



**MAY 2004**

**WEST VIRGINIA INFORMATIONAL LETTER**

**No. 147**

**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 2004 Legislation**

The purpose of this Informational Letter is to briefly summarize significant insurance legislation enacted during the 2004 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 consumer, nor should it be construed as a comprehensive explanation of the bills addressed. Rather, it is intended to highlight the more important bills.

To view the following bills and resolutions, you may access the website of the West Virginia Legislature at [www.legis.state.wv.us](http://www.legis.state.wv.us). If interested in seeking a copy of particular legislation, please contact the West Virginia Legislature, Senate Clerk's Office at (304) 357-7800, or House Clerk's Office at (304) 340-3200, Main Unit, State Capitol, Charleston, West Virginia, 25305.

***Senate Bill 143 -- Small Employer Group Health Plan for Uninsured Groups***

This bill allows licensed carriers which access a provider network to offer a health benefit plan and reduced rates associated with the plan to a small employer. Only a small employer that has not offered a health benefit plan to its employees for at least six (6) consecutive months before the effective date of the bill is eligible to purchase the plan. Each small employer purchasing this offering is required to pay at least 50% of its employees' premiums for the coverage. By definition, a small employer is one employing an average of no more than fifty (50), nor fewer than two (2), eligible employees on the first day of its group health plan year.

This bill becomes effective June 11, 2004.

***Senate Bill 161 -- High Risk Pools***

This bill creates a board under the Department of Tax & Revenue, appointed by the Governor, to administer a health plan for individuals who are unable to obtain accident and sickness insurance in the commercial individual market. Eligibility is based upon rejection as an insured in the commercial individual accident and sickness market, but the Board will also promulgate a list of medical conditions for which a person will be considered eligible without having been rejected. The Board will also establish coverages to be issued by this high risk plan,

the schedule of benefits, exclusions and other limitations. However, the plan is required to offer coverage consistent with comprehensive coverage. Premiums, as well as an increase in the assessment obligation of hospitals by the West Virginia Health Care Authority, will fund the plan.

This bill becomes effective July 1, 2004.

### ***Senate Bill 176 – Investments and Investment Practices of Insurance Companies***

This bill modernizes Article 8 of the Insurance Code by updating the article to include separate investment sections as to types and limitations of investments allowed for life insurance, accident and sickness insurance and property and casualty companies. Some of the changes include a change in the general individual limitations on investments, other than governmental obligations; a change in the requirements and limits for maintenance of reserve amounts; and a change in the allowance of foreign investments and securities up to 20% of admitted assets. This bill allows for types of investments that were not contemplated under the previous law.

The effective date of this bill is June 11, 2004.

### ***Senate Bill 230 – Flood Insurance***

Senate Bill 230 provides for a new definition of flood insurance, to be added to the Insurance Code as a type of casualty insurance. The premium taxes collected by the Insurance Commissioner from flood insurance shall be deposited into a new revenue fund created in the State Treasury, known as the “Flood Insurance Tax Fund.” The Treasurer is authorized to distribute from the Fund amounts for activities which promote and enhance flood plain management issues, or the Treasurer may also distribute from the Fund moneys for sub-grants to local government units and other eligible entities.

This bill becomes effective June 11, 2004.

### ***Senate Bill 428 – Captive Insurance Companies***

The purpose of this bill is to encourage entities to form captive insurance companies in West Virginia, rather than in offshore locations that are not subject to the Commissioner’s jurisdiction. To accomplish this end, the bill authorizes the formation of different types of captives, which were not authorized under prior law. Also, this bill establishes minimum capital and surplus requirements for each of the different types of captives authorized.

This bill becomes effective June 11, 2004.

### ***Senate Bill 431 – Interstate Compact***

The Interstate Compact is a National Association of Insurance Commissioners model that creates a single point of filing and national standards for certain insurance products including life insurance, long-term care insurance, disability insurance and annuities. While insurers have the alternative option of filing products in the states where licensed, the “Interstate Product Regulation Commission” will act as a joint public agency among the compacting states, to coordinate the activities prescribed by the bill.

