

WEST VIRGINIA INFORMATIONAL LETTER

NO. 86

MAY, 1993

TO: All Insurance Companies Licensed To Do Business In The State of
West Virginia, Insurance Trade Associations, Insurance Media
Publications and All Other Interested Persons

The purpose of this Informational Letter is to briefly summarize significant insurance legislation enacted during the 1993 regular session of the West Virginia Legislature. This letter is not to be construed as inclusive of all legislation which may affect the insurance industry or insurance consumers, nor should it be construed as a comprehensive explanation of the bills addressed. Rather, it is intended to highlight the more important bills.

Persons seeking a copy of particular legislation should contact the West Virginia Legislature, Senate Clerks Office 304/357-7800, or House Clerks Office 304/340-3200, Main Unit, State Capitol, Charleston, West Virginia 25305.

SUMMARY OF 1993 LEGISLATION

Senate Bill 282 -- Medicare Supplement Policies

This bill amends the existing medicare supplement statutes for individual and group accident and sickness policies to meet the requirements of the federal Omnibus Reconciliation Act of 1990 (OBRA '90).

The definition of "medicare supplement policy" is revised to also include any insurance or subscriber contract of a health maintenance organization. Outlines of coverage must disclose any existence of automatic renewal premium increases based on the policyholders age. The free examination period is extended to thirty (30) days. Any refund made on a medicare supplement policy must be paid directly to the applicant.

This bill becomes **effective July 5, 1993.**

Senate Bill 326 -- Group Accident and Sickness Regulation on Minimum Policy Coverage Standards

This bill requires the Insurance Commissioner to promulgate a regulation establishing group accident and sickness minimum policy coverage standards. The provisions of this article apply to all insurers writing group accident and sickness policies, hospital service corporations, medical service corporations, dental service corporations, health service corporations, health care corporations and health maintenance organizations.

This bill becomes **effective July 3, 1993.**

Senate Bill 510 -- Limited Benefits, Accident and Sickness Policies

This bill enacts several health insurance reforms. The Insurance Commissioner is given greater regulatory authority over limited benefits health insurance such as disability, hospital indemnity and specified disease policies. It establishes loss ratio standards relating to both premium rate increase requests by an insurer and refunds to policyholders if the insurer offering limited benefits policies fails to attain specified loss ratios. This bill also requires a sixty (60) day notice to the insured if the insurer intends to cancel or nonrenew a limited benefits policy. It prohibits preexisting conditions limitations, waiting periods and similar restrictions for a policy replacing a limited benefits policy providing similar coverage. The bill also gives the Insurance Commissioner extraterritorial jurisdiction over limited benefits policies issued outside this State but insuring West Virginia residents.

Regarding individual accident and sickness insurance other than limited benefits policies, this bill requires an insurer issuing such policies to have a minimum anticipated loss ratio of sixty-five (65) percent to qualify for a rate increase after July 1, 1994. In calculating its minimum anticipated loss ratio, an insurer shall include in its actual incurred claims the amount of premium taxes paid to the state.

This bill amends existing Chapter 33, Article 16D, of the West Virginia Code to track more closely the language in the National Association of Insurance Commissioners (N.A.I.C.) Model Act entitled "Premium Rates and Renewability of Coverage for Health Insurance Sold to Small Groups." The bill increases from forty-nine (49) to sixty (60) the maximum number of employees which qualifies an employer to be classified as a small employer for purposes of the marketing and rate practices established in this article. To qualify for a rate increase after July 1, 1993, an insurer must have a minimum anticipated loss ratio of seventy-three (73) percent. In calculating its minimum anticipated loss ratio, an insurer shall include in its actual incurred claims the amount of premium taxes paid to the state.

This bill becomes **effective July 7, 1993.**

House Bill 2179 -- Release by Minors Repealed

This bill repeals Chapter 33, Article 6, Section 23 of the West Virginia Code. This section stated that an eighteen (18) year old "minor," who is named a beneficiary in a life insurance policy, annuity or settlement agreement, may not receive more than two thousand dollars (\$2,000) per year from the proceeds of the settlement.

This bill becomes **effective July 6, 1993.**

House Bill 2180 -- Fire and Marine Insurance Auditing and Stamping Offices Repealed

This bill repeals Chapter 33, Article 17, Section 10 of the West Virginia Code. This section established auditing and stamping offices which were run by insurance rating organizations to review insurance companies rate filings.

This bill becomes **effective July 6, 1993.**

House Bill 2181 -- Termination Notice

This bill mandates insurers to give notice to insured group employees or members and their spouses and dependents, who are entitled to conversion privileges, at least sixty (60) days in advance of terminating their group accident and sickness policies.

The provisions of this article apply to all insurers writing group accident and sickness policies, hospital service corporations, medical service corporations, dental service corporations, health service corporations, health care corporations and health maintenance organizations.

This bill became **effective April 9, 1993.**

House Bill 2182 -- Agent Appointment Clarification

This bill requires that an agent be appointed by an insurer before the agent can solicit, market, sell or transact business of any kind on behalf of that insurer. Such an appointment must be approved by the Insurance Commissioner.

