

May 2008

WEST VIRGINIA INFORMATIONAL LETTER

NO. 159

**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 2008 Legislation**

The purpose of this Informational Letter is to summarize significant insurance legislation enacted during the 2008 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](http://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](http://www.wvinsurance.gov) or the Secretary of State's website at [www.wvsos.com](http://www.wvsos.com).

***Senate Bill 417 – Department of Revenue Rules Bill***

114 CSR 2 (amended) – This amendment permits the sharing of commissions between producers so as to permit a non-appointed producer to solicit and prepare an application, collect and remit premium, and deliver the policy. Such a producer may not, however, execute the policy on behalf of the company and is required to forward it to an appointed agent for this purpose. The non-appointed agent is required to disclose to the applicant that he or she may not sign or execute the policy. ***Effective July 1, 2008.***

114 CSR 2A (new) – This rule was mandated by 2007 legislation that adopted NAIC model legislation regarding criminal background checks for producer applicants. The new rule provides the process by which prints will be collected by law enforcement agencies or the entity with which OIC contracts for the testing of license applicants. It also sets forth how such prints should be transmitted to the State Police and FBI. The rule also sets fees. ***Effective August 1, 2008.***

114 CSR 11 “Advertisements of Life Insurance and Annuities”; 11A “Life Insurance Disclosures”; 11B “Suitability of Annuity Sales; & 11C “Standardizing Formats for Life Insurance Illustrations” -- Prior to these changes, a single rule (114 CSR 11, last amended in 1974) covered deceptive *sales* practices involving life insurance; no rule covered advertisements specifically or reflected the statutory expansion of the OIC's role in regulating annuities. These four rules (a complete rewrite of Rule 11 and three new rules) mirror current NAIC models. A technical amendment was also made to the current rule on replacement of life insurance (114 CSR 8). ***Effective August 1, 2008.***

114 CSR 15 (amended) – This amendment makes minor changes to the current rule on OIC examinations and allows companies being examined to supply data in encrypted form if the encryption software is supplied to OIC at no cost. *Effective July 1, 2008.*

114 CSR 31 (amended) – The technical amendment to this rule reflects a statutory change made in 1993 that raised the minimum guaranteed loss ratio for individual health policies from 55% to 60%. *Effective April 29, 2008.*

114 CSR 64 (amended) – This amendment implements 2007 legislative changes to the mental health parity statute, W. Va. Code §33-16-3a, removing the requirement that the Commissioner report annually to the Legislature on the effect of the parity statute. The rule change simply removes the companies' annual reporting requirement, which had been necessary to enable the Commissioner to prepare her annual report. *Effective April 29, 2008.*

114 CSR 69A (amended) – This rule change, based on an NAIC model, recognizes the most recent CSO preferred mortality tables for use in determining the necessary reserves of life insurance companies. The rule contains an internal effective date of January 1, 2007, which is intended to permit the use of these tables in the reports due in March 2008. *Effective April 29, 2008.*

114 CSR 82 (new) – In response to problems with the sales of life insurance products to military personnel and the lack of clarity regarding the states' authority to act with respect to sales on military bases, Congress enacted legislation in 2006 that specifically authorized state insurance regulators to enforce insurance consumer protection laws on federal military facilities. This bill also provided that NAIC would work with the Department of Defense to draft model standards to deal with the problem. West Virginia enacted legislation in 2007 that specifically granted the Insurance Commissioner the authority to promulgate a rule to deal with predatory sales practices involving military personnel (SB 559, adding WV Code §33-4-21). NAIC drafted a model rule to regulate sales to active personnel both on and off federal bases; national guard members would be covered if on active duty under "published orders" (not weekend or summer drills). The new state rule mirrors the NAIC model; similar rules have been enacted in almost every state. *Effective August 1, 2008.*

***Senate Bill 571 – Relating to firefighter's workers' compensation benefits (effective June 6, 2008)***

This bill creates a rebuttable presumption that a professional firefighter's cardiovascular or pulmonary injury/disease was caused by his or her job under certain circumstances. If the professional firefighter can show that (1) he or she had been on the job for two years immediately prior to the onset of the injury/disease or the firefighter's death and (2) he or she had fought a fire (including in a training exercise) within six months of the onset of the injury/disease or death, the injury/disease/death would be presumed compensable under the workers' compensation laws. The bill also requires the Insurance Commissioner to study the effect of this presumption on rates and other insurance matters and report to the Legislature by the end of 2008 on the effect of extending the presumption to volunteer firefighters.

***Senate Bill 653 – Relating to permitting internet sales of life, accident and sickness insurance (effective June 5, 2008)***

The bill amends a provision regarding the manner in which applications for life insurance or accident and sickness insurance must be issued in this state. The amendment clarifies that if an application is taken for life or accident and sickness insurance and is completed electronically (usually via the internet), the application is exempt from the general requirement that the application be completed by an agent in the presence of the proposed insured.

***Senate Bill 704 – Regulating viatical life insurance settlements (effective May 29, 2008)***

This bill establishes a regulatory scheme for “viatical” or “life settlement” companies that buy life insurance policies from policyholders, including licensing of such companies, standards for marketing, sales disclosures and similar consumer protections. The bill prohibits the practice of inducing the purchase of a policy for the sole purpose of later selling to a company that will in turn sell to investors (STOLI or “stranger originated life insurance”).

