

APRIL 2006

WEST VIRGINIA INFORMATIONAL LETTER

NO. 156

TO: All Insurance Companies Doing Business in the State of West Virginia, Insurance Trade Associations, Insurance Media Publications and Other Interested Persons

RE: Summary of 2006 Legislation

The purpose of this Informational Letter is to summarize significant insurance legislation enacted during the 2006 Regular Session of the West Virginia Legislature. This letter does not necessarily include all legislation that may affect the insurance industry or insurance consumers and is only intended to highlight the major points in the more important bills. The explanations contained herein should in no way be construed as being indicative of the Insurance Commissioner's views on or interpretation of the legislation.

To view the following bills, you may access the website of the West Virginia Legislature at www.legis.state.wv.us. To obtain 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. The rules may be viewed on the Insurance Commissioner's website at www.wvinsurance.gov or the Secretary of State's website at www.wvsos.com.

Senate Bill 223 – Relating to examination of insurance and health care entities (effective June 9, 2006)

This bill increases -- from 10 to 30 days -- the period in which companies have to respond to the results of a financial or market conduct examination by the Insurance Commissioner. It also makes a minimum five-year examination cycle uniform for all insurance entities; the Commissioner may, however, examine more frequently as the situation demands.

Senate Bill 357 – Authorizing Department of Revenue to promulgate legislative rules

--Series 2 – Licensing and Conduct of Individual Insurance Producers (effective May 1, 2006) – In the continuing effort to increase uniformity and reciprocity with regard to producer licensing, this rule amendment incorporates two licensing standards that were adopted by the NAIC Producer Licensing Working Group in 2004: (1) Expansion of the professional designations that permit a person to escape the licensing examination requirements; and (2) adoption of the uniform definition of "limited lines license" for which no examination or continuing education is required in order to obtain or keep a license.

The amendment also addresses some of the agency's internal policies: (1) A longstanding agency practice requiring a new employee to surrender his or her producer license while employed by the Insurance Commissioner resulted in the employee having to retake the licensing examination upon leaving the agency job; the rule allows such a person to regain his or her license without re-examination if application for reinstatement is made within one year of leaving the state job; (2) current law (W.Va. Code §33-12-9(c)) permits an *individual* producer whose license has lapsed to renew without reapplication if he or she does so within a year of the lapse and pays an additional \$25 fee; the amendment establishes the same rule for lapsed *agency* licenses; and (3) federal criminal law (18 U.S.C. §1033) prohibits any person who has been convicted of a felony involving dishonesty or breach of trust from engaging in the business of insurance unless he or she receives the written consent of the Insurance Commissioner; the amendment establishes a procedure, including a \$100 fee, for applying for such consent.

Any questions with respect to the above may be directed to Jane Strother, Director, Agent Licensing Division, Office of the Insurance Commissioner, (304) 558-0610, Ext. 1112.

--Series 8 – Replacement of Life Insurance Policies and Annuity Contracts (effective July 1, 2006) – Prior to the 2005 legislative session, the only statutory treatment of replacement life insurance transactions was a single section in the Unfair Trade Practices Act, W.Va. Code §33-11-5a, that was enacted in 1996. The Insurance Commissioner subsequently adopted a rule implementing this statute that mirrored the then-existing (1997) NAIC model. In 1998, NAIC amended its model to include the replacement of annuities in addition to life insurance policies; the 1998 NAIC model also amended other provisions, such as the record retention requirements. During the 2005 regular session, the Legislature mandated that the Insurance Commissioner adopt emergency and legislature rules based on the current NAIC model that would replace the then-current statute. The new rule sets out what must be done when a producer is attempting to sell a life insurance policy or annuity contract to replace such a policy or contract already held by the consumer. The emergency version of the rule became effective on December 1, 2005.

--Series 14 – Unfair Trade Practices (effective April 24, 2006) – This rule defines certain practices that constitute unfair methods of competition or unfair acts or practices, with particular emphasis on clarifying what constitutes an unfair claim settlement practice. The amendments to this series also establish certain minimum standards and methods of settlements for both first-party and third-party insurance claims. The proposed legislative rule filed last year (which mirrored the emergency rule that went into effect on October 11, 2005) was amended in several respects during the 2006 legislative session.