This bill becomes effective June 10, 2004.

***Senate Bill 450 – Long Term Care***

This bill revised and updated West Virginia's Long Term Care article, which had not been substantially updated since 1989. An increase is made in the number of days, from ten (10) to thirty (30), that a consumer has to review and return a Long Term Care policy and obtain a refund. After the policy has been in existence for two years, it can only be rescinded upon a showing of knowing and intentional misrepresentation of material facts by the policyholder. A policy summary is to be delivered to the insured at the time of policy delivery. If a claim under the policy is denied, the insurer must provide a written explanation for the reasons for the denial and make available all information relating to the denial within sixty (60) days of a written request by the policyholder. Any insurer or agent found to have violated the article is subject to a fine of up to three times the commission paid on the policy or ten thousand dollars, whichever is greater.

This bill becomes effective June 11, 2004.

***Senate Bill 479 – Issuance of License to Transact Insurance***

This bill clarifies that foreign companies that have obtained a Certificate of Authority from the Insurance Commissioner pursuant to the Insurance Code may transact the business of insurance in West Virginia without obtaining a Certificate of Authority that the West Virginia Secretary of State would otherwise require of a foreign corporation under Chapter 31D of the Code.

The effective date of this bill is June 11, 2004.

***Senate Bill 506 -- Banking Institutions***

This bill amends no provisions of Chapter 33, but rather amends Chapter 31A of the West Virginia Code relating to banking institutions, in that it allows an insurer licensed pursuant to the Insurance Code to use a variation of the word "bank" in its name. Also, it requires the Insurance Commissioner to notify the Banking Commissioner of each insurer so licensed.

This bill becomes effective June 8, 2004.

***Senate Bill 517 – Standard Nonforfeiture Law for Individual Deferred Annuities***

The purpose of this bill is to adopt the National Association of Insurance Commissioners model language on nonforfeiture law. Specifically, this bill identifies the minimum values of paid up annuity, cash surrender or death benefits available under annuity contracts.

This bill becomes effective June 10, 2004.

### ***House Bill 2914 – Liquidations of Insurance Companies***

This bill amends Article 10 of the Insurance Code to address the requirements of a U.S. Supreme Court decision which determined the priority of claims of the federal government in relation to other creditors. In addition, this bill amends Article 10 to ensure prompt review by a circuit court of a petition for rehabilitation or liquidation so that policyholder rights are determined quickly and Guaranty Fund protection of claims is triggered early. This bill also clarifies and expands the rights of a receiver to recover fraudulent or preferential transfers by the insurer, and transfers by the insurer to its affiliates, thus maximizing the amount of the estate for distribution to creditors.

This bill becomes effective June 9, 2004.

### ***House Bill 4004 – Insurance Fraud Protection/Auto Nonrenewal Amendments***

House Bill 4004 establishes a Fraud Unit within the Office of the Insurance Commissioner to investigate suspected violations of the Insurance Code relating to fraud as well as violations of Chapter 61 of the West Virginia Code (Crimes and Their Punishment) as they relate to the business of insurance. This bill requires the reporting of suspected insurance fraud by licensees, and encourages reporting by others, and also creates the crime of filing fraudulent insurance claims.

This bill also amends current permissible reasons to nonrenew auto policies. Among others, it changes the number of moving traffic violations for nonrenewal from two (2) in twelve (12) months to two (2) in twenty-four (24) months, and changes the number of at-fault accidents for non-renewal from two (2) in twelve (12) months to two (2) in thirty-six (36) months. In addition, with passage of this legislation, an automobile insurer is allowed to nonrenew policies if it is done as part of an approved withdrawal plan.

House Bill 4004 also creates an alternative method of nonrenewing automobile policies which removes the required reasons for nonrenewal. However, the total number of nonrenewals under the alternative method will be limited to 1% of in-force policies in the State and in each county. An insurer electing to nonrenew under the alternative percentage method must annually report the number of nonrenewals and reasons for nonrenewals to the Commissioner.

The effective date of this bill is June 11, 2004.

