

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 2790**

4
5 (By Delegates Westfall, Waxman, Shott and Frich)

6 (Originating in the House Committee on Judiciary)

7 [February 25, 2015]

8
9
10 A BILL to amend and reenact §17D-4-2, §17D-4-7 and §17D-4-12 of the Code of West Virginia,
11 1931, as amended; to amend and reenact §33-6-31 and §31-6-31d of said code; and to
12 amend said code by adding thereto a new section, designated §33-6-31h, all relating to proof
13 of financial responsibility limits for motor vehicles; increasing the minimum amounts of
14 proof required; providing that insurers are not required to offer new or increased uninsured
15 or underinsured motor vehicle coverage when coverage is increased to meet the increased
16 requirements of proof of financial responsibility; providing that insurers who issue policies
17 with named driver exclusions are not required to provide any coverage upon an insured
18 vehicle covering the excluded driver, notwithstanding the requirements of proof of financial
19 responsibility.

20 *Be it enacted by the Legislature of West Virginia:*

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

25 **CHAPTER 17D. MOTOR VEHICLE SAFETY RESPONSIBILITY LAW.**

26 **ARTICLE 4. PROOF OF FINANCIAL RESPONSIBILITY FOR THE FUTURE.**

1 **§17D-4-2. "Proof of financial responsibility" defined.**

2 As used in this chapter:

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

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

20 **17D-4-7. Payments sufficient to satisfy requirements.**

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

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

25 (2) When, subject to such limit of \$20,000 because of bodily injury to or death of one person,
26 the sum of \$40,000 has been credited upon any judgment or judgments rendered in excess of that

1 amount because of bodily injury to or death of two or more persons as the result of any one accident;
2 or

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

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

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

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

13 or

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

16 ~~(b) Provided, however, that~~ (c) Payments made in settlement of any claims because of bodily
17 injury, death or property damage arising from such accident shall be credited in reduction of the
18 amounts provided for in this section.

19 **§17D-4-12. "Motor vehicle liability policy" defined; scope and provisions of policy.**

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

25 (b) Such owner's policy of liability insurance:

26 (1) Shall designate by explicit description or by appropriate reference all vehicles with

1 respect to which coverage is thereby to be granted; and

2 (2) Shall insure the person named therein and any other person, as insured, using any such
3 vehicle or vehicles with the express or implied permission of such named insured, against loss from
4 the liability imposed by law for damages arising out of the ownership, operation, maintenance or use
5 of such vehicle or vehicles within the United States of America or the Dominion of Canada, subject
6 to limits exclusive of interest and costs, with respect to each such vehicle, ~~as follows: Twenty~~
7 ~~thousand dollars because of bodily injury to or death of one person in any one accident and, subject~~
8 ~~to said limit for one person, \$40,000 because of bodily injury to or death of two or more persons in~~
9 ~~any one accident, and \$10,000 because of injury to or destruction of property of others in any one~~
10 ~~accident~~ in the amounts required in section two of this article.

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

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

21 (e) Such motor vehicle liability policy need not insure any liability under any workers'
22 compensation law nor any liability on account of bodily injury to or death of an employee of the
23 insured while engaged in the employment, other than domestic, of the insured, or while engaged in
24 the operation, maintenance or repair of any such vehicle nor any liability for damage to property
25 owned by, rented to, in charge of or transported by the insured.

26 (f) Every motor vehicle liability policy ~~shall be~~ is subject to the following provisions which

1 need not be contained therein:

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

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

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

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

17 (g) Any policy which grants the coverage required for a motor vehicle liability policy may
18 also grant any lawful coverage in excess of or in addition to the coverage specified for a motor
19 vehicle liability policy and such excess or additional coverage ~~shall is not be~~ subject to the provisions
20 of this chapter. With respect to a policy which grants such excess or additional coverage, the term
21 "motor vehicle liability policy" applies only to that part of the coverage which is required by this
22 section.

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

26 (i) Any motor vehicle liability policy may provide for the prorating of the insurance

1 thereunder with other valid and collectible insurance.

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

4 (k) Any binder issued pending the issuance of a motor vehicle policy ~~shall be deemed to~~
5 fulfills the requirements for such a policy.