Any questions with respect to the above may be directed to Andrew Pauley, Associate Counsel, Legal Division, Office of the Insurance Commissioner, (304) 558-6279, Ext. 1402.

--Series 21 – West Virginia Essential Property Insurance Association (effective July 1, 2006) – W.Va. Code §33-20A-1 *et seq.* established the West Virginia Essential Insurance Association (the “Fair Plan”) to offer homeowners’ coverage to those who were unable to obtain it on the open market. Under rules promulgated in 1988, the Insurance Commissioner set coverage limits of \$100,000 for residences and \$300,000 for commercial property; these limits have remained unchanged for 18 years. The amendment to this rule increases these limits to \$200,000 for residential and \$500,000 for commercial property. The amendments to Series 21 also incorporate a 1989 amendment to the statute (W.Va. Code §33-20A-6(b)(15)) that exempts these policies from the valued policy law in W.Va. Code §33-17-9.

Any questions with respect to the above may be directed to John Ogle, General Manager, West Virginia Essential Property Insurance Association, (215) 629-8800, Ext. 120.

--Series 24 – Medicare Supplemental Insurance (effective April 24, 2006) – The Medicare Modernization Act of 2003 [MMA] required the NAIC to amend its model rules to provide for standardization of coverages among the various Medigap policies and to reflect the new coverages for prescription benefits. The federal government required the states to adopt these amendments by September 8, 2005, in order to avoid federal control of a non-complying state’s Medicare program; to meet the deadline, the Insurance Commissioner issued the rule as an emergency rule. Among other things, the necessary changes required by MMA will remove prescription drug benefits from standard Medigap plans H, I, J and K with a high deductible and the pre-standardized Medigap policies with drug coverage.

--Series 74 – Nonrenewal of Property Insurance Policies (effective April 24, 2006) – Prior to the 2005 legislative session, property insurers could only nonrenew mature policies (older than four years) for reasons specified in the Code, e.g. nonpayment of premium; immature policies could be nonrenewed for any nondiscriminatory reason. Senate Bill 30 (2005) established an alternative method for the nonrenewal of homeowners’ policies that mirrored the same concept enacted in 2004 for automobile policies. This new method allows a company to nonrenew any homeowner’s policy (mature or immature) for reasons “consistent with a company’s underwriting standards”; however, any company electing this alternative method is limited to the number of policies it may so nonrenew (1% statewide and 1% per county). Each company must elect a method and will be required to use that elected method for the next five years. The new rule tracks the statute and provides some general guidance for the nonrenewal notices, e.g., the notice must be “sufficiently clear to be understood by a reasonable person.” It also requires that underwriting standards be filed and that the Insurance Commissioner review them to assure “consistency with generally accepted underwriting standards.”

Any questions with respect to the above may be directed to Jack M. Rife, Director, Rates and Forms Division, Office of the Insurance Commissioner, (304) 558-2094, Ext. 1117.

--Series 75 – Private Passenger Automobile and Property Insurance (effective April 24, 2006) – Biannual Rate Filings – In 2005, the Legislature enacted Senate Bill 418 that required any company providing more than 5% of the homeowner or automobile policies statewide to make “biannual rate filings” with the Commissioner. The rule sets out how the Commissioner will determine which companies are subject to the filing requirement, sets deadlines for the filings, and provides penalties for failure to file (\$100 for every day the filing is late, which may be waived for excusable neglect). This rule had previously been filed as an emergency rule.

Any questions with respect to the above may be directed to Jack M. Rife, Director, Rates and Forms Division, Office of the Insurance Commissioner, (304) 558-2094, Ext. 1117.

--Senate Bill 438 – Regulating Title Insurance Rates (effective June 9, 2006)

By statute, title insurance was exempt from the rate-filing requirements of the insurance code; this bill removes that exemption. The Commissioner expects to file an emergency rule prior to June 9, 2006 with respect to the new statutory requirements.

Any questions with respect to the above may be directed to Jack M. Rife, Director, Rates and Forms Division, Office of the Insurance Commissioner, (304) 558-2094, Ext. 1117.

