

COMMITTEE SUBSTITUTE

for

H. B. 2790

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

(Originating in the House Committee on the Judiciary)
[February 25, 2015]

A BILL 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) The term “Proof of financial responsibility” ~~as used in~~
3 ~~this chapter shall mean:~~ means proof of ability to respond in
4 damages for liability, on account of accident occurring

5 subsequent to the effective date of ~~said~~ the proof, arising out of
6 the ownership, operation, maintenance or use of a motor vehicle,
7 trailer or semitrailer in the amount of \$20,000 because of bodily
8 injury to or death of one person in any one accident, and, subject
9 to ~~said~~ the limit for one person, in the amount of \$40,000
10 because of bodily injury to or death of two or more persons in
11 any one accident, and in the amount of \$10,000 because of injury
12 to or destruction of property of others in any one accident.

13 (b) Beginning January 1, 2016, “proof of financial
14 responsibility” means proof of ability to respond in damages for
15 liability, on account of accident occurring subsequent to the
16 effective date of the proof, arising out of the ownership,
17 operation, maintenance, or use of a motor vehicle, trailer or
18 semitrailer in the amount of \$25,000 because of bodily injury to
19 or death of one person in any one accident, and, subject to the
20 limit for one person, in the amount of \$50,000 because of bodily
21 injury to or death of two or more persons in any one accident,
22 and in the amount of \$25,000 because of injury to or destruction
23 of property of others in any one accident: *Provided, That proof*
24 of financial responsibility provided by an insurance policy in

25 effect on December 31, 2015 in the minimum amounts required
26 in subdivision (a) of this section shall continue to provide
27 adequate proof of financial responsibility required by this
28 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, ~~be~~ 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 ~~(b) Provided, however, that~~ (c) Payments made in settlement
34 of any claims because of bodily injury, death or property damage

35 arising from such accident shall be credited in reduction of the
36 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 ~~said~~ the term is used
2 in this chapter means an “owner’s policy” or an “operator’s
3 policy” of liability insurance certified as provided in section ten
4 or section eleven of this article as proof of financial
5 responsibility, and issued, except as otherwise provided in
6 section eleven, by an insurance carrier duly authorized to
7 transact business in this state, to or for the benefit of the person
8 named therein as insured.

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

10 (1) Shall designate by explicit description or by appropriate
11 reference all vehicles with respect to which coverage is thereby
12 to be granted; and

13 (2) Shall insure the person named therein and any other
14 person, as insured, using any such vehicle or vehicles with the
15 express or implied permission of such named insured, against
16 loss from the liability imposed by law for damages arising out of

17 the ownership, operation, maintenance or use of such vehicle or
18 vehicles within the United States of America or the Dominion of
19 Canada, subject to limits exclusive of interest and costs, with
20 respect to each such vehicle, ~~as follows: Twenty thousand dollars~~
21 ~~because of bodily injury to or death of one person in any one~~
22 ~~accident and, subject to said limit for one person, \$40,000~~
23 ~~because of bodily injury to or death of two or more persons in~~
24 ~~any one accident, and \$10,000 because of injury to or destruction~~
25 ~~of property of others in any one accident~~ in the amounts required
26 in section two of this article.

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

34 (d) Such motor vehicle liability policy shall state the name
35 and address of the named insured, the coverage afforded by the
36 policy, the premium charged therefor, the policy period, and the

37 limits of liability, and shall contain an agreement or be endorsed
38 that insurance is provided thereunder in accordance with the
39 coverage defined in this chapter as respects bodily injury and
40 death or property damage, or both, and is subject to all the
41 provisions of this chapter.

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

50 (f) Every motor vehicle liability policy ~~shall be~~ is subject to
51 the following provisions which need not be contained therein:

52 (1) The liability of the insurance carrier with respect to the
53 insurance required by this chapter shall become absolute
54 whenever injury or damage covered by said motor vehicle
55 liability policy occurs; ~~said~~ the policy may not be canceled or
56 annulled as to such liability by an agreement between the

57 insurance carrier and the insured after the occurrence of the
58 injury or damage; no statement made by the insured or on his or
59 her behalf and no violation of ~~said the~~ policy ~~shall~~ defeats or
60 voids ~~said the~~ policy.

61 (2) The satisfaction by the insured of a judgment for such
62 injury or damage ~~shall is not be~~ a condition precedent to the right
63 or duty of the insurance carrier to make payment on account of
64 such injury or damage.

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

70 (4) The policy, the written application therefor, if any, and
71 any rider or endorsement which does not conflict with the
72 provisions of this chapter ~~shall~~ constitutes the entire contract
73 between parties.

74 (g) Any policy which grants the coverage required for a
75 motor vehicle liability policy may also grant any lawful coverage

76 in excess of or in addition to the coverage specified for a motor
77 vehicle liability policy and such excess or additional coverage
78 ~~shall~~ is not ~~be~~ subject to the provisions of this chapter. With
79 respect to a policy which grants such excess or additional
80 coverage, the term “motor vehicle liability policy” applies only
81 to that part of the coverage which is required by this section.

