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WEST VIRGINIA INFORMATIONAL LETTER

NO. 192

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 2015 Legislation

This Informational Letter summarizes significant insurance and workers' compensation legislation enacted during the 2015 Regular Session of the West Virginia Legislature. It 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.

The bills are available on the Legislature's website at www.legis.state.wv.us. The rules can be found on the Insurance Commissioner's website at www.wvinsurance.gov and the Secretary of State's website at www.wvsos.com.

BILLS

Senate Bill 3 – Relating to Real Property Possessor's Liability for Trespasser Harm (Effective April 29, 2015)

This bill codified the common law rule that a possessor of real property owes no duty of care to a trespasser. If a common law right of action with respect to trespasser harm existed as of the effective date of the legislation, it will still be permitted. The possessor continues to have a duty to refrain from intentionally causing harm to a trespasser.

Senate Bill 6 – Relating to Medical Professional Liability (Effective March 10, 2015)

This legislation amended the Medical Professional Liability Act. It includes changes made to existing definitions and created a new definition for "related entity." The overarching result of these changes is an expansion of the Act's scope. The bill further modified the qualifications regarding the competency of expert witnesses and provided for rebuttable presumptions concerning state/federal reports, accreditation reports, disciplinary actions and assessments of civil/criminal penalties. The legislation also increased the inflationary portion with respect to a noneconomic damages award.



Senate Bill 13 – Relating to Real Property Possessor’s Liability for Injuries Caused by Open and Obvious Hazards (Effective February 18, 2015)

The Legislature here reinstated the open and obvious hazard doctrine in which a real property possessor owes no duty of care to protect others against dangers that are open, obvious, reasonably apparent or as well known to the person injured as they were to the possessor.

Senate Bill 344 – Relating to Duty to Mitigate Damages in Employment Claims (Effective June 8, 2015)

The intent of this bill was to provide a framework for adequate and reasonable compensation to those persons who have been subjected to an unlawful employment action, but also to ensure that compensation does not far exceed the goal of making a wronged employee whole. Under this law, the plaintiff has an affirmative duty through “reasonable diligence” to mitigate past and future lost wages irrespective of whether the plaintiff can prove the defendant employer acted with malice or in willful disregard of the plaintiff’s rights. Thus, the common law malice exception to the duty to mitigate damages in employment discrimination claims has been abolished.

Senate Bill 366 – Relating to Qualified Health Plans on the West Virginia Health Benefit Exchange (Effective June 9, 2015)

This bill creates a new article within the Insurance Code. It requires certain information be published on the Insurance Commissioner’s website regarding qualified health plans being offered for sale through the West Virginia Health Benefit Exchange in a format easily found by a consumer. This online information is to be provided to assist consumers in making informed decisions concerning the purchase of a qualified health plan.

Senate Bill 373 – Relating to Automobile Insurance Verification (Effective June 11, 2015)

This legislation permits the use of a digital image located on a wireless communication device to serve as proof of automobile insurance. The Commissioner considers the digital image to constitute an electronic record and thus must be provided to an insured in conformity with the Uniform Electronic Transactions Act (UETA), W. Va. Code § 39A-1-1 et seq. Accordingly, the insured must affirmatively consent to the use of the digital image. Otherwise, a paper copy of the proof of insurance should be provided.

Senate Bill 411 – Relating to Liability for Asbestos Exposure (Effective June 9, 2015)

This legislation addresses transparency regarding claims made in the asbestos bankruptcy trust claim system and claims made in civil asbestos litigation. The Legislature found that asbestos claimants often seek compensation from both sources simultaneously. However, there is limited coordination between the two paths of recovery. Accordingly, the Legislature through this bill is requiring disclosures of existing and potential asbestos trust claims in any asbestos action filed in this state. The law also establishes standards and procedures for the handling of certain asbestos claims and provides for setoffs/credits in favor of a defendant in a civil action with respect to any trust claim award.

Senate Bill 421 – Relating to Punitive Damages (Effective June 8, 2015)

This bill authorizes an award of punitive damages only when the defendant acts with actual malice toward the plaintiff or a conscious, reckless and outrageous indifference to the health, safety and welfare of others. The legislation also allows the court, upon the defendant's request, to bifurcate the trial with respect to compensatory and punitive damage awards. Under the law, the amount of punitive damages that may be awarded in a civil action cannot exceed four times the amount of compensatory damages or \$500,000, whichever is greater.

Senate Bill 578 – Relating to Nonorthopedic Occupational Disease Claims (Effective June 8, 2015)

This bill authorizes, in the context of workers' compensation coverage, a final settlement with respect to medical benefits for nonorthopedic occupational disease claims as long as the claimant is represented by an attorney.

House Bill 2002 – Relating to Predicating Actions for Damages on the Principle of Comparative Fault (Effective May 25, 2015)

This legislation generally abolishes joint liability among defendants in an action for damages, making each defendant liable for compensatory damages allocated to that defendant in direct proportion to that defendant's percentage of fault. It also establishes how to reallocate any portion of a judgment that a plaintiff is unable to collect and provides exceptions to the several liability doctrine.

