

Senate Bill No. 47

(By Senator Tucker)

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[Introduced January 8, 2014; referred to the Committee on Banking
and Insurance; and then to the Committee on the Judiciary.]

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

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

2 That §17A-6-10b of the Code of West Virginia, 1931, as
3 amended, be amended and reenacted; that §17A-6C-2 of said code be
4 amended and reenacted; that §17C-22-2 of said code be amended and
5 reenacted; that §17D-4-2, §17D-4-7 and §17D-4-12 of said code be
6 amended and reenacted; and that §33-6-31 and §33-6-31d of said code
7 be amended and reenacted, all to read as follows:

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

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

12 **§17A-6-10b. Special plates for financial institutions; fee.**

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

1 such financial institution as provided in this section.

2 (2) Any financial institution may make application to the
3 commissioner upon a form prescribed by him or her for a certificate
4 containing a general distinguishing number and for a special plate
5 or plates. The applicant shall submit proof of its status as a
6 bona fide financial institution requiring such special plates as
7 required by the commissioner. The commissioner shall determine
8 that the applicant is a bona fide financial institution eligible to
9 receive a special plate or plates under the provisions of this
10 section and that said institution does, as a regular incident to
11 its business, repossess and sell vehicles and have need to
12 transport said vehicles in conjunction with the repossession or
13 sale.

14 (3) The commissioner, upon approving any such application,
15 shall issue to the applicant a certificate containing the
16 applicant's name and address and the general distinguishing number
17 assigned to the applicant. The commissioner shall also issue a
18 special plate, or special plates, as applied for, which shall have
19 displayed thereon the general distinguishing number assigned to the
20 applicant. Each plate shall also contain a number or symbol
21 identifying the same from every other plate or plates bearing the
22 same general distinguishing number.

23 (4) The annual fee for a license certificate for a financial

1 institution and one special plate shall be \$100. Additional
2 special plates, not to exceed four, shall be available upon
3 appropriate application to the commissioner at a fee of \$25 each.

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

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

12 (7) The financial institution shall be required to furnish a
13 certificate of insurance ~~in the amount of \$25,000 because of bodily~~
14 ~~injury to or death of any one person in any one accident, \$40,000~~
15 ~~because of bodily injury or death to two or more persons in any one~~
16 ~~accident and \$10,000 because of injury to or destruction of~~
17 ~~property of others in any one accident~~ with amounts not less than
18 the requirements of section two, article four, chapter seventeen-d
19 of this code.

20 (8) For purposes of this section, "financial institution"
21 ~~shall mean~~ means any state bank, state savings and loan
22 association, state building and loan association, national bank,
23 federally chartered savings and loan, savings bank, industrial

1 bank, industrial loan company or similar institution.

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

3 **§17A-6C-2. Bonds and insurance.**

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

17 (b) An application for a license certificate must also be
18 accompanied by a certificate of insurance certifying that the
19 applicant has in force an insurance policy, issued by an insurance
20 company authorized to do business in this state, insuring the
21 applicant and any other person using any vehicle or vehicles owned
22 by, or in the possession of, the applicant with the expressed or
23 implied permission of the applicant, against loss from the

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

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

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

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

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

22 **ARTICLE 22. RIDESHARING.**

23 **§17C-22-2. Common carrier laws do not apply to ridesharing;**

1 **requiring liability insurance.**

2 The following laws and regulations of this state shall not
3 apply to any ridesharing arrangement using a motor vehicle with a
4 seating capacity for not more than fifteen persons, including the
5 driver:

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

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

1 requirements of section two, article four, chapter seventeen-d of
2 this code, and in the case of any other motor vehicle to be used
3 for any ridesharing arrangement under the provisions of this
4 article, all such motor vehicles prior to such use, and continuing
5 during the term of such use, shall be insured for liability arising
6 out of the ownership, operation, maintenance or use thereof in the
7 amount of \$100,000 because of bodily injury to or death of one
8 person in any one accident, and, subject to said limit for one
9 person, in the amount of \$300,000 because of bodily injury to or
10 death of two or more persons in any one accident, and in the amount
11 of \$25,000 because of injury to or destruction of property of
12 others in any one accident and insured for medical pay coverage of
13 not less than \$10,000;

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

17 (d) Laws and regulations with equipment requirements and
18 special accident reporting requirements that are specifically
19 applicable to common carriers or commercial vehicles; and

