

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

House Bill 3484

By Delegate Flanigan

[Introduced March 18, 2025; referred to the
Committee on Finance]

1 A BILL to amend and reenact §17D-4-2 and §33-6-31 of the Code of West Virginia, 1931, as
2 amended, relating to motor vehicle insurance policies; requiring minimum mandatory
3 underinsured motor vehicle insurance coverage with the same minimum policy limits as
4 required of minimum mandatory uninsured motor vehicle insurance coverage.

Be it enacted by the Legislature of West Virginia:

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

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

18 proof of financial responsibility required by this chapter until the policy expires or is renewed.

19 (c) Beginning January 1, 2026, "proof of financial responsibility", in addition to the meaning
20 provided in subsection (b) of this section, also means and includes proof of underinsurance
21 coverage necessary pay all sums which the insured is legally entitled to recover as damages from
22 the owner or operator of an underinsured vehicle that provides insufficient insurance coverage to
23 respond in damages for liability, on account of accident occurring subsequent to the effective date
24 of the proof, arising out of the ownership, operation, maintenance, or use of a motor vehicle, trailer
25 or semitrailer in the amount of \$25,000 because of bodily injury to or death of one person in any
26 one accident, and, subject to the limit for one person, in the amount of \$50,000 because of bodily
27 injury to or death of two or more persons in any one accident, and in the amount of \$25,000
28 because of injury to or destruction of property of others in any one accident: *Provided*, That proof
29 of financial responsibility provided by an insurance policy in effect on December 31, 2025 in the
30 minimum amounts required in subdivision (b) of this section shall continue to provide adequate
31 proof of financial responsibility required by this chapter until the policy expires or is renewed.

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, or of property damage liability
2 insurance, covering liability arising from the ownership, maintenance or use of any motor vehicle,
3 may be issued or delivered in this state to the owner of such vehicle, or may be issued or delivered
4 by any insurer licensed in this state upon any motor vehicle for which a certificate of title has been
5 issued by the Division of Motor Vehicles of this state, unless it contains a provision insuring the
6 named insured and any other person, except a bailee for hire and any persons specifically

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

23 (b) Nor may any such policy or contract be so issued or delivered unless it contains an
24 endorsement or provisions undertaking to pay the insured all sums which he or she is legally
25 entitled to recover as damages from the owner or operator of an uninsured or underinsured motor
26 vehicle, within limits which shall be no less than the requirements of §17D-4-2 of this code, as
27 amended from time to time: *Provided*, That such policy or contract shall provide an option to the
28 insured with appropriately adjusted premiums to pay the insured all sums which he or she shall be
29 legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle up
30 to an amount of \$100,000 because of bodily injury to or death of one person in any one accident
31 and, subject to said limit for one person, in the amount of \$300,000 because of bodily injury to or
32 death of two or more persons in any one accident and in the amount of \$50,000 because of injury

33 to or destruction of property of others in any one accident: *Provided, however,* That such
34 endorsement or provisions may exclude the first \$300 of property damage resulting from the
35 negligence of an uninsured motorist: *Provided further,* That such policy or contract shall provide an
36 option to the insured with appropriately adjusted premiums to pay the insured all sums which he or
37 she is legally entitled to recover as damages from the owner or operator of an uninsured or
38 underinsured motor vehicle up to an amount not less than limits of bodily injury liability insurance
39 and property damage liability insurance purchased by the insured without set off against the
40 insured's policy or any other policy. Regardless of whether motor vehicle coverage is offered and
41 provided to an insured through a multiple vehicle insurance policy or contract, or in separate single
42 vehicle insurance policies or contracts, no insurer or insurance company providing a bargained for
43 discount for multiple motor vehicles with respect to underinsured motor vehicle coverage may be
44 treated differently from any other insurer or insurance company utilizing a single insurance policy
45 or contract for multiple covered vehicles for purposes of determining the total amount of coverage
46 available to an insured. "Underinsured motor vehicle" means a motor vehicle with respect to the
47 ownership, operation or use of which there is liability insurance applicable at the time of the
48 accident, but the limits of that insurance are either: (i) Less than limits the insured carried for
49 underinsured motorists' coverage; or (ii) has been reduced by payments to others injured in the
50 accident to limits less than limits the insured carried for underinsured motorists' coverage. No
51 sums payable as a result of underinsured motorists' coverage may be reduced by payments made
52 under the insured's policy or any other policy.

