

# **E N R O L L E D**

COMMITTEE SUBSTITUTE

for

## **H. B. 2790**

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(BY DELEGATE(S) WESTFALL, WAXMAN,  
SHOTT AND FRICH)

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

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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.**

1       As used in this chapter:

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

12       (b) Beginning January 1, 2016, “proof of financial  
13 responsibility” means proof of ability to respond in damages for  
14 liability, on account of accident occurring subsequent to the  
15 effective date of the proof, arising out of the ownership,  
16 operation, maintenance, or use of a motor vehicle, trailer or

17 semitrailer in the amount of \$25,000 because of bodily injury to  
18 or death of one person in any one accident, and, subject to the  
19 limit for one person, in the amount of \$50,000 because of bodily  
20 injury to or death of two or more persons in any one accident,  
21 and in the amount of \$25,000 because of injury to or destruction  
22 of property of others in any one accident: *Provided*, That proof  
23 of financial responsibility provided by an insurance policy in  
24 effect on December 31, 2015 in the minimum amounts required  
25 in subdivision (a) of this section shall continue to provide  
26 adequate proof of financial responsibility required by this  
27 chapter until the policy expires or is renewed.

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

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

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

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

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

16 (b) Notwithstanding the provisions of subsection (a) of this  
17 section, judgments herein referred to that are rendered upon a  
18 cause of action that arose on or after January 1, 2016, for the  
19 purpose of this chapter only, are deemed satisfied:

20 (1) When \$25,000 has been credited upon any judgment or  
21 judgments rendered in excess of that amount because of bodily  
22 injury to or death of one person as the result of any one accident;  
23 or

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

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

33 (c) Payments made in settlement of any claims because of  
34 bodily injury, death or property damage arising from such  
35 accident shall be credited in reduction of the amounts provided  
36 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  
2 this chapter means an “owner’s policy” or an “operator’s policy”  
3 of liability insurance certified as provided in section ten or  
4 section eleven of this article as proof of financial responsibility,  
5 and issued, except as otherwise provided in section eleven, by an  
6 insurance carrier duly authorized to transact business in this  
7 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  
10 reference all vehicles with respect to which coverage is thereby  
11 to be granted; and



12       (2) Shall insure the person named therein and any other  
13 person, as insured, using any such vehicle or vehicles with the  
14 express or implied permission of such named insured, against  
15 loss from the liability imposed by law for damages arising out of  
16 the ownership, operation, maintenance or use of such vehicle or  
17 vehicles within the United States of America or the Dominion of  
18 Canada, subject to limits exclusive of interest and costs, with  
19 respect to each such vehicle, in the amounts required in section  
20 two of this article.

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

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

36       (e) Such motor vehicle liability policy need not insure any  
37 liability under any workers' compensation law nor any liability  
38 on account of bodily injury to or death of an employee of the  
39 insured while engaged in the employment, other than domestic,  
40 of the insured, or while engaged in the operation, maintenance  
41 or repair of any such vehicle nor any liability for damage to  
42 property owned by, rented to, in charge of or transported by the  
43 insured.

44 (f) Every motor vehicle liability policy is subject to the  
45 following provisions which need not be contained therein:

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

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

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

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

67 (g) Any policy which grants the coverage required for a  
68 motor vehicle liability policy may also grant any lawful coverage  
69 in excess of or in addition to the coverage specified for a motor  
70 vehicle liability policy and such excess or additional coverage is  
71 not subject to the provisions of this chapter. With respect to a  
72 policy which grants such excess or additional coverage, the term  
73 "motor vehicle liability policy" applies only to that part of the  
74 coverage which is required by this section.

75 (h) Any motor vehicle liability policy may provide that the  
76 insured shall reimburse the insurance carrier for any payment the  
77 insurance carrier would not have been obligated to make under  
78 the terms of the policy except for the provisions of this chapter.

