

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 443**

4 (By Senators Tucker, Miller, Snyder, Walters and Kessler (Mr.
5 President))

6 _____
7 [Originating in the Committee on Banking and Insurance;
8 reported March 19, 2013.]
9 _____

10
11 A BILL to amend and reenact §17A-6-10b of the Code of West
12 Virginia, 1931, as amended; to amend and reenact §17A-6C-2 of
13 said code; to amend and reenact §17C-22-2 of said code; to
14 amend and reenact §17D-4-2, §17D-4-7 and §17D-4-12 of said
15 code; and to amend and reenact §33-6-31 and §33-6-31d of said
16 code, all relating to the minimum proof of financial
17 responsibility in motor vehicle insurance coverage; increasing
18 minimum proof of financial responsibility amounts; changing
19 sections that refer to the specific prior financial
20 responsibility amounts to now refer to the amounts specified
21 in §17D-4-2; and minimizing the administrative burden by not
22 requiring new insurance offers and new forms for making offers
23 of uninsured and underinsured coverage.

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

25 That §17A-6-10b of the Code of West Virginia, 1931, as
26 amended, be amended and reenacted; that §17A-6C-2 of said code be
27 amended and reenacted; that §17C-22-2 of said code be amended and
28 reenacted; that §17D-4-2, §17D-4-7 and §17D-4-12 of said code be

1 amended and reenacted; and that §33-6-31 and §33-6-31d of said code
2 be amended and reenacted, all to read as follows:

3 **CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION, REGISTRATION,**
4 **CERTIFICATE OF TITLE, AND ANTITHEFT PROVISIONS.**

5 **ARTICLE 6. LICENSING OF DEALERS AND WRECKERS OR DISMANTLERS;**
6 **SPECIAL PLATES; TEMPORARY PLATES OR MARKERS.**

7 **§17A-6-10b. Special plates for financial institutions; fee.**

8 (1) Notwithstanding any of the other provisions of this
9 article, a financial institution may operate or move a vehicle upon
10 the highways and streets of this state solely for the purposes of
11 transporting such vehicle, in conjunction with a repossession or
12 sale of said vehicle conducted in the ordinary course of such
13 institution's business in financing the purchase of the vehicle or
14 where the vehicle otherwise serves as collateral or security in a
15 loan transaction, without first registering each such vehicle upon
16 the condition that any such vehicle display thereon, in a manner
17 prescribed by the commissioner, a special plate or plates issued to
18 such financial institution as provided in this section.

19 (2) Any financial institution may make application to the
20 commissioner upon a form prescribed by him or her for a certificate
21 containing a general distinguishing number and for a special plate
22 or plates. The applicant shall submit proof of its status as a
23 bona fide financial institution requiring such special plates as
24 required by the commissioner. The commissioner shall determine
25 that the applicant is a bona fide financial institution eligible to
26 receive a special plate or plates under the provisions of this
27 section and that said institution does, as a regular incident to
28 its business, repossess and sell vehicles and have need to

1 transport said vehicles in conjunction with the repossession or
2 sale.

3 (3) The commissioner, upon approving any such application,
4 shall issue to the applicant a certificate containing the
5 applicant's name and address and the general distinguishing number
6 assigned to the applicant. The commissioner shall also issue a
7 special plate, or special plates, as applied for, which shall have
8 displayed thereon the general distinguishing number assigned to the
9 applicant. Each plate shall also contain a number or symbol
10 identifying the same from every other plate or plates bearing the
11 same general distinguishing number.

12 (4) The annual fee for a license certificate for a financial
13 institution and one special plate shall be \$100. Additional
14 special plates, not to exceed four, shall be available upon
15 appropriate application to the commissioner at a fee of \$25 each.

16 (5) Every financial institution shall keep a written record of
17 the vehicle upon which such special plates are used, the time
18 during which each is used upon a particular vehicle and the
19 location of the place of repossession, storage and subsequent
20 delivery, if any, of each vehicle, which record shall be open to
21 inspection by any police officer or employee of the department.