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

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

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

92 (k) Any binder issued pending the issuance of a motor
93 vehicle policy ~~shall be deemed to~~ fulfills the requirements for
94 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, ~~shall~~ may be issued or delivered in this state to the
5 owner of such vehicle, or ~~shall~~ may be issued or delivered by
6 any insurer licensed in this state upon any motor vehicle for
7 which a certificate of title has been issued by the Division of
8 Motor Vehicles of this state, unless it ~~shall~~ contains a provision
9 insuring the named insured and any other person, except a bailee
10 for hire and any persons specifically excluded by any restrictive
11 endorsement attached to the policy, responsible for the use of or
12 using the motor vehicle with the consent, expressed or implied,
13 of the named insured or his or her spouse against liability for
14 death or bodily injury sustained or loss or damage occasioned
15 within the coverage of the policy or contract as a result of

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

35 (b) Nor ~~shall~~ may any such policy or contract be so issued or
36 delivered unless it ~~shall~~ contains an endorsement or provisions
37 undertaking to pay the insured all sums which he or she ~~shall be~~
38 is legally entitled to recover as damages from the owner or
39 operator of an uninsured motor vehicle, within limits which shall
40 be no less than the requirements of section two, article four,
41 chapter seventeen-d of this code, as amended from time to time:
42 *Provided*, That such policy or contract shall provide an option to
43 the insured with appropriately adjusted premiums to pay the
44 insured all sums which he or she shall be legally entitled to
45 recover as damages from the owner or operator of an uninsured
46 motor vehicle up to an amount of \$100,000 because of bodily
47 injury to or death of one person in any one accident and, subject
48 to said limit for one person, in the amount of \$300,000 because
49 of bodily injury to or death of two or more persons in any one
50 accident and in the amount of \$50,000 because of injury to or
51 destruction of property of others in any one accident: *Provided*,
52 *however*, That such endorsement or provisions may exclude the
53 first \$300 of property damage resulting from the negligence of
54 an uninsured motorist: *Provided further*, That such policy or

55 contract shall provide an option to the insured with appropriately
56 adjusted premiums to pay the insured all sums which he or she
57 ~~shall~~ is legally ~~be~~ entitled to recover as damages from the owner
58 or operator of an uninsured or underinsured motor vehicle up to
59 an amount not less than limits of bodily injury liability insurance
60 and property damage liability insurance purchased by the insured
61 without set off against the insured's policy or any other policy.
62 Regardless of whether motor vehicle coverage is offered and
63 provided to an insured through a multiple vehicle insurance
64 policy or contract, or in separate single vehicle insurance
65 policies or contracts, no insurer or insurance company providing
66 a bargained for discount for multiple motor vehicles with respect
67 to underinsured motor vehicle coverage ~~shall~~ may be treated
68 differently from any other insurer or insurance company utilizing
69 a single insurance policy or contract for multiple covered
70 vehicles for purposes of determining the total amount of
71 coverage available to an insured. "Underinsured motor vehicle"
72 means a motor vehicle with respect to the ownership, operation
73 or use of which there is liability insurance applicable at the time
74 of the accident, but the limits of that insurance are either: (i)

75 Less than limits the insured carried for underinsured motorists’
76 coverage; or (ii) has been reduced by payments to others injured
77 in the accident to limits less than limits the insured carried for
78 underinsured motorists’ coverage. No sums payable as a result
79 of underinsured motorists’ coverage ~~shall~~ may be reduced by
80 payments made under the insured’s policy or any other policy.

81 (c) As used in this section, the term “bodily injury” ~~shall~~
82 includes death resulting therefrom and the term “named insured”
83 ~~shall~~ means the person named as such in the declarations of the
84 policy or contract and ~~shall~~ also includes such person’s spouse
85 if a resident of the same household and the term “insured” ~~shall~~
86 means the named insured and, while resident of the same
87 household, the spouse of any such named insured and relatives
88 of either, while in a motor vehicle or otherwise, and any person,
89 except a bailee for hire, who uses, with the consent, expressed or
90 implied, of the named insured, the motor vehicle to which the
91 policy applies or the personal representative of any of the above;
92 and the term “uninsured motor vehicle” ~~shall~~ means a motor
93 vehicle as to which there is no: (i) Bodily injury liability
94 insurance and property damage liability insurance both in the

95 amounts specified by section two, article four, chapter
96 seventeen-d of this code, as amended from time to time; (ii)
97 there is such insurance, but the insurance company writing the
98 same denies coverage thereunder; or (iii) there is no certificate
99 of self-insurance issued in accordance with the provisions of said
100 section. A motor vehicle shall be deemed to be uninsured if the
101 owner or operator thereof be unknown: *Provided*, That recovery
102 under the endorsement or provisions ~~shall be~~ is subject to the
103 conditions hereinafter set forth.

