

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 2617

BY DELEGATES WESTFALL, HOTT, D. JEFFRIES, ESPINOSA

AND PORTERFIELD

[Passed March 7, 2019; in effect ninety days from
passage.]

1 AN ACT to amend and reenact §33-6-31d of the Code of West Virginia, 1931, as amended,
2 relating to the form for making offer of optional uninsured and underinsured coverage by
3 insurers; requiring Insurance Commissioner to provide for the use of electronic means of
4 delivery and electronic signing of form; defining electronic means; requiring an insurer,
5 when offering to place an insured with an affiliate of the insurer, to make available a new
6 uninsured and underinsured motorist coverage offer form; and providing that last form
7 previously signed governs if insured does not return the form.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. THE INSURANCE POLICY.

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

1 (a) Optional limits of uninsured motor vehicle coverage and underinsured motor vehicle
2 coverage required by §33-6-31 of this code shall be made available to the named insured at the
3 time of initial application for liability coverage and upon any request of the named insured on a
4 form prepared and made available by the Insurance Commissioner. The contents of the form shall
5 be prescribed by the commissioner and shall specifically inform the named insured of the
6 coverage offered and the rate calculation for the coverage, including, but not limited to, levels and
7 amounts of the coverage available and the number of vehicles which will be subject to the
8 coverage. The commissioner shall provide for the use of electronic means of delivery and
9 electronic signing when issuing the prescribed form. The form shall allow any named insured to
10 waive any or all of the coverage offered.

11 (b) Any insurer who issues a motor vehicle insurance policy in this state shall provide the
12 form to each person who applies for the issuance of a policy by delivering the form to the applicant
13 or by mailing the form to the applicant. Insurers may deliver the form by electronic means. Delivery
14 by "electronic means" includes delivery of the form to an electronic mail address at which an
15 applicant or policyholder has consented to receive notices or documents, by posting on an
16 electronic network or site accessible via the Internet, electronic device, or mobile application, at

17 or from which the applicant or policyholder has consented to receive delivery, or by any other
18 delivery method that has been consented to by the applicant or policyholder. Any document
19 delivered electronically satisfies any font, size, color, spacing, or other format requirements that
20 are established for printed documents, provided that the format in the document delivered
21 electronically has reasonably similar proportions or emphasis for the characters relative to the
22 rest of the electronic document. The applicant shall complete, date, and sign the form and return
23 the form to the insurer within 30 days after receipt of the form. Any signature executed in
24 conformity with the Uniform Electronic Transactions Act in §39A-1-1 *et seq.* of this code is
25 enforceable as provided by that act. An insurer or agent of the insurer is not liable for payment of
26 any damages applicable under any optional uninsured or underinsured coverage authorized by
27 §33-6-31 of this code for any incident which occurs from the date the form was mailed or delivered
28 to the applicant until the insurer receives the form and accepts payment of the appropriate
29 premium for the coverage requested in the form from the applicant: *Provided*, That if prior to the
30 insurer's receipt of the executed form the insurer issues a policy to the applicant which provides
31 for optional uninsured or underinsured coverage, the insurer is liable for payment of claims against
32 the optional coverage up to the limits provided in the policy. The contents of a form described in
33 this section which has been signed by an applicant creates a presumption that the applicant and
34 all named insureds received an effective offer of the optional coverages described in this section
35 and that the applicant exercised a knowing and intelligent election or rejection of the offer as
36 specified in the form. The election or rejection is binding on all persons insured under the policy.

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

42 (d) The insurer shall make the forms available to any named insured who requests
43 different coverage limits on or after the effective date of this section. An insurer is not required to
44 make the form available or notify any person of the availability of the optional coverages
45 authorized by this section except as required by this section.

46 (e) Notwithstanding any of the provisions of this article to the contrary, including §33-6-
47 31f of this code, for insurance policies in effect on December 31, 2015, insurers are not required
48 to offer or obtain new uninsured or underinsured motorist coverage offer forms as described in
49 this section on any insurance policy to comply with the amount of the minimum required financial
50 responsibility limits set forth in §17D-4-2(b) of this code. All offer forms that were executed prior
51 to January 1, 2016, shall remain in full force and effect.

52 (f) If an insurer offers to place an insured with an affiliate of the insurer, the insurer shall
53 make available a new uninsured and underinsured motorist coverage offer form, in the manner
54 provided by and pursuant to subsections (a) and (b) of this section. A named insured shall
55 complete, date, and sign the form as provided by subsection (b) of this section and return the
56 form to the insurer within 30 days after receipt of the form. If an insured does not return the form
57 within 30 days, then the last form previously signed by the insured for the insurer or any affiliate
58 governs the amount of uninsured and underinsured motorist coverage provided by the newly
59 issuing insurer and remains binding on all persons insured under the policy.

The 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

The within this the
day of, 2019.

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Governor