed by law for damages arising out of the ownership, operation, maintenance or use of such vehicle or vehicles within the United States of America or the Dominion of Canada, subject to limits exclusive of interest and costs, with respect to each such vehicle, in the amounts required in section two of this article.

(c) Such operator's policy of liability insurance shall insure the person named as insured therein against loss from the liability imposed upon him or her by law for damages arising out of the use by him or her of any motor vehicle not owned by him or her, within the same territorial limits and subject to the same limits of liability as are set forth above with respect to an owner's policy of liability insurance.

(d) Such motor vehicle liability policy shall state the name and address of the named insured, the coverage afforded by the policy, the premium charged therefor, the policy period, and the limits of liability, and shall contain an agreement or be endorsed that insurance is provided thereunder in accordance with the coverage defined in this chapter as respects bodily injury and death or property damage, or both, and is subject to all the provisions of this chapter.

(e) Such motor vehicle liability policy need not insure any liability under any workers' compensation law nor any liability on account of bodily injury to or death of an employee of the insured while engaged in the employment, other than domestic, of the insured, or while engaged in the operation, maintenance or repair of any such vehicle nor any liability for damage to property owned by, rented to, in charge of or transported by the insured.
(f) Every motor vehicle liability policy is subject to the following provisions which need not be contained therein:

1. The liability of the insurance carrier with respect to the insurance required by this chapter shall become absolute whenever injury or damage covered by said motor vehicle liability policy occurs; the policy may not be canceled or annulled as to such liability by an agreement between the insurance carrier and the insured after the occurrence of the injury or damage; no statement made by the insured or on his or her behalf and no violation of the policy defeats or voids the policy.

2. The satisfaction by the insured of a judgment for such injury or damage is not a condition precedent to the right or duty of the insurance carrier to make payment on account of such injury or damage.

3. The insurance carrier may settle any claim covered by the policy, and if such settlement is made in good faith, the amount thereof shall be deductible from the limits of liability specified in subdivision (2), subsection (b) of this section.

4. The policy, the written application therefor, if any, and any rider or endorsement which does not conflict with the provisions of this chapter constitutes the entire contract between parties.

(g) Any policy which grants the coverage required for a motor vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy and such excess or additional coverage is not subject to the provisions of this chapter. With respect to a policy which grants such excess or additional coverage, the term "motor vehicle liability policy" applies only to that part of the coverage which is required by this section.
(h) Any motor vehicle liability policy may provide that the insured shall reimburse the insurance carrier for any payment the insurance carrier would not have been obligated to make under the terms of the policy except for the provisions of this chapter.

(i) Any motor vehicle liability policy may provide for the prorating of the insurance thereunder with other valid and collectible insurance.

(j) The requirements for a motor vehicle liability policy may be fulfilled by the policies of one or more insurance carriers which policies together meet such requirements.

(k) Any binder issued pending the issuance of a motor vehicle policy fulfills the requirements for such a policy.

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.

(a) No 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, may be issued or delivered in this state to the owner of such vehicle, or may be issued or delivered by any insurer licensed in this state upon any motor vehicle for which a certificate of title has been issued by the Division of Motor Vehicles of this state, unless it contains a provision insuring the named insured and any other person, except a bailee for hire and any persons specifically excluded by any restrictive endorsement attached to the policy, responsible for the use of or using the motor vehicle with the consent, expressed or implied, of the
named insured or his or her spouse against liability for death or bodily injury sustained or loss or damage occasioned within the coverage of the policy or contract as a result of negligence in the operation or use of such vehicle by the named insured or by such person: Provided, That in any such automobile liability insurance policy or contract, or endorsement thereto, if coverage resulting from the use of a nonowned automobile is conditioned upon the consent of the owner of such motor vehicle, the word "owner" shall be construed to include the custodian of such nonowned motor vehicles. Notwithstanding any other provision of this code, if the owner of a policy receives a notice of cancellation pursuant to article six-a of this chapter and the reason for the cancellation is a violation of law by a person insured under the policy, said owner may by restrictive endorsement specifically exclude the person who violated the law and the restrictive endorsement shall be effective in regard to the total liability coverage provided under the policy, including coverage provided pursuant to the mandatory liability requirements of section two, article four, chapter seventeen-d of this code, but nothing in such restrictive endorsement may be construed to abrogate the "family purpose doctrine".

