

**JULY 2002**

**WEST VIRGINIA INFORMATIONAL LETTER**

**NO. 141**

**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**

**RE: Summary of 2002 Legislation**

The purpose of this informational letter is to alert you to the passage of the following bills and to urge your review of said bills in their entirety. The same can be viewed by logging on to the legislature's web site at [www.legis.state.wv.us](http://www.legis.state.wv.us).

**Senate Bill 397** was the comprehensive Tax and Revenue Rules Bill which included three rules promulgated by the Insurance Commission. They are an amendment to the Medical Malpractice Loss Experience and Loss Expense Annual Reporting Requirements contained in 114CSR23, a new privacy rule pursuant to the Gramm Leach Bliley Act 15 U.S.C. 6805 designated 114CSR57 (previously enacted as an Emergency Rule) and a new External Review Rule designated 114CSR58. The bill was passed on March 9, 2002 and made effective from passage. Each of the aforesaid Rules were then filed in final form with the Secretary of State's Office on April 8, 2002, effective immediately.

**Senate Bill 450** amended the Insurance Tax Procedures Act found at W. Va. Code § 33-43-1, *et seq.*, and specifically Section 6 relating to failure to make quarterly payments. The Bill was passed on March 7, 2002, with an effective date of June 5, 2002.

**Senate Bill 458** amended the Health Maintenance Organization Act, and specifically W. Va. Code § 33-25A-23 dealing with penalties and enforcement which will now provide for civil penalties in the event of balance billing in violation of the aforesaid Act. The Bill was passed on March 9, 2002, with an effective date of June 7, 2002.

**Senate Bill 459**, amended the Substandard Risk Motor Vehicle Insurance Statute found at W. Va. Code § 33-6-31c, and provides for an administrative penalty in the event of failure to give notice as required thereunder. The Bill was passed on March 8, 2002, with an effective date of June 6, 2002.

**Senate Bill 461** amended the Organization and Procedures of Domestic Stock and Mutual Insurers Act found at W. Va. Code § 33-5-1 *et seq.*, and, more specifically,

Section 32 contained therein by defining "principal place of business". The Bill was passed on March 8, 2002, with an effective date of June 6, 2002.

**Senate Bill 479** amended W. Va. Code § 33-6-34 by increasing the filing fee for forms from twenty-five dollars to fifty dollars and the filing fee for rates or rules from twenty-five dollars to seventy-five dollars. Unlike many other states, multiple form changes filed simultaneously will continue to be considered one filing for purposes of the fee. The Bill was passed on March 8, 2002, with an effective date of June 6, 2002.

**Senate Bill 506** added a new Article, Use of Clearing House Corporations and Federal Reserve Book Entry System, designated W. Va. Code § 33-8A-1 *et seq.*, to regulate the relationship between insurance companies and custodians of the invested assets of insurance companies. The Bill passed on March 8, 2002, with an effective date of June 6, 2002.

**Senate Bill 516** amended W. Va. Code § 33-20D-1 *et seq.*, relating to Tail Insurance and, specifically, Section 33-20D-3 which will now require carriers selling medical malpractice coverage to submit a plan, for approval by the Insurance Commissioner, for determination of the limits in the event of default on the amortized portion of the premium. The Bill was passed on March 8, 2002, with a ninety day effective date, namely June 6, 2002.

**Senate Bill 583** amended W. Va. Code § 33-16-2, dealing with eligible groups for Group Accident and Sickness Insurance, and specifically the criteria for associations and adding Bona Fide Associations as an eligible group through which policies may be issued. The Bill was passed on March 9, 2002, with an effective date of June 7, 2002.

**Senate Bill 593** amended W. Va. Code § 33-6-33, dealing with the value of total loss motor vehicles, and clarified the forms of dissemination that might be approved for official used car guides. A separate informational letter is being issued on this topic. The Bill was passed on March 9, 2002, with an effective date of June 7, 2002.

**Senate Bill 647** amended the Annuity Tax Statute found at W. Va. Code § 33-3-15 to provide an election between front end and back end tax treatment. The Bill was passed on March 9, 2002, with an effective date of June 7, 2002.

**House Bill 2730** added new Sections to the West Virginia Public Employees Insurance Act found in Article 16, and specifically W. Va. Code § 5-16-7c thereunder, as well as Accident and Sickness Insurance found in Article 15, and specifically Section 33-15-4g thereunder, Group Accident and Sickness Insurance found in Article 16 and specifically Section 33-16-3P thereunder, Hospital of Service Corporations found in Article 24 and specifically W. Va. Code § 33-24-7g thereunder and Health Maintenance Organizations under Article 25A, and specifically W. Va. Code § 33-25A-8f thereunder, requiring coverage for reconstruction following mastectomies, including the non-affected breast to produce a symmetrical appearance, and certain hospital coverage thereafter. The Bill was passed on March 9, 2002, with an effective date of June 7, 2002.