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

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

85 (k) Any binder issued pending the issuance of a motor  
86 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.**

1 (a) No policy or contract of bodily injury liability insurance,  
2 or of property damage liability insurance, covering liability  
3 arising from the ownership, maintenance or use of any motor  
4 vehicle, may be issued or delivered in this state to the owner of  
5 such vehicle, or may be issued or delivered by any insurer  
6 licensed in this state upon any motor vehicle for which a  
7 certificate of title has been issued by the Division of Motor  
8 Vehicles of this state, unless it contains a provision insuring the  
9 named insured and any other person, except a bailee for hire and  
10 any persons specifically excluded by any restrictive endorsement  
11 attached to the policy, responsible for the use of or using the  
12 motor vehicle with the consent, expressed or implied, of the

13 named insured or his or her spouse against liability for death or  
14 bodily injury sustained or loss or damage occasioned within the  
15 coverage of the policy or contract as a result of negligence in the  
16 operation or use of such vehicle by the named insured or by such  
17 person: *Provided*, That in any such automobile liability  
18 insurance policy or contract, or endorsement thereto, if coverage  
19 resulting from the use of a nonowned automobile is conditioned  
20 upon the consent of the owner of such motor vehicle, the word  
21 “owner” shall be construed to include the custodian of such  
22 nonowned motor vehicles. Notwithstanding any other provision  
23 of this code, if the owner of a policy receives a notice of  
24 cancellation pursuant to article six-a of this chapter and the  
25 reason for the cancellation is a violation of law by a person  
26 insured under the policy, said owner may by restrictive  
27 endorsement specifically exclude the person who violated the  
28 law and the restrictive endorsement shall be effective in regard  
29 to the total liability coverage provided under the policy,  
30 including coverage provided pursuant to the mandatory liability  
31 requirements of section two, article four, chapter seventeen-d of  
32 this code, but nothing in such restrictive endorsement may be  
33 construed to abrogate the “family purpose doctrine”.

34 (b) Nor may any such policy or contract be so issued or  
35 delivered unless it contains an endorsement or provisions  
36 undertaking to pay the insured all sums which he or she is  
37 legally entitled to recover as damages from the owner or  
38 operator of an uninsured motor vehicle, within limits which shall  
39 be no less than the requirements of section two, article four,  
40 chapter seventeen-d of this code, as amended from time to time:  
41 *Provided*, That such policy or contract shall provide an option to  
42 the insured with appropriately adjusted premiums to pay the  
43 insured all sums which he or she shall be legally entitled to  
44 recover as damages from the owner or operator of an uninsured  
45 motor vehicle up to an amount of \$100,000 because of bodily  
46 injury to or death of one person in any one accident and, subject

47 to said limit for one person, in the amount of \$300,000 because  
48 of bodily injury to or death of two or more persons in any one  
49 accident and in the amount of \$50,000 because of injury to or  
50 destruction of property of others in any one accident: *Provided*,  
51 *however*, That such endorsement or provisions may exclude the  
52 first \$300 of property damage resulting from the negligence of  
53 an uninsured motorist: *Provided further*, That such policy or  
54 contract shall provide an option to the insured with appropriately  
55 adjusted premiums to pay the insured all sums which he or she  
56 is legally entitled to recover as damages from the owner or  
57 operator of an uninsured or underinsured motor vehicle up to an  
58 amount not less than limits of bodily injury liability insurance  
59 and property damage liability insurance purchased by the insured  
60 without set off against the insured's policy or any other policy.  
61 Regardless of whether motor vehicle coverage is offered and  
62 provided to an insured through a multiple vehicle insurance  
63 policy or contract, or in separate single vehicle insurance  
64 policies or contracts, no insurer or insurance company providing  
65 a bargained for discount for multiple motor vehicles with respect  
66 to underinsured motor vehicle coverage may be treated  
67 differently from any other insurer or insurance company utilizing  
68 a single insurance policy or contract for multiple covered  
69 vehicles for purposes of determining the total amount of  
70 coverage available to an insured. "Underinsured motor vehicle"  
71 means a motor vehicle with respect to the ownership, operation  
72 or use of which there is liability insurance applicable at the time  
73 of the accident, but the limits of that insurance are either: (i)  
74 Less than limits the insured carried for underinsured motorists'  
75 coverage; or (ii) has been reduced by payments to others injured  
76 in the accident to limits less than limits the insured carried for  
77 underinsured motorists' coverage. No sums payable as a result  
78 of underinsured motorists' coverage may be reduced by  
79 payments made under the insured's policy or any other policy.