### ***House Bill 4303 – Agent Issues***

This bill entails a number of amendments including: 1) technical changes to ensure compliance with the federal Gramm-Leach-Bliley Act; 2) a requirement that producers have 24 hours of continuing education every two years, rather than every three years; 3) the requirement that both resident and non-resident surplus lines licensees must collect and remit the surcharge on fire and casualty insurance policies for the benefit of fire departments; 4) a change that allows licensed agencies to act as managing general agents; 5) repeal of the countersignature law; 6) clarification that a non-resident producer's license is needed before the producer may sell, solicit or negotiate insurance for a risk that is located in West Virginia, if the producer is not located in West Virginia; 7) repeal of the section relating to the use of insurance vending machines, which are obsolete and no longer in use in this State; 8) the discontinuation of service representative

permits issued by the Insurance Commissioner's Office, (grandfathers in existing service representatives); and 9) the allowance of non-resident producers to obtain limited licenses allowing them to sell insurance for car rental companies, in compliance with the Gramm-Leach-Bliley Act.

The effective date of this bill is June 11, 2004.

#### ***House Bill 4377 – Physicians' Assessment for Physicians' Mutual***

This bill requires all physicians to pay the one time assessment imposed on July 1, 2003, to fund the Physicians' Mutual Insurance Company. Failure to pay the assessment by July 1, 2004, will subject the physician to a civil penalty in the amount of \$250.00. Also, the Board of Medicine or the Board of Osteopathy, as appropriate, will suspend the medical license of any physician who received notice and failed to pay the special assessment by July 1, 2004. Any license suspended due to this provision will then remain suspended until both the special assessment and the civil penalty are paid in full. This bill also clarifies the premium taxes to which the Physicians' Mutual Insurance Company is subject.

The effective date of this legislation was March 21, 2004.

#### ***House Bill 4740 – Patients' Compensation Fund***

This bill establishes a Patients' Compensation Fund (PCF) that will be implemented and administered by the Board of Risk and Insurance Management. The purpose of the PCF is to compensate claimants who are unable to collect economic damages due to the joint and several liability reforms and the \$500,000 limit on damages resulting from emergency care malpractice.

This bill becomes effective June 11, 2004.

#### ***House Concurrent Resolution #31***

This resolution requests the Joint Committee on Government and Finance to study the issue of credit scoring as a factor in determining the amount of a premium charged for issuance of an insurance policy.

#### ***House Concurrent Resolution #37***

This resolution establishes the goal of the Legislature to see that all the citizens of West Virginia have comprehensive, quality and affordable healthcare and requests the Joint Committee on Government and Finance to study the various mechanisms for reaching this goal.

#### ***Senate Concurrent Resolution #63***

This resolution requests the Joint Committee on Government and Finance to study the use of credit scoring in the insurance and rate-making process.

***Senate Concurrent Resolution #65***

This resolution requests the Joint Committee on Government and Finance to study the availability and affordability of commercial property and casualty insurance.

***Senate Concurrent Resolution #66***

This resolution requests the Joint Committee on Government and Finance to study the availability and affordability of homeowners insurance.

***Senate Concurrent Resolution #99***

This resolution requests the Joint Committee on Government and Finance to study appropriate sources of revenue to pay for future costs of cleanup at 58 different sites insured by the Underground Storage Tank Insurance Fund.

***House Bill 4217 – Tax and Revenue Rules Bill***

This bill authorizes the Insurance Commissioner to promulgate the following rules:

Title 114, Series 2 – Licensing and Conduct of Individual Insurance Producers, Agencies and Solicitors.

Title 114, Series 20 – Excess Line Brokers.

Title 114, Series 24 – Medicare Supplement Insurance.

Title 114, Series 26 – Accident and Sickness Rate Filing.

Title 114, Series 40 – Credit for Reinsurance.

Title 114, Series 65 – Self-Insurance Pools for Political Subdivisions.

If you have any questions regarding these legislative acts, please contact Mary Jane Pickens, General Counsel, at 304-558-0401, ext. 159.

ss:/Jane L. Cline

Jane L. Cline  
Insurance Commissioner