**House Bill 2986** amended Chapter 8, Article 15, relating to volunteer fire companies, and specifically added a new section 8c providing for immunity from liability for damages resulting

from a defect in donated fire control or rescue equipment. The Bill precludes assertion of the immunity, however, by any insurer covering such liability unless the same is rejected in writing by the insured. The Bill was passed on March 9, 2002, with an effective date of June 7, 2002.

**House Bill 4039** amended the West Virginia Public Employees Insurance Act found in Article 16, and specifically W. Va. Code § 5-16-7 thereunder, Group Accident and Sickness Insurance found in Article 16, and specifically Section 33-16-3a thereunder and Health Maintenance Organizations contained in Article 25A, and specifically Section 33-25A-2 thereunder, requiring certain coverage for Mental Health. The Bill was passed on March 8, 2002, with an effective date of June 6, 2002.

**House Bill 4446** repealed Article 16E of Chapter 33 which previously related to minimum loss ratios and reporting with respect to limited benefits accident and sickness insurance policies and certificates. The Bill was passed on March 4, 2002, with an effective date of June 2, 2002.

**House Bill 4465** amended W. Va. Code § 33-20B-4, relating to rates for medical malpractice insurance policies, and specifically by changing the waiting period during which the Commissioner shall hold a public hearing on rate increase requests of 10% or more from sixty to ninety days. This was "technical amendment" to correct an omission in House Bill 6014, passed during the Sixth Special Session 2001, and to be consistent with other changes previously made. The Bill was passed on March 8, 2002, with an effective date of June 6, 2002.

**House Bill 4469** amended the Unfair Trade Practices Act found at W. Va. Code § 33-11-4, by adding a subsection (12) dealing with failure to maintain the privacy of consumer financial and health information which shall now constitute a violation of the Act, provided that any licensee who complies with the provisions of the new subsection, commissioner's rule or a court order by disseminating such information shall not be deemed to be in violation. The Bill was passed on March 9, 2002, with an effective date of June 7, 2002.

**House Bill 4497** amended Chapter 33, Article 12, and added a new Article designated 12C to adopt certain uniform licensing and reciprocity provisions of the NAIC Producer Licensing Model Act. The Bill was passed on March 9, 2002, with an effective date of June 7, 2002. This is a lengthy bill, of import to all, and I urge a particularly careful reading of it.

**House Bill 4509** amended the Public Health section of the code, found in Chapter 16, and specifically W. Va. Code §§ 16-1A-2 and 16-1A-3 relating to Uniform Credentialing for Health Care Practitioners, use of uniform application forms and continuation of the advisory committee. The Bill was passed on March 8, 2002, and made effective from passage.

**House Bills 4581 and 4582** are amendments to House Bill 601 passed during the Sixth Special Session 2001, relating to the Board of Risk and Insurance Management and specifically repealing the temporary OB/GYN Program which was found at W. Va. Code § 33-12-5C, allowing BRIM to provide commercial general liability coverage, providing for additional capitalization, and moving ambulances from the definition of "state property" to the former Senate Bill 3 portion of the Act. The Bills were passed on March 7 and 8, respectively, and effective from passage.

**House Bill 4669** amended W. Va. Code § 33-2-9, relating to examination of insurers, and specifically authorized the Insurance Commissioner to contract with outside professionals to conduct such exams without submitting to the formal bid process through the Purchasing Division of the Department of Administration. The Bill was passed on March 9, 2002, with an effective date of June 7, 2002.

**House Bill 4670**, commonly referred to as the "*Mitchell v. Broadnax Bill*" amended W. Va. Code § 33-6-30, dealing with construction of policies, to set forth certain legislative findings with respect to claims arising under the aforesaid Supreme Court opinion. The Bill was passed on March 7, 2002, with an effective date of June 5, 2002.

The foregoing is merely a listing, and brief overview, and is not intended to provide the details of the aforesaid statutes. Please review them each, in their entirety, to determine their full impact on you and your business.

If you have any questions regarding the contents of this Informational Letter, you may contact Vincent J. King, General Counsel at (304) 558-0401.

Jane L. Cline  
INSURANCE COMMISSIONER