Exception is made to this provision when an agent submits to an insurer an inquiry and obtains a bid for any kind of life insurance, health insurance or annuity. The agent must then become properly appointed before accepting premium or binding coverage.

This bill became **effective April 9, 1993.**

House Bill 2185 -- Child Advocate Proceedings Relating to Insurance Coverage

This bill empowers the Insurance Commissioner to take enforcement against certain insurers in complying with court ordered insurance coverage for dependent children. The Insurance Commissioner will work in conjunction with the Child Advocate Office in these matters.

This bill becomes **effective July 8, 1993.**

House Bill 2271 -- Spin-Off Policies

This bill stipulates that upon death, legal separation or divorce, the named insured or spouse, who has been covered by a motor vehicle liability policy for two (2) or more years, can have his/her own individual policy issued. This "spin-off policy is separate and equal from the original policy. It provides the same coverage as the original policy unless the insured elects to increase or decrease the coverage in the "spin-off policy.

Insurers must notify all named insureds of their "spin-off policy rights at policy issuance and upon any change or termination of a policy for reasons other than those provided in Chapter 33, Article 6A, Sections 1 and 4 of the West Virginia Code.

This bill becomes **effective July 8, 1993.**

**House Bill 2286 -- National Association of Insurance Commissioners (NAIC)
Accreditation Legislation**

This bill adopts NAIC Model legislation and conforms existing statutes to meet the NAICs accreditation standards. The bill does the following:

Examination Authority: The bill strengthens the Insurance Commissioners existing authority to examine the activities, operations, financial conditions and affairs of all persons transacting or attempting to transact insurance business in this State. The bill enables the Insurance Commissioner to adopt a flexible system of examinations which directs resources as may be deemed appropriate and necessary for the administration of the insurance code and insurance related laws of this State.

Licensure Requirements: The bill amends existing language that exempted insurers from licensure requirements but subjected these insurers to premium and annuity tax requirements if the insurer was not transacting new insurance business but collecting premiums on and servicing of policies in force in this State. The amendments specifically limit this exemption from licensure requirements to insurers of individuals who have moved to this State and continue to purchase insurance coverage from these unlicensed companies.

Capital and Surplus Requirements: The bill allows the Insurance Commissioner to require an insurer to maintain funds in excess of the current minimum capital and surplus requirements due to the amount or kind or combination of kinds of insurance transacted by an insurer. Failure of an insurer to maintain funds as ordered by the Insurance Commissioner are grounds for suspension, revocation, refusal or nonrenewal of the insurers license. Any order so issued by the Insurance Commissioner is subject to review pursuant to applicable administrative proceedings of the West Virginia Code.

Prior Approval of Reinsurance Agreements: The bill amends the existing Code requirement that insurers must file with and gain the Insurance Commissioners approval of reinsurance agreements. The new language states that assumption reinsurance agreements shall not become effective unless the Insurance Commissioners approval is gained in advance. New language is added that: (1) states causes for not approving said agreements; (2) defines assumption reinsurance agreements; (3) requires filings for

House Bill 2286 – (continued)

approval of reinsurance agreements be certified under oath by responsible officers of the parties; and (4) allows the Insurance Commissioner to promulgate rules to implement the provisions of Chapter 33, Article 4, Section 15 of the West Virginia Code.

Credit for Reinsurance: The bill amends existing provisions on credit for reinsurance being allowed either as an asset or as a deduction from liability to any ceding insurer. Amended language states that credits are not allowed unless the reinsurance agreement contains the standard insolvency clause. Credits are not allowed unless under the reinsurance contract the liability for such reinsurance is assumed by the assuming insurer or insurers as of the same effective date. The bill is amended to require a reinsurer to be accredited on or before the effective date of the reinsurance contract, rather than the thirty-first day of December of the year for which the ceding insurer is claiming a credit.

Health Care and Hospital Service Corporations: The bill makes hospital service corporations and health care corporations adhere to existing provisions of Chapter 33, Article 16A of the West Virginia Code regarding conversion of an insured's health insurance coverage under a group policy to an individual health insurance policy.

Insurance Holding Company Act: The bill requires the Insurance Commissioner to promulgate a rule setting forth procedural requirements necessary to implement the provisions of the Insurance Holding Company Systems Act and specifying the required reporting forms.

Risk Retention Act: The bill amends the Risk Retention Act to require risk retention groups registered in this State to make annual filings.

Hazardous Financial Condition Standards: This bill gives the Insurance Commissioner the right to hold private hearings on orders issued pursuant to the Hazardous Financial Condition statute. If the insurer requests a public hearing, then the Insurance Commissioner will so comply.

