

WEST VIRGINIA INFORMATIONAL LETTER

NO. 104

MAY, 1997

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

The purpose of this Informational Letter is to briefly summarize significant insurance legislation enacted during the 1997 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 1997 LEGISLATION

HB. 101 -- Overdue Child Support -- Grounds for Revocation of License

Upon receiving a circuit court order suspending or restricting an insurance agents license for nonpayment of child support, the Insurance Commissioners Office must notify the agent of the courts action within twenty days from the date of receipt of the court order. This agency's notice must direct the agent to refrain from doing any business until the court or the states Child Support Enforcement Division certifies that the agent has complied with the court orders.

This bill also requires that on the agents licensing application form, an agent must make sworn certification regarding any child support obligations that he/she has. The making of any false statements on the application may subject the agent to such disciplinary action as immediate revocation of his/her license.

This bill becomes effective **July 1, 1997**.

HB. 2091 -- Coverage for Victims of Abuse

Life and health insurers are prohibited from denying, canceling or nonrenewing coverage on any person who is or has been a victim of abuse. Nor is any insurer allowed to add any surcharge or rating factor to a premium of any policy of a victim of abuse. When underwriting or rating a risk, the fact that a person is or has been a victim of abuse may not be considered a physical or mental condition.

A company may decline to issue a policy insuring the life of an individual who is a victim of abuse, if the perpetrator of abuse is the applicant or would be the owner of the policy.

This bill becomes effective **July 11, 1997**.

HB. 2198 -- Insurance Sales in Financial Institutions

State-chartered banks are provided parity with national banks in the selling of insurance. They are also given statutory authority to sell annuities.

Employees and agents of a financial institution cannot solicit insurance unless they have complied with state licensing and appointment requirements.

Banking employees, with responsibilities involving loan or credit transactions, are not permitted to solicit insurance. Certain allowances can be made for a financial institution with three or less employees with lending authority. For those banks which have only one employee with an agents license and lending authority, the Insurance Commissioner may grant a waiver in complying with this mandate.

Certain disclosures must be made to customers in writing by the financial institutions when selling insurance. Among these disclosures is the written notice that the insurance product may be purchased from an agent or broker of the customers choice. The notice must state that if the customer chooses an insurance provider, other than the financial institution, this decision does not affect the customers credit relationship with the institution.

No insurance-related referrals or solicitations can be made before the customer has received written confirmation that his/her loan or extension of credit has been approved by the institution. If insurance is required as a condition of getting a loan, the credit and insurance transactions must be completed independently and through separate documents.

Discriminatory practices against agents or brokers not affiliated with a financial institution are prohibited. Among those prohibitions noted is that a financial institution may not reject an insurance policy because the policy has not been issued or underwritten by an agent or broker affiliated with the institution.

The sale of insurance by a financial institution must be distinct and separate from the institutions lending and deposit-taking activities. If this stipulation provides hardship for an institution with very limited space, that institution may request the Insurance Commissioner to grant a waiver from compliance.

All records of insurance transactions, including customer complaints, must be kept separate from all other records concerning the institutions business transactions.

This bill becomes effective **June 25, 1997**.

HB. 2473 -- Arson

The law is amended to include in defining a person who commits arson as someone who "persuades, incites, entices or solicits any person to burn" a building, dwelling or personal property. Someone who is jailed for arson may not be given parole until he/she has served a statutorily prescribed amount of time. The amount of jail time is contingent upon the degree of arson for which the person has been convicted.

Any person who causes bodily injury in the act of committing arson shall be guilty of a felony. An individual convicted of a felony may be ordered to reimburse any fire department or company for the costs used in controlling or extinguishing an arson fire.

This bill becomes effective **July 11, 1997**.

HB. 2667 -- Access, Portability and Renewability of Health Insurance

Federal mandates are implemented for group and individual health insurance coverage set forth in the Health Insurance Portability and Accountability Act of 1996, commonly known as the Kassenbaum-Kennedy bill, the Newborns and Mothers Health Protection Act of 1996 and the Mental Health Parity Act of 1996. The bill also repeals West Virginia Code 33-15-15 and 33-16C-1 *et seq.*, which established minimum benefits for accident and sickness insurance policies.