Senate Bill 454 – Removing Insurance Commissioner as health maintenance organizations’ attorney for service of process purposes (effective May 25, 2006)

This bill removes a provision of the Insurance Code that made the Insurance Commissioner the agent of HMOs for service of process; the Secretary of State is now the agent under general corporation law.

Senate Bills 467 & 468 – Amending group life and group health insurance requirements (both effective June 9, 2006)

These bills eliminate the minimum group participation rates (currently 75%) and reduce the minimum size (from 10 to 2) of employee groups for purposes of group life (S.B. 467) and group health (S.B. 468) insurance.

Senate Bill 619 – Relating to Physicians’ Mutual Insurance Company board member’s term (effective June 5, 2006)

Current law (W.Va. Code §33-20F-5(d)) limits any member of the board of directors of the Physicians’ Mutual Company to two consecutive terms of office, the bill removes that restriction.

Senate Bill 630 – Relating to cancellation of combination insurance policies (effective June 5, 2006)

Prior to this amendment, the Code permitted cancellation of an auto (W.Va. Code §33-6A-1) or homeowner's (HO) policy (§§33-17A-4 & -5), but there was no provision covering "combination" policies that merge auto and HO coverages in a single policy. The bill provides that, when a part of a combination auto/HO policy is cancelled, the company must offer the insured a new policy for the non-cancelled line. It also requires that, in order to avoid a gap in coverage, this new single-line policy must be effective as of the date of the cancellation of the combination policy and that the inception date of the new policy must relate back to when the combination policy was first issued.

Senate Bill 635 – Requiring boards of education to maintain certain flood insurance. (effective June 6, 2006)

This bill requires county boards of education to maintain flood insurance on certain buildings and their contents.

Senate Bill 754 – Clarifying risk categories covered by farmers' mutual insurance companies (effective June 9, 2006)

A farmers' mutual fire insurance company (FMIC) can sell only those property lines set forth in the Code; this bill expands the property risks so as to permit FMICs to write most of the risks included in standard HO policies, e.g. burglary and theft.

A FMIC may not offer liability coverages unless it applies for and receives a special license extension from the Commissioner. The bill clarifies that any such license extension is limited to whatever period the Commissioner sets; it also permits the Commissioner to extend the company's license to permit an FMIC to write liability coverages on vehicles "used to service the premises" as well as golf carts and vehicles used by persons with disabilities.

The bill also sets out a test to gauge whether an FMIC is fulfilling its role to serve underserved areas. Under this test, a farmers' mutual would have to demonstrate that a majority of its business meets one or more criteria, such as serving areas with a fire protection rating of five or higher.

Senate Bill 755 – Relating to Physicians' Mutual Insurance Company (effective June 9, 2006)

This bill permits individual underwriting of malpractice policies offered by the Physicians' Mutual Insurance Company and the nonrenewal of policies already in force.

House Bill 4021 – Relating to a pilot program authorizing participating health care clinics and private medical practitioners to provide primary and preventive health services for a prepaid fee (effective March 11, 2006)

This bill comprises five major health care initiatives:

- (1) Establishes a three-year pilot program by which primary care clinics and physicians can obtain a license to sell prepaid memberships entitling subscribers to access to preventative care services. The program is limited to eight clinics, each of which may operate at up to three sites. Applications are subject to approval by the Health Care Authority, and fees, forms and marketing materials are subject to review by the Insurance Commissioner.
- (2) Permits the sale of individual limited benefits health insurance policies that do not have to include many of the mandatory benefits now required by the Insurance Code. Only persons who have not had coverage for the previous year or who have lost coverage due to a “qualifying event” (e.g. loss of job) may purchase these plans.
- (3) Establishes an “Interagency Health Council” – Health Care Authority, Insurance Commissioner, PEIA, DHHR and CHIPS – to study and report on health care issues under benchmarks set by statute.
- (4) Mandates the expansion of the CHIPS program to cover, to the extent allowable by federal guidelines, children in families earning between 200% and 300% of the federal poverty limits.
- (5) Mandates that, upon federal certification of its claim management system, DHHR ensure that this system provides: (i) Quarterly financial reports to LOCHHRA; (ii) a management reporting system by July 1, 2006 and (iii) specific utilization data by provider/eligibility-group/service by October 1, 2006.