80 (c) As used in this section, the term "bodily injury" includes  
81 death resulting therefrom and the term "named insured" means

82 the person named as such in the declarations of the policy or  
83 contract and also includes such person's spouse if a resident of  
84 the same household and the term "insured" means the named  
85 insured and, while resident of the same household, the spouse of  
86 any such named insured and relatives of either, while in a motor  
87 vehicle or otherwise, and any person, except a bailee for hire,  
88 who uses, with the consent, expressed or implied, of the named  
89 insured, the motor vehicle to which the policy applies or the  
90 personal representative of any of the above; and the term  
91 "uninsured motor vehicle" means a motor vehicle as to which  
92 there is no: (i) Bodily injury liability insurance and property  
93 damage liability insurance both in the amounts specified by  
94 section two, article four, chapter seventeen-d of this code, as  
95 amended from time to time; (ii) there is such insurance, but the  
96 insurance company writing the same denies coverage thereunder;  
97 or (iii) there is no certificate of self-insurance issued in  
98 accordance with the provisions of said section. A motor vehicle  
99 shall be deemed to be uninsured if the owner or operator thereof  
100 be unknown: *Provided*, That recovery under the endorsement or  
101 provisions is subject to the conditions hereinafter set forth.

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

113 Nothing in this subsection prevents such owner or operator  
114 from employing counsel of his or her own choice and taking any  
115 action in his or her own interest in connection with such  
116 proceeding.

117 (e) If the owner or operator of any motor vehicle which  
118 causes bodily injury or property damage to the insured is  
119 unknown, the insured, or someone in his or her behalf, in order  
120 for the insured to recover under the uninsured motorist  
121 endorsement or provision, shall:

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

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

136 (3) Upon trial establish that the motor vehicle, which caused  
137 the bodily injury or property damage, whose operator is  
138 unknown, was a "hit and run" motor vehicle, meaning a motor  
139 vehicle which causes damage to the property of the insured  
140 arising out of physical contact of such motor vehicle therewith,  
141 or which causes bodily injury to the insured arising out of  
142 physical contact of such motor vehicle with the insured or with  
143 a motor vehicle which the insured was occupying at the time of  
144 the accident. If the owner or operator of any motor vehicle  
145 causing bodily injury or property damage be unknown, an action  
146 may be instituted against the unknown defendant as "John Doe",  
147 in the county in which the accident took place or in any other  
148 county in which such action would be proper under the  
149 provisions of article one, chapter fifty-six of this code; service of

150 process may be made by delivery of a copy of the complaint and  
151 summons or other pleadings to the clerk of the court in which the  
152 action is brought, and service upon the insurance company  
153 issuing the policy shall be made as prescribed by law as though  
154 such insurance company were a party defendant. The insurance  
155 company has the right to file pleadings and take other action  
156 allowable by law in the name of John Doe.

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

179 (g) No such endorsement or provisions may contain any  
180 provision requiring arbitration of any claim arising under any  
181 such endorsement or provision, nor may anything be required of  
182 the insured except the establishment of legal liability, nor may



183 the insured be restricted or prevented in any manner from  
184 employing legal counsel or instituting legal proceedings.

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

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

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

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

209 (l) The Insurance Commissioner shall review on an annual  
210 basis the rate structure for uninsured and underinsured motorists'  
211 coverage as set forth in subsection (b) of this section and shall  
212 report to the Legislature on said rate structure on or before  
213 January 15, 1983, and on or before January 15, of each of the  
214 next two succeeding years.

215 (m) For insurance policies in effect on December 31, 2015,  
216 including motor vehicle insurance policies and liability policies  
217 that are of an excess or umbrella type that cover automobile  
218 liability, insurers are not required to make a new offer of  
219 uninsured and underinsured motor vehicle coverage upon the  
220 renewal if the liability coverage is increased solely to meet the  
221 requirements of the increased minimum required financial  
222 responsibility limits set forth in subdivision (b), section two,  
223 article four, chapter seventeen-d of this code. Those insurers that  
224 have issued policies that carry limits of coverage below the  
225 minimum required financial responsibility limits in effect on  
226 December 31, 2015 shall increase such limits to an amount equal  
227 to or above the new minimum required financial responsibility  
228 limits when the policy is renewed but not later than December  
229 31, 2016.