(b) Nor may any such policy or contract be so issued or delivered unless it contains an endorsement or provisions undertaking to pay the insured all sums which he or she is legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle, within limits which shall be no less than the requirements of section two, article four, chapter seventeen-d of this code, as amended from time to time: Provided, That such policy or contract shall provide an option to the insured with appropriately adjusted premiums to pay the insured all sums which he or she shall be legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle up to an amount of $100,000 because of bodily injury to or death of one person in any one accident and, subject
to said limit for one person, in the amount of $300,000 because of bodily injury to or death of two or more persons in any one accident and in the amount of $50,000 because of injury to or destruction of property of others in any one accident: Provided, however, That such endorsement or provisions may exclude the first $300 of property damage resulting from the negligence of an uninsured motorist: Provided further, That such policy or contract shall provide an option to the insured with appropriately adjusted premiums to pay the insured all sums which he or she is legally entitled to recover as damages from the owner or operator of an uninsured or underinsured motor vehicle up to an amount not less than limits of bodily injury liability insurance and property damage liability insurance purchased by the insured without set off against the insured’s policy or any other policy. Regardless of whether motor vehicle coverage is offered and provided to an insured through a multiple vehicle insurance policy or contract, or in separate single vehicle insurance policies or contracts, no insurer or insurance company providing a bargained for discount for multiple motor vehicles with respect to underinsured motor vehicle coverage may be treated differently from any other insurer or insurance company utilizing a single insurance policy or contract for multiple covered vehicles for purposes of determining the total amount of coverage available to an insured. “Underinsured motor vehicle” means a motor vehicle with respect to the ownership, operation or use of which there is liability insurance applicable at the time of the accident, but the limits of that insurance are either: (i) Less than limits the insured carried for underinsured motorists’ coverage; or (ii) has been reduced by payments to others injured in the accident to limits less than limits the insured carried for underinsured motorists’ coverage. No sums payable as a result of underinsured motorists’ coverage may be reduced by payments made under the insured’s policy or any other policy.

(c) As used in this section, the term “bodily injury” includes death resulting therefrom and the term “named insured” means
the person named as such in the declarations of the policy or
contract and also includes such person’s spouse if a resident of
the same household and the term “insured” means the named
insured and, while resident of the same household, the spouse of
any such named insured and relatives of either, while in a motor
vehicle or otherwise, and any person, except a bailee for hire,
who uses, with the consent, expressed or implied, of the named
insured, the motor vehicle to which the policy applies or the
personal representative of any of the above; and the term
“uninsured motor vehicle” means a motor vehicle as to which
there is no: (i) Bodily injury liability insurance and property
damage liability insurance both in the amounts specified by
section two, article four, chapter seventeen-d of this code, as
amended from time to time; (ii) there is such insurance, but the
insurance company writing the same denies coverage thereunder;
or (iii) there is no certificate of self-insurance issued in
accordance with the provisions of said section. A motor vehicle
shall be deemed to be uninsured if the owner or operator thereof
be unknown: Provided, That recovery under the endorsement or
provisions is subject to the conditions hereinafter set forth.

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

Nothing in this subsection prevents such owner or operator
from employing counsel of his or her own choice and taking any
action in his or her own interest in connection with such
proceeding.
(e) If the owner or operator of any motor vehicle which causes bodily injury or property damage to the insured is unknown, the insured, or someone in his or her behalf, in order for the insured to recover under the uninsured motorist endorsement or provision, shall:

(1) Within twenty-four hours after the insured discover, and being physically able to report the occurrence of such accident, the insured, or someone in his or her behalf, reports the accident to a police, peace or to a judicial officer, unless the accident has already been investigated by a police officer;

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

(3) Upon trial establish that the motor vehicle, which caused the bodily injury or property damage, whose operator is unknown, was a “hit and run” motor vehicle, meaning a motor vehicle which causes damage to the property of the insured arising out of physical contact of such motor vehicle therewith, or which causes bodily injury to the insured arising out of physical contact of such motor vehicle with the insured or with a motor vehicle which the insured was occupying at the time of the accident. If the owner or operator of any motor vehicle causing bodily injury or property damage be unknown, an action may be instituted against the unknown defendant as “John Doe”, in the county in which the accident took place or in any other county in which such action would be proper under the provisions of article one, chapter fifty-six of this code; service of
process may be made by delivery of a copy of the complaint and
summons or other pleadings to the clerk of the court in which the
action is brought, and service upon the insurance company
issuing the policy shall be made as prescribed by law as though
such insurance company were a party defendant. The insurance
company has the right to file pleadings and take other action
allowable by law in the name of John Doe.