22 (6) The provisions of this section shall not apply to any
23 work, company or service vehicles of the financial institution.

24 (7) The financial institution shall be required to furnish a
25 certificate of insurance ~~in the amount of \$25,000 because of bodily~~
26 ~~injury to or death of any one person in any one accident, \$40,000~~
27 ~~because of bodily injury or death to two or more persons in any one~~
28 ~~accident and \$10,000 because of injury to or destruction of~~

1 ~~property of others in any one accident~~ with amounts not less than
2 the requirements of section two, article four, chapter seventeen-d
3 of this code.

4 (8) For purposes of this section, "financial institution"
5 shall mean any state bank, state savings and loan association,
6 state building and loan association, national bank, federally
7 chartered savings and loan, savings bank, industrial bank,
8 industrial loan company or similar institution.

9 **ARTICLE 6C. AUTOMOBILE AUCTION BUSINESSES.**

10 **§17A-6C-2. Bonds and insurance.**

11 (a) An application for a license certificate must be
12 accompanied by a bond, issued by a surety corporation authorized to
13 issue bonds in this state, in the penal sum of \$25,000, to ensure
14 that the licensee will not make fraudulent representations to the
15 detriment of any purchaser, seller, financial institution or the
16 State of West Virginia. The bond shall be effective on the date
17 the license certificate is issued. A licensee shall keep the bond
18 in full force and effect at all times. The aggregate liability of
19 the surety in no event shall exceed the principal sum of the bond.
20 The surety of the bond shall have the right to cancel upon giving
21 thirty days' notice to the commissioner and shall be relieved of
22 liability for any breach of condition occurring after the effective
23 date of the cancellation.

24 (b) An application for a license certificate must also be
25 accompanied by a certificate of insurance certifying that the
26 applicant has in force an insurance policy, issued by an insurance
27 company authorized to do business in this state, insuring the
28 applicant and any other person using any vehicle or vehicles owned

1 by, or in the possession of, the applicant with the expressed or
2 implied permission of the applicant, against loss from the
3 liability imposed by law for damages arising out of the ownership,
4 possession, operation, maintenance or use of such vehicles, subject
5 to minimum limits, exclusive of interest and costs, with respect to
6 each vehicle, ~~as follows: \$20,000 because of bodily injury to or~~
7 ~~death of one person in any one accident and, subject to said limit~~
8 ~~for one person, \$40,000 because of bodily injury to or death of two~~
9 ~~or more persons in any one accident and \$10,000 because of injury~~
10 ~~to or destruction of property of others in any one accident in~~
11 ~~amounts not less than the requirements of section two, article~~
12 ~~four, chapter seventeen-d of this code.~~

13 (c) The liability insurance policy shall run concurrently with
14 the license year and shall remain in full force and effect at all
15 times.

16 (d) All persons conducting business at or through an
17 automobile auction business in this state must obey all Division of
18 Motor Vehicles laws and rules.

19 (e) Automobile auction businesses shall report any violations
20 of law or any scheme designed to deceive or defraud the automobile
21 buying public and assist in prosecuting those involved in such
22 acts.

23 **CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.**

24 **ARTICLE 22. RIDESHARING.**

25 **§17C-22-2. Common carrier laws do not apply to ridesharing;**
26 **requiring liability insurance.**

27 The following laws and regulations of this state shall not

1 apply to any ridesharing arrangement using a motor vehicle with a
2 seating capacity for not more than fifteen persons, including the
3 driver:

4 (a) Chapter twenty-four-a of this code pertaining to the
5 regulation of common carriers of any kind or description by the
6 Public Service Commission;