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

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

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

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

2 The term "proof of financial responsibility" as used in this
3 chapter ~~shall mean~~ means: Proof of ability to respond in damages
4 for liability, on account of accident occurring subsequent to the
5 effective date of ~~said~~ the proof, arising out of the ownership,
6 operation, maintenance or use of a motor vehicle, trailer or
7 semitrailer in the amount of ~~\$20,000~~ \$25,000 because of bodily
8 injury to or death of one person in any one accident, and, subject
9 to ~~said~~ the limit for one person, in the amount of ~~\$40,000~~ \$50,000
10 because of bodily injury to or death of two or more persons in any
11 one accident, and in the amount of ~~\$10,000~~ \$25,000 because of
12 injury to or destruction of property of others in any one accident.
13 The proof of financial responsibility amounts established in this
14 section by the Acts of the Legislature during its 2014 regular
15 session, shall apply to any insurance policy issued or renewed on
16 or after January 1, 2015.

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

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

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

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

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

9 (b) Provided, ~~however,~~ That payments made in settlement of any
10 claims because of bodily injury, death or property damage arising
11 from such accident shall be credited in reduction of the amounts
12 provided ~~for~~ in this section.

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

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

19 (a) A "motor vehicle liability policy" as said term is used in
20 this chapter means an "owner's policy" or an "operator's policy" of
21 liability insurance certified as provided in section ten or section
22 eleven of this article as proof of financial responsibility, and
23 issued, except as otherwise provided in section eleven, by an

1 insurance carrier duly authorized to transact business in this
2 state, to or for the benefit of the person named therein as
3 insured.

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

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

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

22 (c) Such operator's policy of liability insurance shall insure
23 the person named as insured therein against loss from the liability

1 imposed upon him or her by law for damages arising out of the use
2 by him or her of any motor vehicle not owned by him or her, within
3 the same territorial limits and subject to the same limits of
4 liability as are set forth above with respect to an owner's policy
5 of liability insurance.

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

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

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

23 (1) The liability of the insurance carrier with respect to the

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

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

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

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

21 (g) Any policy which grants the coverage required for a motor
22 vehicle liability policy may also grant any lawful coverage in
23 excess of or in addition to the coverage specified for a motor

1 vehicle liability policy and such excess or additional coverage
2 shall not be subject to the provisions of this chapter. With
3 respect to a policy which grants such excess or additional
4 coverage, the term "motor vehicle liability policy" applies only to
5 that part of the coverage which is required by this section.

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

10 (i) Any motor vehicle liability policy may provide for the
11 prorating of the insurance thereunder with other valid and
12 collectible insurance.

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

16 (k) Any binder issued pending the issuance of a motor vehicle
17 policy shall be deemed to fulfill the requirements for such a
18 policy.

19 **CHAPTER 33. INSURANCE.**

20 **ARTICLE 6. THE INSURANCE POLICY.**

21 **§33-6-31. Motor vehicle policy; omnibus clause; uninsured and**
22 **underinsured motorists' coverage; conditions for**
23 **recovery under endorsement; rights and liabilities of**

1 **insurer.**

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

1 owner of a policy receives a notice of cancellation pursuant to
2 article six-a of this chapter and the reason for the cancellation
3 is a violation of law by a person insured under the policy, said
4 owner may by restrictive endorsement specifically exclude the
5 person who violated the law and the restrictive endorsement shall
6 be effective in regard to the total liability coverage provided
7 under the policy, including coverage provided pursuant to the
8 mandatory liability requirements of section two, article four,
9 chapter seventeen-d of this code, but nothing in such restrictive
10 endorsement shall be construed to abrogate the "family purpose
11 doctrine".

12 (b) Nor shall any such policy or contract be so issued or
13 delivered unless it shall contain an endorsement or provisions
14 undertaking to pay the insured all sums which he or she shall be
15 legally entitled to recover as damages from the owner or operator
16 of an uninsured motor vehicle, within limits which shall be no less
17 than the requirements of section two, article four, chapter
18 seventeen-d of this code, as amended from time to time: *Provided,*
19 That such policy or contract shall provide an option to the insured
20 with appropriately adjusted premiums to pay the insured all sums
21 which he or she shall be legally entitled to recover as damages
22 from the owner or operator of an uninsured motor vehicle up to an
23 amount of \$100,000 because of bodily injury to or death of one