53 (c) As used in this section, the term "bodily injury" includes death resulting therefrom and
54 the term "named insured" means the person named as such in the declarations of the policy or
55 contract and also includes such person's spouse if a resident of the same household and the term
56 "insured" means the named insured and, while resident of the same household, the spouse of any
57 such named insured and relatives of either, while in a motor vehicle or otherwise, and any person,
58 except a bailee for hire, who uses, with the consent, expressed or implied, of the named insured,

the motor vehicle to which the policy applies or the personal representative of any of the above; and the term "uninsured motor vehicle" means a motor vehicle as to which there is no: (i) Bodily injury liability insurance and property damage liability insurance both in the amounts specified by §17D-4-2 of this code, as amended from time to time; (ii) there is such insurance, but the insurance company writing the same denies coverage thereunder; or (iii) there is no certificate of self-insurance issued in accordance with the provisions of said section. A motor vehicle shall be deemed to be uninsured if the owner or operator thereof be unknown: *Provided*, That recovery under the endorsement or provisions is subject to the conditions hereinafter set forth.

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

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

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

(1) Within 24 hours after the insured discover, and being physically able to report the occurrence of such accident, the insured, or someone in his or her behalf, reports the accident to a police, peace or to a judicial officer, unless the accident has already been investigated by a police officer;

(2) Notify the insurance company, within 60 days after such accident, that the insured or his

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

90 (3) Upon trial establish that the motor vehicle, which caused the bodily injury or property
91 damage, whose operator is unknown, was a "hit and run" motor vehicle, meaning a motor vehicle
92 which causes damage to the property of the insured arising out of physical contact of such motor
93 vehicle therewith, or which causes bodily injury to the insured arising out of physical contact of
94 such motor vehicle with the insured or with a motor vehicle which the insured was occupying at the
95 time of the accident. If the owner or operator of any motor vehicle causing bodily injury or property
96 damage be unknown, an action may be instituted against the unknown defendant as "John Doe",
97 in the county in which the accident took place or in any other county in which such action would be
98 proper under the provisions of §56-1-1 *et seq.* of this code; service of process may be made by
99 delivery of a copy of the complaint and summons or other pleadings to the clerk of the court in
100 which the action is brought, and service upon the insurance company issuing the policy shall be
101 made as prescribed by law as though such insurance company were a party defendant. The
102 insurance company has the right to file pleadings and take other action allowable by law in the
103 name of John Doe.

104 (f) An insurer paying a claim under the endorsement or provisions required by subsection
105 (b) of this section is subrogated to the rights of the insured to whom such claim was paid against
106 the person causing such injury, death or damage to the extent that payment was made. The
107 bringing of an action against the unknown owner or operator as John Doe or the conclusion of
108 such an action does not constitute a bar to the insured, if the identity of the owner or operator who
109 caused the injury or damages complained of, becomes known, from bringing an action against the
110 owner or operator theretofore proceeded against as John Doe. Any recovery against such owner

111 or operator shall be paid to the insurance company to the extent that such insurance company has
112 paid the insured in the action brought against such owner or operator as John Doe, except that
113 such insurance company shall pay its proportionate part of any reasonable costs and expenses
114 incurred in connection therewith, including reasonable attorney's fees. Nothing in an endorsement
115 or provision made under this subsection, nor any other provision of law, operates to prevent the
116 joining, in an action against John Doe, of the owner or operator of the motor vehicle causing injury
117 as a party defendant, and such joinder is hereby specifically authorized.

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

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

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

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

135 (k) Nothing contained herein prevents any insurer from also offering benefits and limits
136 other than those prescribed herein, nor does this section prevent any insurer from incorporating in

such terms, conditions and exclusions as may be consistent with the premium charged.

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

(m) For insurance policies in effect on December 31, 2015, including motor vehicle insurance policies and liability policies that are of an excess or umbrella type that cover automobile liability, insurers are not required to make a new offer of uninsured and underinsured motor vehicle coverage upon the renewal if the liability coverage is increased solely to meet the requirements of the increased minimum required financial responsibility limits set forth in §17D-4-2(b) and 17D-4-2(c) of this code. Those insurers that have issued policies that carry limits of coverage below the minimum required financial responsibility limits in effect on December 31, 2015 shall increase such limits to an amount equal to or above the new minimum required financial responsibility limits when the policy is renewed but not later than December 31, 2016.

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NOTE: The purpose of this bill is to require minimum mandatory underinsured motor vehicle insurance coverage with the same minimum policy limits as required of minimum mandatory uninsured motor vehicle insurance coverage.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.