

# **WEST VIRGINIA LEGISLATURE**

**2019 REGULAR SESSION**

**Committee Substitute**

**for**

**House Bill 2617**

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ESPINOSA AND PORTERFIELD

[Originating in the Committee on the Judiciary,

February 19, 2019.]



1 A BILL to amend and reenact §33-6-31d of the Code of West Virginia, 1931, as amended, relating  
2 to the form for making offer of optional uninsured and underinsured coverage by insurers;  
3 requiring Insurance Commissioner to provide for the use of electronic means of delivery  
4 and electronic signing of form; and requiring an insurer when offering to place an insured  
5 with an affiliate of the insurer, to make available a new uninsured and underinsured  
6 motorist coverage offer form.

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

**ARTICLE 6. THE INSURANCE POLICY.**

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

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

12 (b) Any insurer who issues a motor vehicle insurance policy in this state shall provide the  
13 form to each person who applies for the issuance of such policy by delivering the form to the  
14 applicant or by mailing the form to the applicant. ~~together with the applicant's initial premium~~  
15 ~~notice~~ Insurers may deliver the form by electronic means. Delivery by "electronic means" includes  
16 delivery of the form that has not been precompleted with elections and a signature to an  
17 electronic mail address at which an applicant or policyholder has consented to receive notices

18 or documents, or by posting on an electronic network or site accessible via the Internet, electronic  
19 device or mobile application, at or from which the applicant or policyholder has consented to  
20 receive delivery or by any other delivery method that has been consented to by the applicant or  
21 policyholder. Any document delivered electronically satisfies any font, size, color, spacing, or  
22 other format requirements that are established for printed documents, provided that the format in  
23 the document delivered electronically has reasonably similar proportions or emphasis for the  
24 characters relative to the rest of the electronic document. The applicant shall complete, date and  
25 sign the form and return the form to the insurer within 30 days after receipt thereof. Any signature  
26 executed in conformity with the Uniform Electronic Transactions Act shall be enforceable as  
27 provided by that act. No insurer or agent thereof is liable for payment of any damages applicable  
28 under any optional uninsured or underinsured coverage authorized by §33-6-31 of this code for  
29 any incident which occurs from the date the form was mailed or delivered to the applicant until  
30 the insurer receives the form and accepts payment of the appropriate premium for the coverage  
31 requested therein from the applicant: *Provided*, That if prior to the insurer's receipt of the executed  
32 form the insurer issues a policy to the applicant which provides for such optional uninsured or  
33 underinsured coverage, the insurer is liable for payment of claims against such optional coverage  
34 up to the limits provided therefor in such policy. The contents of a form described in this section  
35 which has been signed by an applicant creates a presumption that such applicant and all named  
36 insureds received an effective offer of the optional coverages described in this section and that  
37 such applicant exercised a knowing and intelligent election or rejection, as the case may be, of  
38 such offer as specified in the form. Such election or rejection is binding on all persons insured  
39 under the policy.

40 (c) Any insurer who has issued a motor vehicle insurance policy in this state which is in  
41 effect on the effective date of this section shall mail or otherwise deliver the form to any person  
42 who is designated in the policy as a named insured. A named insured shall complete, date, and  
43 sign the form and return the form to the insurer within 30 days after receipt thereof. No insurer or

44 agent thereof is liable for payment of any damages in any amount greater than any limits of such  
45 coverage, if any, provided by the policy in effect on the date the form was mailed or delivered to  
46 such named insured for any incident which occurs from the date the form was mailed or delivered  
47 to such named insured until the insurer receives the form and accepts payment of the appropriate  
48 premium for the coverage requested therein from the applicant. The contents of a form described  
49 in this section which has been signed by any named insured creates a presumption that all named  
50 insureds under the policy received an effective offer of the optional coverages described in this  
51 section and that all such named insured exercised a knowing and intelligent election or rejection,  
52 as the case may be, of such offer as specified in the form. Such election or rejection is binding on  
53 all persons insured under the policy.

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

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

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

69           (g) If an insurer offers to place an insured with an affiliate of the insurer, the insurer shall  
70 make available a new uninsured and underinsured motorist coverage offer form, in the manner  
71 provided by and pursuant to subsections (a) and (b) of this section. A named insured shall  
72 complete, date, and sign the form as provided by subsection (b) of this section and return the  
73 form to the insurer within 30 days after receipt thereof. If an insured does not return the form  
74 within 30 days, then the last form previously signed by the insured for the insurer or any affiliate  
75 shall govern the amount of uninsured and underinsured motorist coverage provided by the newly  
76 issuing insurer, which shall remain binding on all persons insured under the policy.

NOTE: The purpose of this bill is to require the Insurance Commissioner to provide for the use of electronic means of delivery and electronic signing of the form for making an offer of optional uninsured and underinsured motorist coverage by insurers. It also requires an insurer, when offering to place an insured with an affiliate of the insurer, to make available a new uninsured and underinsured motorist coverage offer form.

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