Large and Small Groups: Effective for plan years beginning on or after July 1, 1997, an insurer may not refuse to renew coverage under group policies except under certain limited conditions, such as nonpayment of premiums or fraud. Preexisting condition exclusions may be imposed only if medical advice, diagnosis, care or treatment for the condition was recommended or received within the six month period preceding enrollment in the plan. When a preexisting condition is imposed, the exclusion is limited to twelve months and must be reduced by the individuals previous creditable coverage. Pregnancy may not be excluded from coverage as a preexisting condition, and genetic information is not to be considered a preexisting condition in the absence of a diagnosis of a condition related to the genetic information.

Small Group: Effective for plan years beginning on or after July 1, 1997, guaranteed issue of all products is required in the small group market (2-50 employees) without regard to health status or claims experience. Because higher-risk groups may now seek coverage, premiums may vary up to 30% from the index rate for a class of business, instead of the 25% variance formerly permitted.

Individual: For policies offered, sold, issued, renewed or in effect on or after July 1, 1997, insurers are required to insure eligible individuals, as defined in the statute, without the imposition of any preexisting condition exclusion. The insurer may, however, elect to limit the choice of coverage to two different policy forms: (a) the two most popular policy forms (those with the largest and second largest premium volume) OR (b) two policy forms with representative coverage (a lower level and a higher level coverage policy form). With certain limited exceptions, such as nonpayment of premiums or fraud, the bill also requires insurers to renew accident and sickness insurance coverage under all individual policies, not just those held by eligible individuals. Insurers that discontinue offering a particular type of coverage must provide notice to the insureds and provide them with the option to purchase another type of policy. An insurer that discontinues offering all accident and sickness insurance coverage in the state is prohibited from selling individual coverage in the state for a period of five years.

Maternity and Mental Health Benefits: Effective January 1, 1998, group health plans and individual accident and sickness insurers that offer maternity benefits must provide for at least a 48 hour hospital stay following a normal vaginal delivery, and at least a 96 hour hospital length of stay following a cesarean section. Also effective January 1, 1998, a plan in the large group market that provides both mental and physical health benefits must provide equal coverage for mental and physical benefits.

Individual Medical Savings Accounts (IMSAs): The bill incorporates by reference certain definitions established for Medical Savings Accounts (MSAs) by federal law. An IMSA is defined as any trust that satisfies MSA trust requirements set forth in Section 220 of the Internal Revenue Code. "Medical expenses" are those expenses that meet the definition of "qualified medical expenses" set forth in the same section. The Insurance Commissioner is no longer required to promulgate legislative rules on IMSAs, and the Tax Commissioner is granted additional power to promulgate emergency rules on the keeping of records and the filing of returns by IMSA holders and trustees.

This bill became effective **April 12, 1997.**

S.B. 33 -- Disbursement of 1% Surcharge Tax

The time frame for disbursing funds collected on the one percent surcharge of all fire and casualty insurance policies has been amended. The State Treasurer is to distribute the monies to the volunteer and part volunteer fire departments on a quarterly basis, rather than the previously mandated annual distribution.

This bill becomes effective **July 11, 1997.**

S.B. 157 -- Administrative Regulations

The promulgation of the following administrative regulations has been authorized: Medicare Supplement Insurance; Life and Health Re-insurance Agreements; Valuation of Life Insurance Policies; Diabetes; Emergency Medical Services; Utilization Management and Replacement of Life Insurance.

The Individual Medical Savings Accounts regulation, 114 CSR 47, is disapproved and not authorized for promulgation.

This bill became effective **April 20, 1997**.

S.B. 371 -- Privileges and Immunity

Any person who gives information to an insurer regarding suspected, anticipated or completed insurance fraud is entitled to immunity. Such an individual is not subject to civil liability in providing this type information.

This bill becomes effective **July 10, 1997**.

SENATE CONCURRENT RESOLUTION NO. 26 – MANAGED CARE STUDY

The Legislative Joint Committee on Government and Finance will be appointing an interim committee to study the growth and development of this States health maintenance organizations and the potential for authorizing provider-sponsored networks. The Joint Committee is to report its findings, conclusions and recommendations to the Legislature during its regular 1998 session.