Business Transacted With Producer Controlled Property/Casualty Insurer Act: The bill amends and reenacts Chapter 33, Article 36 of the West Virginia Code which defines the Insurance Commissioners authority to regulate and set standards for business transactions between a property and/or casualty insurer and a producer who has effective control of the insurer. The amendments are made to conform this article to the model law required for accreditation under the National Association of Insurance Commissioners Financial Regulation Standards and Accreditation Program. The amendments deal with definitions, applicability, minimum standards, disclosure, penalties and effective date. Controlled insurers and controlling producers have **until September 6, 1993 to comply with this article.**

Reinsurance Intermediary Act: The bill adds a new article to the West Virginia Code designated Article 38. It establishes the Insurance Commissioners authority to regulate business transactions between reinsurance intermediaries, insurance companies and reinsurance companies. The article requires the reinsurance intermediaries to become licensed in this State or to be licensed in a state with a substantially similar law. This article goes into effect January 1, 1994.

This bill becomes **effective July 7, 1993.**

House Bill 2440 -- Agents/Adjusters Notice of Hearing and Address Requirements

This bill clarifies the proper actions the Insurance Commissioner may take on any agent, adjuster, solicitor, excess line broker or service representative when this person does not appear before an administrative hearing held on allegations against him/her. The Commissioner may enter an order adverse to the interests of the agent, adjuster, solicitor, excess line broker or service representative upon such failure to appear at the hearing.

Within thirty (30) days of entry of the order, the licensee may file a written appeal which shows good and reasonable cause for the persons failure to appear. The Commissioner, in his discretion, may rescind the order and request reconsideration of the matter and a new hearing.

House Bill 2440 – (continued)

This bill also mandates that an adjuster file his/her residence and business addresses with this agency. Within thirty (30) days of any change in these addresses the adjuster must file with this agency notice of such changes.

This bill becomes **effective July 6, 1993.**

House Bill 2518 -- Ten Day Free Look

This bill exempts group annuity policies, contracts or certificates issued in connection with a pension or profit-sharing plan qualified or exempt under sections 401, 403, 408, 457 or 501 of the Internal Revenue Code from the ten (10) day right of return provisions mandated in Chapter 33, Article 6, Section 11b, of the West Virginia Code.

This bill became **effective April 10, 1993.**

**House Bill 2580 -- Waiver Form for Offer of Optional UI and UIM
Coverage/Termination of Agent Contract Prohibited**

This bill directs the Insurance Commissioner to develop a form to be used by insurance companies and their representatives. This form is to inform applicants and insureds of the optional limits of uninsured and underinsured motor vehicle coverages available, rate calculations for these coverages and the number of vehicles subject to these coverages.

All insurers who issue motor vehicle insurance in this State shall provide this form to each person who applies for issuance of a policy. This form must also be delivered to any person who is designated as a named insured on a policy at the time this bill becomes effective.

House Bill 2580 – (continued)

Recipients of this form have thirty (30) days from receiving it to complete and return the form to the insurer. If the form has been signed by the applicant or named insured, then the presumption is created that this person received an effective offer of optional coverages and that he/she has exercised a knowing and intelligent election or rejection of coverages. If the applicant or named insured fails to return the form, then the presumption is created that this person exercised a knowing and intelligent rejection of such offer of coverages.

This bill also prohibits an insurer from cancelling, nonrenewing or otherwise terminating an agents contract as a result of any analysis of a loss ratio resulting from claims paid under the provisions of an endorsement for uninsured and underinsured motor vehicle coverage. Moreover, no provisions in the agents contract may deter the person from selling and writing endorsements for optional uninsured and underinsured motor vehicle coverage.

This bill became effective April 10, 1993.

House Bill 2632 -- Life and Health Guaranty Association

This bill brings the West Virginia Life and Health Guaranty Association more into compliance with the National Association of Insurance Commissioners Model Law. It distinguishes which types of policies are covered and not covered by the association. The limits of liability incurred by the association on such products as life insurance, health insurance, annuities and unallocated annuities are given. The association is to maintain two (2) accounts with respective subaccounts. Two (2) classes for assessments are established and the methods for collecting these assessments are outlined. The responsibilities of the Insurance Commissioner to the associations board when a company becomes impaired or insolvent are stated. Using the existence of the guaranty association in sales and advertising materials is prohibited.

This bill becomes **effective July 8, 1993.**

House Bill 2728 -- Substandard Motor Vehicle Policy Notifications

This bill mandates that every application of insurance and every policy issued for a substandard risk must identify in boldface print and contrasting color that these documents concern substandard motor vehicle insurance. Further explanations must be given that the premiums charged are higher than the rates generally applicable for average risks and that if the coverages or premiums are not satisfactory, the applicant or insured may be eligible for other insurance.

By July 1, 1993, all licensed insurers must submit all applications and policies for substandard motor vehicle insurance to the Insurance Commissioner for prior approval.

This bill becomes **effective July 1, 1993.**

House Bill 2758 -- Emergency Adjusters

This bill defines the role of an emergency adjuster. When an occurrence has been declared an insurance emergency by the Insurance Commissioner, he may authorize individuals to be emergency adjusters. A licensed insurer may submit to the Insurance Commissioner an application requesting approval and authorization of one (1) or more emergency adjusters. The Insurance Commissioner must act on the application within twenty-four (24) hours of its receipt. The emergency adjuster license is valid up to a period of one hundred and twenty (120) days. The emergency adjuster is exempted from the mandatory licensure, examination and fee requirements.

This bill became effective **April 8, 1993.**