7 (b) Laws and regulations containing insurance requirements
8 that are specifically applicable to common carriers or commercial
9 vehicles: *Provided*, That with respect to any private or
10 individually owned motor vehicle designed for a normal passenger
11 capacity, including the driver thereof, of no more than six
12 persons, prior to, and continuing during the term of such use, the
13 use of any such motor vehicle for any ridesharing arrangement under
14 the provisions of this article, such motor vehicle shall be insured
15 for liability arising out of the ownership, operation, maintenance
16 or use thereof in ~~the amount of \$20,000 because of bodily injury to~~
17 ~~or death of one person in any one accident, and, subject to said~~
18 ~~limit for one person, in the amount of \$40,000 because of bodily~~
19 ~~injury to or death of two or more persons in any one accident, and~~
20 ~~in the amount of \$10,000 because of injury to or destruction of~~
21 ~~property of others in any one accident~~ amounts not less than the
22 requirements of section two, article four, chapter seventeen-d of
23 this code, and in the case of any other motor vehicle to be used
24 for any ridesharing arrangement under the provisions of this
25 article, all such motor vehicles prior to such use, and continuing
26 during the term of such use, shall be insured for liability arising
27 out of the ownership, operation, maintenance or use thereof in the

1 amount of \$100,000 because of bodily injury to or death of one
2 person in any one accident, and, subject to said limit for one
3 person, in the amount of \$300,000 because of bodily injury to or
4 death of two or more persons in any one accident, and in the amount
5 of \$25,000 because of injury to or destruction of property of
6 others in any one accident and insured for medical pay coverage of
7 not less than \$10,000;

8 (c) Laws imposing a greater standard of care on common
9 carriers or commercial vehicles than that imposed on other drivers
10 or owners of motor vehicles;

11 (d) Laws and regulations with equipment requirements and
12 special accident reporting requirements that are specifically
13 applicable to common carriers or commercial vehicles; and

14 (e) Laws imposing a tax on fuel purchased in another state by
15 a common carrier or road use taxes on commercial buses.

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

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

18 **§17D-4-2. "Proof of financial responsibility" defined.**

19 The term "proof of financial responsibility" as used in this
20 chapter ~~shall mean~~ means: Proof of ability to respond in damages
21 for liability, on account of accident occurring subsequent to the
22 effective date of ~~said~~ the proof, arising out of the ownership,
23 operation, maintenance or use of a motor vehicle, trailer or
24 semitrailer in the amount of ~~\$20,000~~ \$25,000 because of bodily
25 injury to or death of one person in any one accident, and, subject
26 to ~~said~~ the limit for one person, in the amount of ~~\$40,000~~ \$50,000
27 because of bodily injury to or death of two or more persons in any
28 one accident, and in the amount of ~~\$10,000~~ \$25,000 because of

1 injury to or destruction of property of others in any one accident.
2 The proof of financial responsibility amounts established in this
3 section by the acts of the Legislature during its 2013 regular
4 session, shall apply to any insurance policy issued or renewed on
5 or after January 1, 2014.

6 **§17D-4-7. Payments sufficient to satisfy requirements.**

7 (a) Judgments herein referred to shall, for the purpose of
8 this chapter only, be deemed satisfied:

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

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

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

21 (b) *Provided, however,* that payments made in settlement of any
22 claims because of bodily injury, death or property damage arising
23 from such accident shall be credited in reduction of the amounts
24 provided for in this section.

25 (c) The dollar amounts set forth in subsection (a) of this
26 section shall reflect the minimum limits of financial
27 responsibility in section two of this article as they may be
28 amended from time to time.

1 **§17D-4-12. "Motor vehicle liability policy" defined; scope and**
2 **provisions of policy.**

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

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

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

15 (2) Shall insure the person named therein and any other
16 person, as insured, using any such vehicle or vehicles with the
17 express or implied permission of such named insured, against loss
18 from the liability imposed by law for damages arising out of the
19 ownership, operation, maintenance or use of such vehicle or
20 vehicles within the United States of America or the Dominion of
21 Canada, subject to limits exclusive of interest and costs, with
22 respect to each such vehicle, ~~as follows: Twenty thousand dollars~~
23 ~~because of bodily injury to or death of one person in any one~~
24 ~~accident and, subject to said limit for one person, \$40,000 because~~
25 ~~of bodily injury to or death of two or more persons in any one~~
26 ~~accident, and \$10,000 because of injury to or destruction of~~
27 ~~property of others in any one accident~~ in such amounts as are
28 required by section two of this article.