6 **CHAPTER 33. INSURANCE.**

7 **ARTICLE 6. THE INSURANCE POLICY.**

8 **§33-6-31. Motor vehicle policy; omnibus clause; uninsured and underinsured motorists'**
9 **coverage; conditions for recovery under endorsement; rights and liabilities of**
10 **insurer.**

11 (a) No policy or contract of bodily injury liability insurance, or of property damage liability
12 insurance, covering liability arising from the ownership, maintenance or use of any motor vehicle,
13 ~~shall~~ may be issued or delivered in this state to the owner of such vehicle, or ~~shall~~ may be issued or
14 delivered by any insurer licensed in this state upon any motor vehicle for which a certificate of title
15 has been issued by the Division of Motor Vehicles of this state, unless it ~~shall~~ contains a provision
16 insuring the named insured and any other person, except a bailee for hire and any persons specifically
17 excluded by any restrictive endorsement attached to the policy, responsible for the use of or using
18 the motor vehicle with the consent, expressed or implied, of the named insured or his or her spouse
19 against liability for death or bodily injury sustained or loss or damage occasioned within the coverage
20 of the policy or contract as a result of negligence in the operation or use of such vehicle by the named
21 insured or by such person: *Provided*, That in any such automobile liability insurance policy or
22 contract, or endorsement thereto, if coverage resulting from the use of a nonowned automobile is
23 conditioned upon the consent of the owner of such motor vehicle, the word "owner" shall be
24 construed to include the custodian of such nonowned motor vehicles. Notwithstanding any other
25 provision of this code, if the owner of a policy receives a notice of cancellation pursuant to article
26 six-a of this chapter and the reason for the cancellation is a violation of law by a person insured

1 under the policy, said owner may by restrictive endorsement specifically exclude the person who
2 violated the law and the restrictive endorsement shall be effective in regard to the total liability
3 coverage provided under the policy, including coverage provided pursuant to the mandatory liability
4 requirements of section two, article four, chapter seventeen-d of this code, but nothing in such
5 restrictive endorsement ~~shall~~ may be construed to abrogate the "family purpose doctrine".

6 (b) Nor ~~shall~~ may any such policy or contract be so issued or delivered unless it ~~shall~~ contains
7 an endorsement or provisions undertaking to pay the insured all sums which he or she ~~shall be~~ is
8 legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle,
9 within limits which shall be no less than the requirements of section two, article four, chapter
10 seventeen-d of this code, as amended from time to time: *Provided*, That such policy or contract shall
11 provide an option to the insured with appropriately adjusted premiums to pay the insured all sums
12 which he or she shall be legally entitled to recover as damages from the owner or operator of an
13 uninsured motor vehicle up to an amount of \$100,000 because of bodily injury to or death of one
14 person in any one accident and, subject to said limit for one person, in the amount of \$300,000
15 because of bodily injury to or death of two or more persons in any one accident and in the amount
16 of \$50,000 because of injury to or destruction of property of others in any one accident: *Provided*,
17 *however*, That such endorsement or provisions may exclude the first \$300 of property damage
18 resulting from the negligence of an uninsured motorist: *Provided further*, That such policy or
19 contract shall provide an option to the insured with appropriately adjusted premiums to pay the
20 insured all sums which he or she ~~shall~~ is legally ~~be~~ entitled to recover as damages from the owner
21 or operator of an uninsured or underinsured motor vehicle up to an amount not less than limits of
22 bodily injury liability insurance and property damage liability insurance purchased by the insured
23 without set off against the insured's policy or any other policy. Regardless of whether motor vehicle
24 coverage is offered and provided to an insured through a multiple vehicle insurance policy or
25 contract, or in separate single vehicle insurance policies or contracts, no insurer or insurance
26 company providing a bargained for discount for multiple motor vehicles with respect to underinsured

1 motor vehicle coverage ~~shall~~ may be treated differently from any other insurer or insurance company
2 utilizing a single insurance policy or contract for multiple covered vehicles for purposes of
3 determining the total amount of coverage available to an insured. "Underinsured motor vehicle"
4 means a motor vehicle with respect to the ownership, operation or use of which there is liability
5 insurance applicable at the time of the accident, but the limits of that insurance are either: (i) Less
6 than limits the insured carried for underinsured motorists' coverage; or (ii) has been reduced by
7 payments to others injured in the accident to limits less than limits the insured carried for
8 underinsured motorists' coverage. No sums payable as a result of underinsured motorists' coverage
9 ~~shall~~ may be reduced by payments made under the insured's policy or any other policy.

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

25 (d) Any insured intending to rely on the coverage required by subsection (b) of this section
26 shall, if any action be instituted against the owner or operator of an uninsured or underinsured motor

1 vehicle, cause a copy of the summons and a copy of the complaint to be served upon the insurance
2 company issuing the policy, in the manner prescribed by law, as though such insurance company
3 were a named party defendant; such company shall thereafter have the right to file pleadings and to
4 take other action allowable by law in the name of the owner, or operator, or both, of the uninsured
5 or underinsured motor vehicle or in its own name.