(f) An insurer paying a claim under the endorsement or
provisions required by subsection (b) of this section is
subrogated to the rights of the insured to whom such claim was
paid against the person causing such injury, death or damage to
the extent that payment was made. The bringing of an action
against the unknown owner or operator as John Doe or the
conclusion of such an action does not constitute a bar to the
insured, if the identity of the owner or operator who caused the
injury or damages complained of, becomes known, from
bringing an action against the owner or operator theretofore
proceeded against as John Doe. Any recovery against such
owner or operator shall be paid to the insurance company to the
extent that such insurance company has paid the insured in the
action brought against such owner or operator as John Doe,
except that such insurance company shall pay its proportionate
part of any reasonable costs and expenses incurred in connection
therewith, including reasonable attorney’s fees. Nothing in an
endorsement or provision made under this subsection, nor any
other provision of law, operates to prevent the joining, in an
action against John Doe, of the owner or operator of the motor
vehicle causing injury as a party defendant, and such joinder is
hereby specifically authorized.

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

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

(i) The commissioner of insurance shall formulate and require the use of standard policy provisions for the insurance required by this section, but use of such standard policy provisions may be waived by the commissioner in the circumstances set forth in section ten of this article.

(j) A motor vehicle is uninsured within the meaning of this section, if there has been a valid bodily injury or property damage liability policy issued upon such vehicle, but which policy is uncollectible, in whole or in part, by reason of the insurance company issuing such policy upon such vehicle being insolvent or having been placed in receivership. The right of subrogation granted insurers under the provisions of subsection (f) of this section does not apply as against any person or persons who is or becomes an uninsured motorist for the reasons set forth in this subsection.

(k) Nothing contained herein prevents any insurer from also offering benefits and limits other than those prescribed herein, nor does this section prevent any insurer from incorporating in such terms, conditions and exclusions as may be consistent with the premium charged.

(l) The Insurance Commissioner shall review on an annual basis the rate structure for uninsured and underinsured motorists' coverage as set forth in subsection (b) of this section and shall report to the Legislature on said rate structure on or before January 15, 1983, and on or before January 15, of each of the next two succeeding years.
(m) For insurance policies in effect on December 31, 2015, including motor vehicle insurance policies and liability policies that are of an excess or umbrella type that cover automobile liability, insurers are not required to make a new offer of uninsured and underinsured motor vehicle coverage upon the renewal if the liability coverage is increased solely to meet the requirements of the increased minimum required financial responsibility limits set forth in subdivision (b), section two, article four, chapter seventeen-d of this code. Those insurers that have issued policies that carry limits of coverage below the minimum required financial responsibility limits in effect on December 31, 2015 shall increase such limits to an amount equal to or above the new minimum required financial responsibility limits when the policy is renewed but not later than December 31, 2016.

§33-6-31d. Form for making offer of optional uninsured and underinsured coverage.

(a) Optional limits of uninsured motor vehicle coverage and underinsured motor vehicle coverage required by section thirty-one of this article shall be made available to the named insured at the time of initial application for liability coverage and upon any request of the named insured on a form prepared and made available by the Insurance Commissioner. The contents of the form shall be as prescribed by the commissioner and shall specifically inform the named insured of the coverage offered and the rate calculation therefor, including, but not limited to, all levels and amounts of such coverage available and the number of vehicles which will be subject to the coverage. The form shall be made available for use on or before the effective date of this section. The form shall allow any named insured to waive any or all of the coverage offered.