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

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

15 (b) Any insurer who issues a motor vehicle insurance policy  
16 in this state shall provide the form to each person who applies

17 for the issuance of such policy by delivering the form to the  
18 applicant or by mailing the form to the applicant together with  
19 the applicant's initial premium notice. The applicant shall  
20 complete, date and sign the form and return the form to the  
21 insurer within thirty days after receipt thereof. No insurer or  
22 agent thereof is liable for payment of any damages applicable  
23 under any optional uninsured or underinsured coverage  
24 authorized by section thirty-one of this article for any incident  
25 which occurs from the date the form was mailed or delivered to  
26 the applicant until the insurer receives the form and accepts  
27 payment of the appropriate premium for the coverage requested  
28 therein from the applicant: *Provided*, That if prior to the  
29 insurer's receipt of the executed form the insurer issues a policy  
30 to the applicant which provides for such optional uninsured or  
31 underinsured coverage, the insurer is liable for payment of  
32 claims against such optional coverage up to the limits provided  
33 therefor in such policy. The contents of a form described in this  
34 section which has been signed by an applicant creates a  
35 presumption that such applicant and all named insureds received  
36 an effective offer of the optional coverages described in this  
37 section and that such applicant exercised a knowing and  
38 intelligent election or rejection, as the case may be, of such offer  
39 as specified in the form. Such election or rejection is binding on  
40 all persons insured under the policy.

41 (c) Any insurer who has issued a motor vehicle insurance  
42 policy in this state which is in effect on the effective date of this  
43 section shall mail or otherwise deliver the form to any person  
44 who is designated in the policy as a named insured. A named  
45 insured shall complete, date and sign the form and return the  
46 form to the insurer within thirty days after receipt thereof. No  
47 insurer or agent thereof is liable for payment of any damages in  
48 any amount greater than any limits of such coverage, if any,  
49 provided by the policy in effect on the date the form was mailed  
50 or delivered to such named insured for any incident which occurs

51 from the date the form was mailed or delivered to such named  
52 insured until the insurer receives the form and accepts payment  
53 of the appropriate premium for the coverage requested therein  
54 from the applicant. The contents of a form described in this  
55 section which has been signed by any named insured creates a  
56 presumption that all named insureds under the policy received an  
57 effective offer of the optional coverages described in this section  
58 and that all such named insured exercised a knowing and  
59 intelligent election or rejection, as the case may be, of such offer  
60 as specified in the form. Such election or rejection is binding on  
61 all persons insured under the policy.

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

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

75 (f) Notwithstanding any of the provisions of article six of  
76 this chapter to the contrary, including section thirty-one-f, for  
77 insurance policies in effect on December 31, 2015, insurers are  
78 not required to offer or obtain new uninsured or underinsured  
79 motorist coverage offer forms as described in this section on any  
80 insurance policy to comply with the amount of the minimum  
81 required financial responsibility limits set forth in subsection (b),  
82 section two, article four, chapter seventeen-d of this code. All

83 such offer forms that were executed prior to January 1, 2016,  
84 shall remain in full force and effect.

**§33-6-31h. Excluded drivers; definitions; legislative findings;  
restrictive endorsements.**

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

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

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

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

13 (b) The Legislature finds that:

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

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

21 (3) The decision of the Supreme Court of Appeals of West  
22 Virginia in *Jones v. Motorists Mutual Insurance Company*, 177  
23 W. Va. 763 (1987) interpreted chapter seventeen-d of this code  
24 to require insurers to provide minimum financial responsibility  
25 limits of coverage to excluded drivers; and

26           (4) It is not the intent of the legislature to require insurers to  
27 provide minimum financial responsibility limits of coverage to  
28 excluded drivers.

29           (c) When any person is specifically excluded from coverage  
30 under the provisions of a motor vehicle liability policy by any  
31 restrictive endorsement to the policy, the insurer is not required  
32 to provide any coverage, including both the duty to indemnify  
33 and the duty to defend, for damages arising out of the operation,  
34 maintenance or use of any motor vehicle by the excluded driver,  
35 notwithstanding the provisions of chapter seventeen-d of this  
36 code.

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

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*Chairman, House Committee*

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*Chairman, Senate Committee*

Originating in the House.

In effect ninety days from passage.

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*Clerk of the House of Delegates*

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*Clerk of the Senate*

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*Speaker of the House of Delegates*

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*President of the Senate*

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The within \_\_\_\_\_ this the \_\_\_\_\_  
day of \_\_\_\_\_, 2015.

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*Governor*