House Bill 4379 – Relating to insurance coverage for mammograms, pap smears and human papilloma virus (effective June 9, 2006)

This bill makes changes to the current statutory requirement that certain health insurance policies include mammogram tests and now mandates that such plans include coverage for a pap smear “either conventional or liquid-based cytology, whichever is medically appropriate in the opinion of the woman's physician, and an annual test for the human papilloma virus.”

House Bill 4383 – Continuing the pilot program offered through a Community Access Program to coordinate health care provider reimbursements indefinitely as determined by the Insurance Commissioner (effective June 7, 2006)

The Community Access Program was established by Congress to fund pilot programs aimed at providing greater access to health care. A state statute authorizing such programs (and exempting them from regulation by the Insurance Commissioner) provided for annual sunseting of the programs, but for the last few years the programs have been extended by amendments to the statute. Although the federal grants have expired, one such program operating in Cabell county, the OUCH (Offering the Uninsured in Cabell County Health Care) program, has funds remaining. To obviate the need for OUCH to seek periodic statutory extension of its authority to continue its operations, the bill authorizes the Insurance Commissioner to extend OUCH's existence beyond the new statutory sunset date of June 30, 2007. The program must submit periodic reports to the Commissioner as well as to the legislative oversight committee.

House Bill 4513 – Transferring authority to the Insurance Commissioner regarding employers in default to old workers' compensation fund (effective March 11, 2006)

This bill deals with employers in default to some of the funds established when Workers' Compensation was privatized. It permits the Insurance Commissioner to seek payment of the default amounts and permits the Commissioner to accept the filing of a bond so as to allow the company to operate while repaying the amounts owed. It also mandates issuance of an injunction against further operation of the business if the Insurance Commissioner can prove, by a preponderance of evidence, that a default exists. It also permits the Commissioner to waive penalties and interest on amounts owed to the Old Fund.

Any questions with respect to the above may be directed to Mary Jane Pickens, General Counsel, Office of the Insurance Commissioner, (304) 558-0401.

House Bill 4679 – Relating to qualified charitable gift annuities (effective June 9, 2006)

Although charitable gift annuities are included within the definition of life insurance in Chapter 33 of the Code and are therefore technically subject to regulation by the Insurance Commissioner, the Commissioner has historically not regulated them. In order to clarify the situation, the bill, which is based on an NAIC model adopted by a majority of States, exempts most such annuities from regulation. In order to qualify for the exemption, the charity would have to meet several criteria. First, the issuer would have to meet the IRS definition of "a charitable organization" and the annuity itself would have to meet the IRS definition of a "qualified charitable gift annuity." In addition, the charity would have to have been in existence for three or more years and have \$300,000 in unrestricted assets. Entities meeting these criteria would have to notify the Insurance

Commissioner by the later of September 30, 2006 or the date on which it issues its first annuity after July 1, 2006; the form to be submitted can be found at the Insurance Commissioner's website <http://www.wvinsurance.gov/forms/company/Charitable-Gift-Annuity-Form.pdf>. Such entities would also have to disclose in the annuity agreement that the annuity is not subject to the Insurance Commissioner's regulation. Failure to notify the Commissioner or to give the required notice to a donor would subject the charity to a fine of \$1000 per annuity. Entities and annuities that do not qualify for the exemption would be subject to full regulation as an insurer or, if not licensed to sell annuities, as an unauthorized insurer. Any questions with respect to the above may be directed to Randall Price, Financial Conditions Division, Office of the Insurance Commissioner, (304) 558-2100, Ext. 1137.

House Bill 4847 – Relating to group limited health benefits insurance plans (effective June 9, 2006)

This bill, the counterpart to the portion of H.B. 4021 that authorized the sale of *individual* limited benefits health insurance plans, permits the sale of the *group* limited benefits health insurance policies to employers to cover temporary, part-time and seasonal workers who have not had coverage for the previous year. Like the individual limited benefits plans, such policies do not have to include many of the mandatory benefits required to be in most health insurance policies.

Unless another contact is listed under a particular bill or rule, please contact Timothy Murphy, Associate Counsel, at (304) 558-6279, Ext. 1210 or Mary Jane Pickens, General Counsel, at (304) 558-0401 if you have any questions regarding these legislative acts.

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Insurance Commissioner