***House Bill 4079 – Professional Employer Organizations (PEOs) (Effective June 4, 2008)***

PEOs are companies that provide human-resource services, such as administering benefit plans and payroll, pursuant to an agreement with client-employers. The bill requires PEOs to obtain a license from the Insurance Commissioner by July 1, 2009. The bill ensures that the Insurance Commissioner is able to obtain the workers’ compensation claims information at the client-employer level that is needed to set rates and otherwise regulate that market, and it prohibits PEOs from offering self-funded health plans to their clients. The issues of PEO involvement with health plans, taxes, labor laws and unemployment taxes are to be studied by the Joint Committee on Government and Finance and several agencies.

***House Bill 4137 – Relating to clarifying that a municipality and county will be notified by an insurance company when a total loss to a structure occurs (effective June 3, 2007)***

This bill clarifies that when a structure is destroyed and there is insurance that covers cleanup of the remains, the insurance company must notify the city and county by mail of such coverage.

***House Bill 4157 – Relating to allowing insurers who have been suspended from writing new policies to continue to service existing policies (effective March 7, 2008)***

This bill was a technical amendment to clarify that an insurer that no longer holds a license in this state may continue to service policies that were sold at a time when the insurer was licensed. Insurer may, as authorized by OIC, continue to collect premium and pay applicable servicing commission to agents during this time.

***House Bill 4381 – Relating to an assigned risk plan and guaranty association account for workers’ compensation insurance (effective March 7, 2008)***

This bill achieves two needed changes for the opening of the workers’ compensation market to private carriers in July 2008:

1. Adverse risk pool (“assigned risk or residual market”) – This change to §23-2C-10, which involves the mechanism that provides coverage for employers unable to obtain workers’ compensation coverage in the voluntary market, authorizes the Commissioner to designate a third party to “develop and administer” the program, including the development of premium levels designed to make the system self-sustaining. The appointed administrator also has the authority to assess other carriers to cover any deficits that may arise. Although the initial administrator may be appointed, the Commissioner must bid out the contract for plan administrator in 2011.

2. Private carrier guaranty fund – The bill eliminates the section in the Workers’ Compensation Code that established a state fund to pay claims of persons covered by insolvent insurers. Instead, the bill places responsibility for such claims with the existing WV Guaranty Association, which currently covers claims related to auto and other property and casualty insurer insolvencies. Unlike claims in other lines, workers’ compensation claimants will not be subject to any cap on statutory benefits.

***House Bill 4404 – Discount Medical Plan Organizations and Discount Prescription Drug Plans (effective June 6, 2008)***

This bill regulates discount medical plans via OIC licensing, marketing and sale of plans that promise discounts to members who use the plan’s providers. There is no insurance involved in these plans - rather, members pay for medical services directly to the provider, but receive a discount from the provider for being a member of the plan.

***House Bill 4513 – Relating to reimbursement of costs for newborn screenings by designated health insurers in the State (effective June 6, 2008)***

The bill amends a code section that relates to certain tests to be performed on newborn children. The amendments provide that the required screenings shall be considered a covered benefit and reimbursed to the birthing facility by PEIA, SCHIP, Medicaid and all licensed health insurers whose policies include pregnancy coverage.

***House Bill 4557 – Relating to continuing education for insurance producers (effective June 6, 2008)***

This bill makes two changes affecting those insurance producers who are required to obtain more than six hours of continuing education credits every two years. First, it would allow these producers to carryover up to 6 hours of continuing education credit from one reporting period to another; Second, it allows the Insurance Commissioner to approve up to two hours’ credit for membership in professional organizations. The OIC will coordinate implementation of these new provisions with Prometric’s, the OIC’s continuing education administrator, and information will be available on the OIC’s and Prometric’s websites.

***House Bill 4636 – Relating to making changes to workers’ compensation insurance (effective March 8, 2008)***

This bill, which is discussed in detail in a separate informational letter dated May 2008, addresses several areas of the Workers’ Compensation Code, including:

Defaulting employers – The Commissioner’s authority to collect amounts owed by employer to various funds is strengthened by subjecting defaulters to debarment from state contracts.

Surcharges – To simplify the collection of the regulatory and debt-reduction surcharges from insured employers, the surcharge percentages are set at 5.5% and 9% instead of being recalculated annually.

Notice requirements – The time periods in which carriers must notify their insured and the OIC (through NCCI’s Proof of Claim system) have been amended to comport with national standards.

Claims litigation – A two-party system is established for claims covered by private insurance. An informational brochure must be sent to the claimant in every claim. The jurisdictional period for a claimant to protest a carrier’s or TPA’s claim decision is extended to 60 days. Conditional payments of benefits are mandated in cases in which the only issue controversy related to compensability is whether the claimant properly filed a new claim or should have filed a reopening petition in a prior claim. The Commissioner is required to propose rules relating to return to work programs. Several changes are made to avoid situations that could affect a claimant’s protest on technical procedural grounds.

Miscellaneous – The Board of Review members’ salaries are to be set by the Governor.

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Insurance Commissioner