1 person in any one accident and, subject to said limit for one
2 person, in the amount of \$300,000 because of bodily injury to or
3 death of two or more persons in any one accident and in the amount
4 of \$50,000 because of injury to or destruction of property of
5 others in any one accident: *Provided, however,* That such
6 endorsement or provisions may exclude the first \$300 of property
7 damage resulting from the negligence of an uninsured motorist:
8 *Provided further,* That such policy or contract shall provide an
9 option to the insured with appropriately adjusted premiums to pay
10 the insured all sums which he or she shall legally be entitled to
11 recover as damages from the owner or operator of an uninsured or
12 underinsured motor vehicle up to an amount not less than limits of
13 bodily injury liability insurance and property damage liability
14 insurance purchased by the insured without setoff against the
15 insured's policy or any other policy. Regardless of whether motor
16 vehicle coverage is offered and provided to an insured through a
17 multiple vehicle insurance policy or contract, or in separate
18 single vehicle insurance policies or contracts, no insurer or
19 insurance company providing a bargained for discount for multiple
20 motor vehicles with respect to underinsured motor vehicle coverage
21 shall be treated differently from any other insurer or insurance
22 company utilizing a single insurance policy or contract for
23 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~~ includes death resulting therefrom and the term "named
13 insured" ~~shall mean~~ means the person named as such in the
14 declarations of the policy or contract and shall also include such
15 person's spouse if a resident of the same household and the term
16 "insured" ~~shall mean~~ means the named insured and, while resident of
17 the same household, the spouse of any such named insured and
18 relatives of either, while in a motor vehicle or otherwise, and any
19 person, except a bailee for hire, who uses, with the consent,
20 expressed or implied, of the named insured, the motor vehicle to
21 which the policy applies or the personal representative of any of
22 the above; and the term "uninsured motor vehicle" ~~shall mean~~ means
23 a motor vehicle as to which there is no: (i) Bodily injury

1 liability insurance and property damage liability insurance both in
2 the amounts specified by section two, article four, chapter
3 seventeen-d of this code, as amended from time to time; or (ii)
4 there is such insurance, but the insurance company writing the same
5 denies coverage thereunder; or (iii) there is no certificate of
6 self-insurance issued in accordance with the provisions of said
7 section. A motor vehicle shall be deemed to be uninsured if the
8 owner or operator thereof be unknown: *Provided*, That recovery
9 under the endorsement or provisions shall be subject to the
10 conditions hereinafter set forth.

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

21 Nothing in this subsection shall prevent such owner or
22 operator from employing counsel of his or her own choice and taking
23 any action in his or her own interest in connection with such

1 proceeding.

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

7 (i) Within twenty-four hours after the insured discover, and
8 being physically able to report the occurrence of such accident,
9 the insured, or someone in his or her behalf, shall report the
10 accident to a police, peace or to a judicial officer, unless the
11 accident shall already have been investigated by a police officer;

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

21 (iii) Upon trial establish that the motor vehicle, which
22 caused the bodily injury or property damage, whose operator is
23 unknown, was a "hit and run" motor vehicle, meaning a motor vehicle

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

19 (f) An insurer paying a claim under the endorsement or
20 provisions required by subsection (b) of this section shall be
21 subrogated to the rights of the insured to whom such claim was paid
22 against the person causing such injury, death or damage to the
23 extent that payment was made. The bringing of an action against

1 the unknown owner or operator as John Doe or the conclusion of such
2 an action shall not constitute a bar to the insured, if the
3 identity of the owner or operator who caused the injury or damages
4 complained of, becomes known, from bringing an action against the
5 owner or operator theretofore proceeded against as John Doe. Any
6 recovery against such owner or operator shall be paid to the
7 insurance company to the extent that such insurance company shall
8 have paid the insured in the action brought against such owner or
9 operator as John Doe, except that such insurance company shall pay
10 its proportionate part of any reasonable costs and expenses
11 incurred in connection therewith, including reasonable attorney's
12 fees. Nothing in an endorsement or provision made under this
13 subsection, nor any other provision of law, shall operate to
14 prevent the joining, in an action against John Doe, of the owner or
15 operator of the motor vehicle causing injury as a party defendant,
16 and such joinder is hereby specifically authorized.