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

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

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

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

22 (iii) (3) Upon trial establish that the motor vehicle, which caused the bodily injury or property
23 damage, whose operator is unknown, was a "hit and run" motor vehicle, meaning a motor vehicle
24 which causes damage to the property of the insured arising out of physical contact of such motor
25 vehicle therewith, or which causes bodily injury to the insured arising out of physical contact of such
26 motor vehicle with the insured or with a motor vehicle which the insured was occupying at the time

1 of the accident. If the owner or operator of any motor vehicle causing bodily injury or property
2 damage be unknown, an action may be instituted against the unknown defendant as "John Doe", in
3 the county in which the accident took place or in any other county in which such action would be
4 proper under the provisions of article one, chapter fifty-six of this code; service of process may be
5 made by delivery of a copy of the complaint and summons or other pleadings to the clerk of the court
6 in which the action is brought, and service upon the insurance company issuing the policy shall be
7 made as prescribed by law as though such insurance company were a party defendant. The insurance
8 company ~~shall have~~ has the right to file pleadings and take other action allowable by law in the name
9 of John Doe.

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

24 (g) No such endorsement or provisions ~~shall~~ may contain any provision requiring arbitration
25 of any claim arising under any such endorsement or provision, nor may anything be required of the
26 insured except the establishment of legal liability, nor ~~shall~~ may the insured be restricted or

1 prevented in any manner from employing legal counsel or instituting legal proceedings.

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

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

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

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

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

23 (m) For insurance policies in effect on December 31, 2015, including motor vehicle insurance
24 policies and liability policies that are of an excess or umbrella type that cover automobile liability,
25 insurers are not required to make a new offer of uninsured and underinsured motor vehicle coverage
26 upon the renewal if the liability coverage is increased solely to meet the requirements of the

1 increased minimum required financial responsibility limits set forth in subdivision (b), section two,
2 article four, chapter seventeen-d of this code. Those insurers that have issued policies that carry
3 limits of coverage below the minimum required financial responsibility limits in effect on December
4 31, 2015 shall increase such limits to an amount equal to or above the new minimum required
5 financial responsibility limits when the policy is renewed but not later than December 31, 2016.

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

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

16 (b) Any insurer who issues a motor vehicle insurance policy in this state shall provide the
17 form to each person who applies for the issuance of such policy by delivering the form to the
18 applicant or by mailing the form to the applicant together with the applicant's initial premium notice.
19 The applicant shall complete, date and sign the form and return the form to the insurer within thirty
20 days after receipt thereof. No insurer or agent thereof is liable for payment of any damages applicable
21 under any optional uninsured or underinsured coverage authorized by section thirty-one of this article
22 for any incident which occurs from the date the form was mailed or delivered to the applicant until
23 the insurer receives the form and accepts payment of the appropriate premium for the coverage
24 requested therein from the applicant: *Provided*, That if prior to the insurer's receipt of the executed
25 form the insurer issues a policy to the applicant which provides for such optional uninsured or
26 underinsured coverage, the insurer ~~shall be~~ is liable for payment of claims against such optional

1 coverage up to the limits provided therefor in such policy. The contents of a form described in this
2 section which has been signed by an applicant ~~shall~~ creates a presumption that such applicant and
3 all named insureds received an effective offer of the optional coverages described in this section and
4 that such applicant exercised a knowing and intelligent election or rejection, as the case may be, of
5 such offer as specified in the form. Such election or rejection ~~shall be~~ is binding on all persons
6 insured under the policy.

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

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

26 (e) The insurer shall make such forms available to any named insured who requests different

1 coverage limits on or after the effective date of this section. No insurer is required to make such form
2 available or notify any person of the availability of such optional coverages authorized by this section
3 except as required by this section.

4 (f) Notwithstanding any of the provisions of article six of this chapter to the contrary,
5 including section thirty-one-f, for insurance policies in effect on December 31, 2015, insurers are
6 not required to offer or obtain new uninsured or underinsured motorist coverage offer forms as
7 described in this section on any insurance policy to comply with the amount of the minimum
8 required financial responsibility limits set forth in subsection (b), section two, article four, chapter
9 seventeen-d of this code. All such offer forms that were executed prior to January 1, 2016, shall
10 remain in full force and effect.

11 **§33-6-31h. Excluded drivers; definitions; legislative findings; restrictive endorsements .**

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

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

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

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

20 (b) The Legislature finds that:

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

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

26 (3) The decision of the Supreme Court of Appeals of West Virginia in *Jones v. Motorists*

1 Mutual Insurance Company, 177 W. Va. 763 (1987) interpreted chapter seventeen-d of this code to
2 require insurers to provide minimum financial responsibility limits of coverage to excluded drivers;
3 and

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

6 (c) When any person is specifically excluded from coverage under the provisions of a motor
7 vehicle liability policy by any restrictive endorsement to the policy, the insurer is not required to
8 provide any coverage, including both the duty to indemnify and the duty to defend, for damages
9 arising out of the operation, maintenance or use of any motor vehicle by the excluded driver,
10 notwithstanding the provisions of chapter seventeen-d of this code.”