(b) Any insurer who issues a motor vehicle insurance policy in this state shall provide the form to each person who applies
for the issuance of such policy by delivering the form to the applicant or by mailing the form to the applicant together with the applicant's initial premium notice. The applicant shall complete, date and sign the form and return the form to the insurer within thirty days after receipt thereof. No insurer or agent thereof is liable for payment of any damages applicable under any optional uninsured or underinsured coverage authorized by section thirty-one of this article for any incident which occurs from the date the form was mailed or delivered to the applicant until the insurer receives the form and accepts payment of the appropriate premium for the coverage requested therein from the applicant: Provided, That if prior to the insurer's receipt of the executed form the insurer issues a policy to the applicant which provides for such optional uninsured or underinsured coverage, the insurer is liable for payment of claims against such optional coverage up to the limits provided therefor in such policy. The contents of a form described in this section which has been signed by an applicant creates a presumption that such applicant and all named insureds received an effective offer of the optional coverages described in this section and that such applicant exercised a knowing and intelligent election or rejection, as the case may be, of such offer as specified in the form. Such election or rejection is binding on all persons insured under the policy.

Any insurer who has issued a motor vehicle insurance policy in this state which is in effect on the effective date of this section shall mail or otherwise deliver the form to any person who is designated in the policy as a named insured. A named insured shall complete, date and sign the form and return the form to the insurer within thirty days after receipt thereof. No insurer or agent thereof is liable for payment of any damages in any amount greater than any limits of such coverage, if any, provided by the policy in effect on the date the form was mailed or delivered to such named insured for any incident which occurs
from the date the form was mailed or delivered to such named
insured until the insurer receives the form and accepts payment
of the appropriate premium for the coverage requested therein
from the applicant. The contents of a form described in this
section which has been signed by any named insured creates a
presumption that all named insureds under the policy received an
effective offer of the optional coverages described in this section
and that all such named insured exercised a knowing and
intelligent election or rejection, as the case may be, of such offer
as specified in the form. Such election or rejection is binding on
all persons insured under the policy.

(d) Failure of the applicant or a named insured to return the
form described in this section to the insurer as required by this
section within the time periods specified in this section creates
a presumption that such person received an effective offer of the
optional coverages described in this section and that such person
exercised a knowing and intelligent rejection of such offer. Such
rejection is binding on all persons insured under the policy.

(e) The insurer shall make such forms available to any
named insured who requests different coverage limits on or after
the effective date of this section. No insurer is required to make
such form available or notify any person of the availability of
such optional coverages authorized by this section except as
required by this section.

(f) Notwithstanding any of the provisions of article six of
this chapter to the contrary, including section thirty-one-f, for
insurance policies in effect on December 31, 2015, insurers are
not required to offer or obtain new uninsured or underinsured
motorist coverage offer forms as described in this section on any
insurance policy to comply with the amount of the minimum
required financial responsibility limits set forth in subsection (b),
section two, article four, chapter seventeen-d of this code. All
§33-6-31h. Excluded drivers; definitions; legislative findings; restrictive endorsements.

(a) For purposes of this section, the following definitions apply:

(1) A “motor vehicle liability policy” means an “owner’s policy” or an “operator’s policy” of liability insurance certified as provided in section twelve, article four, chapter seventeen-d of this code.

(2) “Excluded driver” means any driver specifically excluded from coverage under section thirty-one, article six, chapter thirty-three of this code.

(3) “Minimum financial responsibility limits” means those limits defined in section two, article four, chapter seventeen-d of this code.

(b) The Legislature finds that:

(1) The explicit, plain language of a motor vehicle liability policy between an insurer and its insureds should control its effect;

(2) Where insurers are required by the common law to provide minimum financial responsibility limits coverage for excluded drivers, consumers not excluded by restrictive endorsement are negatively impacted;

(3) The decision of the Supreme Court of Appeals of West Virginia in Jones v. Motorists Mutual Insurance Company, 177 W. Va. 763 (1987) interpreted chapter seventeen-d of this code to require insurers to provide minimum financial responsibility limits of coverage to excluded drivers; and
(4) It is not the intent of the legislature to require insurers to provide minimum financial responsibility limits of coverage to excluded drivers.

(c) When any person is specifically excluded from coverage under the provisions of a motor vehicle liability policy by any restrictive endorsement to the policy, the insurer is not required to provide any coverage, including both the duty to indemnify and the duty to defend, for damages arising out of the operation, maintenance or use of any motor vehicle by the excluded driver, notwithstanding the provisions of chapter seventeen-d of this code.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within was approved this the 15th day of April, 2015.

Governor
PRESENTED TO THE GOVERNOR

MAR 18 2015

Time 5:15 PM