17 (g) No such endorsement or provisions shall contain any
18 provision requiring arbitration of any claim arising under any such
19 endorsement or provision, nor may anything be required of the
20 insured except the establishment of legal liability, nor shall the
21 insured be restricted or prevented in any manner from employing
22 legal counsel or instituting legal proceedings.

23 (h) The provisions of subsections (a) and (b) of this section

1 shall not apply to any policy of insurance to the extent that it
2 covers the liability of an employer to his or her employees under
3 any workers' compensation law.

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

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

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

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

7 (m) For insurance policies in effect on December 31, 2014,
8 including motor vehicle insurance policies and liability policies
9 that are of an excess or umbrella type that cover automobile
10 liability, insurers are not required to make a new offer of
11 coverage on such insurance policy in response to amendments made to
12 the minimum required financial responsibility limits set forth in
13 section two, article four, chapter seventeen-d of this code. Those
14 insurers with policies that carry limits of coverage below the
15 minimum required financial responsibility limits shall increase
16 such limits to an amount equal to or above the new minimum required
17 financial responsibility limits when the policy is renewed but not
18 later than December 31, 2015.

19 **§33-6-31d. Form for making offer of optional uninsured and**
20 **underinsured coverage.**

21 (a) Optional limits of uninsured motor vehicle coverage and
22 underinsured motor vehicle coverage required by section thirty-one
23 of this article shall be made available to the named insured at the

1 time of initial application for liability coverage and upon any
2 request of the named insured on a form prepared and made available
3 by the Insurance Commissioner. The contents of the form shall be
4 as prescribed by the commissioner and shall specifically inform the
5 named insured of the coverage offered and the rate calculation
6 therefor, including, but not limited to, all levels and amounts of
7 such coverage available and the number of vehicles which will be
8 subject to the coverage. The form shall be made available for use
9 on or before the effective date of this section. The form shall
10 allow any named insured to waive any or all of the coverage
11 offered.

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

1 for the coverage requested therein from the applicant: *Provided,*
2 That if prior to the insurer's receipt of the executed form the
3 insurer issues a policy to the applicant which provides for such
4 optional uninsured or underinsured coverage, the insurer shall be
5 liable for payment of claims against such optional coverage up to
6 the limits provided therefor in such policy. The contents of a
7 form described in this section which has been signed by an
8 applicant shall create a presumption that such applicant and all
9 named insureds received an effective offer of the optional
10 coverages described in this section and that such applicant
11 exercised a knowing and intelligent election or rejection, as the
12 case may be, of such offer as specified in the form. Such election
13 or rejection shall be binding on all persons insured under the
14 policy.

15 (c) Any insurer who has issued a motor vehicle insurance
16 policy in this state which is in effect on the effective date of
17 this section shall mail or otherwise deliver the form to any person
18 who is designated in the policy as a named insured. A named
19 insured shall complete, date and sign the form and return the form
20 to the insurer within thirty days after receipt thereof. No
21 insurer or agent thereof is liable for payment of any damages in
22 any amount greater than any limits of such coverage, if any,
23 provided by the policy in effect on the date the form was mailed or

1 delivered to such named insured for any incident which occurs from
2 the date the form was mailed or delivered to such named insured
3 until the insurer receives the form and accepts payment of the
4 appropriate premium for the coverage requested therein from the
5 applicant. The contents of a form described in this section which
6 has been signed by any named insured shall create a presumption
7 that all named insureds under the policy received an effective
8 offer of the optional coverages described in this section and that
9 all such named insured exercised a knowing and intelligent election
10 or rejection, as the case may be, of such offer as specified in the
11 form. Such election or rejection is binding on all persons insured
12 under the policy.

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

20 (e) The insurer shall make such forms available to any named
21 insured who requests different coverage limits on or after the
22 effective date of this section. No insurer is required to make
23 such form available or notify any person of the availability of

1 such optional coverages authorized by this section except as
2 required by this section.

3 (f) Notwithstanding any of the provisions of article six of
4 this chapter to the contrary, including section thirty-one-f, for
5 insurance policies in effect on December 31, 2014, insurers are not
6 required to offer or obtain new uninsured or underinsured motorist
7 coverage offer forms as described in this section on any insurance
8 policy to comply with statutory changes made to the amount of the
9 minimum required financial responsibility limits set forth in
10 section two, article four, chapter seventeen-d of this code. All
11 such offer forms that were executed prior to January 1, 2015, shall
12 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.