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

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

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

23 (f) Every motor vehicle liability policy shall be subject to
24 the following provisions which need not be contained therein:

25 (1) The liability of the insurance carrier with respect to the
26 insurance required by this chapter shall become absolute whenever
27 injury or damage covered by said motor vehicle liability policy
28 occurs; said policy may not be canceled or annulled as to such

1 liability by an agreement between the insurance carrier and the
2 insured after the occurrence of the injury or damage; no statement
3 made by the insured or on his or her behalf and no violation of
4 said policy shall defeat or void said policy.

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

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

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

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

26 (h) Any motor vehicle liability policy may provide that the
27 insured shall reimburse the insurance carrier for any payment the
28 insurance carrier would not have been obligated to make under the

1 terms of the policy except for the provisions of this chapter.

2 (i) Any motor vehicle liability policy may provide for the
3 prorating of the insurance thereunder with other valid and
4 collectible insurance.

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

8 (k) Any binder issued pending the issuance of a motor vehicle
9 policy shall be deemed to fulfill the requirements for such a
10 policy.

11 **CHAPTER 33. INSURANCE.**

12 **ARTICLE 6. THE INSURANCE POLICY.**

13 **§33-6-31. Motor vehicle policy; omnibus clause; uninsured and**
14 **underinsured motorists' coverage; conditions for**
15 **recovery under endorsement; rights and liabilities of**
16 **insurer.**

17 (a) No policy or contract of bodily injury liability
18 insurance, or of property damage liability insurance, covering
19 liability arising from the ownership, maintenance or use of any
20 motor vehicle, shall be issued or delivered in this state to the
21 owner of such vehicle, or shall be issued or delivered by any
22 insurer licensed in this state upon any motor vehicle for which a
23 certificate of title has been issued by the Division of Motor
24 Vehicles of this state, unless it shall contain a provision
25 insuring the named insured and any other person, except a bailee
26 for hire and any persons specifically excluded by any restrictive
27 endorsement attached to the policy, responsible for the use of or
28 using the motor vehicle with the consent, expressed or implied, of

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

22 (b) Nor shall any such policy or contract be so issued or
23 delivered unless it shall contain an endorsement or provisions
24 undertaking to pay the insured all sums which he or she shall be
25 legally entitled to recover as damages from the owner or operator
26 of an uninsured motor vehicle, within limits which shall be no less
27 than the requirements of section two, article four, chapter
28 seventeen-d of this code, as amended from time to time: *Provided*,

1 That such policy or contract shall provide an option to the insured
2 with appropriately adjusted premiums to pay the insured all sums
3 which he or she shall be legally entitled to recover as damages
4 from the owner or operator of an uninsured motor vehicle up to an
5 amount of \$100,000 because of bodily injury to or death of one
6 person in any one accident and, subject to said limit for one
7 person, in the amount of \$300,000 because of bodily injury to or
8 death of two or more persons in any one accident and in the amount
9 of \$50,000 because of injury to or destruction of property of
10 others in any one accident: *Provided, however,* That such
11 endorsement or provisions may exclude the first \$300 of property
12 damage resulting from the negligence of an uninsured motorist:
13 *Provided further,* That such policy or contract shall provide an
14 option to the insured with appropriately adjusted premiums to pay
15 the insured all sums which he or she shall legally be entitled to
16 recover as damages from the owner or operator of an uninsured or
17 underinsured motor vehicle up to an amount not less than limits of
18 bodily injury liability insurance and property damage liability
19 insurance purchased by the insured without setoff against the
20 insured's policy or any other policy. Regardless of whether motor
21 vehicle coverage is offered and provided to an insured through a
22 multiple vehicle insurance policy or contract, or in separate
23 single vehicle insurance policies or contracts, no insurer or
24 insurance company providing a bargained for discount for multiple
25 motor vehicles with respect to underinsured motor vehicle coverage
26 shall be treated differently from any other insurer or insurance
27 company utilizing a single insurance policy or contract for
28 multiple covered vehicles for purposes of determining the total