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

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

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

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

130 (†) (2) Notify the insurance company, within sixty days after
131 such accident, that the insured or his or her legal representative
132 has a cause or causes of action arising out of such accident for
133 damages against a person or persons whose identity is unknown
134 and setting forth the facts in support thereof; and, upon written

135 request of the insurance company communicated to the insured
136 not later than five days after receipt of such statement, ~~shall~~
137 make available for inspection the motor vehicle which the
138 insured was occupying at the time of the accident; and

139 ~~(iii)~~ (3) Upon trial establish that the motor vehicle, which
140 caused the bodily injury or property damage, whose operator is
141 unknown, was a “hit and run” motor vehicle, meaning a motor
142 vehicle which causes damage to the property of the insured
143 arising out of physical contact of such motor vehicle therewith,
144 or which causes bodily injury to the insured arising out of
145 physical contact of such motor vehicle with the insured or with
146 a motor vehicle which the insured was occupying at the time of
147 the accident. If the owner or operator of any motor vehicle
148 causing bodily injury or property damage be unknown, an action
149 may be instituted against the unknown defendant as “John Doe”,
150 in the county in which the accident took place or in any other
151 county in which such action would be proper under the
152 provisions of article one, chapter fifty-six of this code; service of
153 process may be made by delivery of a copy of the complaint and
154 summons or other pleadings to the clerk of the court in which the

155 action is brought, and service upon the insurance company
156 issuing the policy shall be made as prescribed by law as though
157 such insurance company were a party defendant. The insurance
158 company ~~shall have~~ has the right to file pleadings and take other
159 action allowable by law in the name of John Doe.

160 (f) An insurer paying a claim under the endorsement or
161 provisions required by subsection (b) of this section ~~shall be~~ is
162 subrogated to the rights of the insured to whom such claim was
163 paid against the person causing such injury, death or damage to
164 the extent that payment was made. The bringing of an action
165 against the unknown owner or operator as John Doe or the
166 conclusion of such an action ~~shall~~ does not constitute a bar to the
167 insured, if the identity of the owner or operator who caused the
168 injury or damages complained of, becomes known, from
169 bringing an action against the owner or operator theretofore
170 proceeded against as John Doe. Any recovery against such
171 owner or operator shall be paid to the insurance company to the
172 extent that such insurance company ~~shall have~~ has paid the
173 insured in the action brought against such owner or operator as
174 John Doe, except that such insurance company shall pay its

175 proportionate part of any reasonable costs and expenses incurred
176 in connection therewith, including reasonable attorney's fees.
177 Nothing in an endorsement or provision made under this
178 subsection, nor any other provision of law, ~~shall~~ operates to
179 prevent the joining, in an action against John Doe, of the owner
180 or operator of the motor vehicle causing injury as a party
181 defendant, and such joinder is hereby specifically authorized.

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

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

193 (i) The commissioner of insurance shall formulate and
194 require the use of standard policy provisions for the insurance

195 required by this section, but use of such standard policy
196 provisions may be waived by the commissioner in the
197 circumstances set forth in section ten of this article.

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

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

213 (l) The Insurance Commissioner shall review on an annual
214 basis the rate structure for uninsured and underinsured motorists'

215 coverage as set forth in subsection (b) of this section and shall
216 report to the Legislature on said rate structure on or before
217 January 15, 1983, and on or before January 15, of each of the
218 next two succeeding years.

219 (m) For insurance policies in effect on December 31, 2015,
220 including motor vehicle insurance policies and liability policies
221 that are of an excess or umbrella type that cover automobile
222 liability, insurers are not required to make a new offer of
223 uninsured and underinsured motor vehicle coverage upon the
224 renewal if the liability coverage is increased solely to meet the
225 requirements of the increased minimum required financial
226 responsibility limits set forth in subdivision (b), section two,
227 article four, chapter seventeen-d of this code. Those insurers that
228 have issued policies that carry limits of coverage below the
229 minimum required financial responsibility limits in effect on
230 December 31, 2015 shall increase such limits to an amount equal
231 to or above the new minimum required financial responsibility
232 limits when the policy is renewed but not later than December
233 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 ~~shall be~~ is liable for payment
32 of claims against such optional coverage up to the limits
33 provided therefor in such policy. The contents of a form
34 described in this section which has been signed by an applicant
35 ~~shall~~ creates a presumption that such applicant and all named
36 insureds received an effective offer of the optional coverages
37 described in this section and that such applicant exercised a
38 knowing and intelligent election or rejection, as the case may be,

39 of such offer as specified in the form. Such election or rejection
40 ~~shall be~~ is binding on 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 ~~shall~~
56 creates a presumption that all named insureds under the policy
57 received an effective offer of the optional coverages described
58 in this section and that all such named insured exercised a

59 knowing and intelligent election or rejection, as the case may be,
60 of such offer as specified in the form. Such election or rejection
61 is binding on 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.