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

11 (c) As used in this section, the term "bodily injury" shall
12 include death resulting therefrom and the term "named insured"
13 shall mean the person named as such in the declarations of the
14 policy or contract and shall also include such person's spouse if
15 a resident of the same household and the term "insured" shall mean
16 the named insured and, while resident of the same household, the
17 spouse of any such named insured and relatives of either, while in
18 a motor vehicle or otherwise, and any person, except a bailee for
19 hire, who uses, with the consent, expressed or implied, of the
20 named insured, the motor vehicle to which the policy applies or the
21 personal representative of any of the above; and the term
22 "uninsured motor vehicle" shall mean a motor vehicle as to which
23 there is no: (i) Bodily injury liability insurance and property
24 damage liability insurance both in the amounts specified by section
25 two, article four, chapter seventeen-d of this code, as amended
26 from time to time; or (ii) there is such insurance, but the
27 insurance company writing the same denies coverage thereunder; or
28 (iii) there is no certificate of self-insurance issued in

1 accordance with the provisions of said section. A motor vehicle
2 shall be deemed to be uninsured if the owner or operator thereof be
3 unknown: *Provided*, That recovery under the endorsement or
4 provisions shall be subject to the conditions hereinafter set
5 forth.

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

16 Nothing in this subsection shall prevent such owner or
17 operator from employing counsel of his or her own choice and taking
18 any action in his or her own interest in connection with such
19 proceeding.

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

25 (i) Within twenty-four hours after the insured discover, and
26 being physically able to report the occurrence of such accident,
27 the insured, or someone in his or her behalf, shall report the
28 accident to a police, peace or to a judicial officer, unless the

1 accident shall already have been investigated by a police officer;

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

11 (iii) Upon trial establish that the motor vehicle, which
12 caused the bodily injury or property damage, whose operator is
13 unknown, was a "hit and run" motor vehicle, meaning a motor vehicle
14 which causes damage to the property of the insured arising out of
15 physical contact of such motor vehicle therewith, or which causes
16 bodily injury to the insured arising out of physical contact of
17 such motor vehicle with the insured or with a motor vehicle which
18 the insured was occupying at the time of the accident. If the
19 owner or operator of any motor vehicle causing bodily injury or
20 property damage be unknown, an action may be instituted against the
21 unknown defendant as "John Doe", in the county in which the
22 accident took place or in any other county in which such action
23 would be proper under the provisions of article one, chapter
24 fifty-six of this code; service of process may be made by delivery
25 of a copy of the complaint and summons or other pleadings to the
26 clerk of the court in which the action is brought, and service upon
27 the insurance company issuing the policy shall be made as
28 prescribed by law as though such insurance company were a party

1 defendant. The insurance company shall have the right to file
2 pleadings and take other action allowable by law in the name of
3 John Doe.

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

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

1 insured be restricted or prevented in any manner from employing
2 legal counsel or instituting legal proceedings.

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

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

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

22 (k) Nothing contained herein shall prevent any insurer from
23 also offering benefits and limits other than those prescribed
24 herein, nor shall this section be construed as preventing any
25 insurer from incorporating in such terms, conditions and exclusions
26 as may be consistent with the premium charged.

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

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

5 (m) For insurance policies in effect on December 31, 2013,
6 including motor vehicle insurance policies and liability policies
7 that are of an excess or umbrella type that cover automobile
8 liability, insurers are not required to make a new offer of
9 coverage on such insurance policy in response to amendments made to
10 the minimum required financial responsibility limits set forth in
11 section two, article four, chapter seventeen-d of this code. Those
12 insurers with policies that carry limits of coverage below the
13 minimum required financial responsibility limits shall increase
14 such limits to an amount equal to or above the new minimum required
15 financial responsibility limits when the policy is renewed but not
16 later than December 31, 2014.

17 **§33-6-31d. Form for making offer of optional uninsured and**
18 **underinsured coverage.**

19 (a) Optional limits of uninsured motor vehicle coverage and
20 underinsured motor vehicle coverage required by section thirty-one
21 of this article shall be made available to the named insured at the
22 time of initial application for liability coverage and upon any
23 request of the named insured on a form prepared and made available
24 by the Insurance Commissioner. The contents of the form shall be
25 as prescribed by the commissioner and shall specifically inform the
26 named insured of the coverage offered and the rate calculation
27 therefor, including, but not limited to, all levels and amounts of
28 such coverage available and the number of vehicles which will be

1 subject to the coverage. The form shall be made available for use
2 on or before the effective date of this section. The form shall
3 allow any named insured to waive any or all of the coverage
4 offered.

5 (b) Any insurer who issues a motor vehicle insurance policy in
6 this state shall provide the form to each person who applies for
7 the issuance of such policy by delivering the form to the applicant
8 or by mailing the form to the applicant together with the
9 applicant's initial premium notice. The applicant shall complete,
10 date and sign the form and return the form to the insurer within
11 thirty days after receipt thereof. No insurer or agent thereof is
12 liable for payment of any damages applicable under any optional
13 uninsured or underinsured coverage authorized by section thirty-one
14 of this article for any incident which occurs from the date the
15 form was mailed or delivered to the applicant until the insurer
16 receives the form and accepts payment of the appropriate premium
17 for the coverage requested therein from the applicant: *Provided,*
18 That if prior to the insurer's receipt of the executed form the
19 insurer issues a policy to the applicant which provides for such
20 optional uninsured or underinsured coverage, the insurer shall be
21 liable for payment of claims against such optional coverage up to
22 the limits provided therefor in such policy. The contents of a
23 form described in this section which has been signed by an
24 applicant shall create a presumption that such applicant and all
25 named insureds received an effective offer of the optional
26 coverages described in this section and that such applicant
27 exercised a knowing and intelligent election or rejection, as the
28 case may be, of such offer as specified in the form. Such election

1 or rejection shall be binding on all persons insured under the
2 policy.

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

24 (d) Failure of the applicant or a named insured to return the
25 form described in this section to the insurer as required by this
26 section within the time periods specified in this section creates
27 a presumption that such person received an effective offer of the
28 optional coverages described in this section and that such person

1 exercised a knowing and intelligent rejection of such offer. Such
2 rejection is binding on all persons insured under the policy.

3 (e) The insurer shall make such forms available to any named
4 insured who requests different coverage limits on or after the
5 effective date of this section. No insurer is required to make
6 such form available or notify any person of the availability of
7 such optional coverages authorized by this section except as
8 required by this section.

9 (f) Notwithstanding any of the provisions of article six of
10 this chapter to the contrary, including section thirty-one-f, for
11 insurance policies in effect on December 31, 2013, insurers are not
12 required to offer or obtain new uninsured or underinsured motorist
13 coverage offer forms as described in this section on any insurance
14 policy to comply with statutory changes made to the amount of the
15 minimum required financial responsibility limits set forth in
16 section two, article four, chapter seventeen-d of this code. All
17 such offer forms that were executed prior to January 1, 2014, shall
18 remain in full force and effect.

NOTE: The purpose of this bill is to increase the minimum proof of financial responsibility in motor vehicle insurance coverage while minimizing administrative burdens on insurers.

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