House Bill 2011 – Relating to a Workplace Employee Injury Caused by the Deliberate Intention of the Employer (Effective June 12, 2015)

This bill amends the law governing "deliberate intent" claims – claims stemming from workplace employee injuries caused by the deliberate intention of the employer to the extent that the employer loses immunity from a lawsuit as provided by Chapter 23 of the West Virginia Code. Among other things, the legislation provides that an employer's actual knowledge of the existence of an unsafe working condition must be specifically proven by the employee or other person seeking to recover under a deliberate intent claim and shall not be deemed or presumed. The bill further defines what constitutes a commonly accepted and well-known safety standard within the industry or business of the employer and establishes that the applicability of state or federal safety provisions is a matter for judicial determination. The amendments made pursuant to this legislation are applicable to workplace employee injuries that occur on or after July 1, 2015.

House Bill 2395 – Relating to Property Owner's Right to Cancel Residential Roofing Contract (Effective June 12, 2015)

This bill provides that an owner of residential property who enters into a contract with a contractor on or after July 1, 2015, to provide goods or services related to the property's roof and who expects the goods or services to be paid from the proceeds of a property and casualty insurance policy, may cancel the contract prior to midnight of the fifth business day after the owner has received notice from the insurer that all or part of the claim is not a covered loss under the insurance policy. Under the law, the contractor has the duty of disclosing this cancellation right prior to entering into the contract with the property owner.

House Bill 2461 – Relating to Claim of a Federal Home Loan Bank in an Insurer Liquidation Proceeding (Effective June 10, 2015)

This legislation provides that the commencement of a delinquency proceeding against an insurer does not operate as a stay, injunction or prohibition regarding a federal home loan bank's rights to collateral pledged by the insurer. It further mandates that the receiver in a delinquency proceeding may not void a transfer made to a federal home loan bank in the ordinary course of business within four months of the commencement of the delinquency proceeding or which received prior approval of the receiver. However, a transfer may be voided if the transfer was made with actual intent to hinder, delay or defraud the receiver, insurer or a creditor.

House Bill 2493 – Relating to Health Insurance Coverage for Anti-Cancer Medication (Effective June 10, 2015)

This bill prohibits a health plan or policy issued on or after January 1, 2016, from having a different copayment, deductible or coinsurance that is contingent on whether anti-cancer medications are administered by the patient (either orally or self-injected) or administered by a health care provider via injection or intravenously. The bill also allows for cost containment measures if the cost of compliance exceeds two percent of the total cost of coverage.

House Bill 2536 – Relating to Limited Lines License for Travel Insurance (Effective June 10, 2015)

This legislation authorizes the Insurance Commissioner to issue a limited lines travel insurance producer license to a business entity that arranges or offers travel services. Travel insurance is defined as a group or individual policy that provides coverage for personal risks incident to planned travel. The travel retailer and its employees could offer and disseminate travel insurance under the limited lines license. The annual fee for a travel insurance entity producer license is \$200.

House Bill 2557 – Relating to Liability Insurance When Renting a Vehicle (Effective June 10, 2015)

This bill provides that insurance coverage provided by a rental or leasing vehicle company is secondary to coverage under any motor vehicle liability insurance in effect for the individual who is renting, leasing, operating, maintaining or using the vehicle. The bill further provides that any liability insurance purchased for additional consideration from the rental or leasing company shall be primary to other available insurance. The Commissioner will allow a phase-in period for compliance with this bill; however, the law's provisions will become mandatory for all policies issued or renewed on or after January 1, 2016.

House Bill 2790 – Relating to Minimum Financial Responsibility Limits for Motor Vehicles (Effective June 9, 2015)

This legislation increases the minimum financial responsible limits for motor vehicles to \$25,000 because of bodily injury to or death of one person in any one accident, \$50,000 because of bodily injury to or death of two or more persons in any one accident, and \$25,000 because of injury to or destruction of property of others in any one accident. The new limits are required for policies issued or renewed on or after January 1, 2016. For policies in effect on December 31, 2015,

including motor vehicle insurance policies and liability policies that are in excess or umbrella type that cover automobile liability, insurers are not required to make new offers of uninsured or underinsured coverage upon renewal if the liability coverage is increased solely to meet the requirements of the increased minimum required responsibility limits. For policies that carry limits of coverage below the minimum required financial responsibility amounts, the limits must be increased to an amount equal to or above the new minimum required financial responsibility limits when the policy is renewed but not later than December 31, 2016. The bill also provides that an insurer that issues a policy with named driver exclusion is not required to provide any coverage, including coverage in the amounts of the minimum financial responsibility limits, for the excluded driver.

LEGISLATIVE RULES

114 CSR 11E – Annuity Disclosure (Effective July 28, 2015)

This rule adopts amendments made to the Annuity Disclosure Model Regulation by the National Association of Insurance Commissioners. Specifically, the rule implements a new “Annuity Buyer’s Guide” and provides standards that an insurer must follow if it elects to furnish a consumer with an annuity illustration. The Commissioner will allow a phase-in period for compliance with this rule; however, the rule’s provisions will become mandatory for all annuities issued or renewed on or after January 1, 2016.

114 CSR 45 – Recognizing Annuity Mortality Tables for Use in Determining Reserve Liabilities for Annuities (Effective July 28, 2015)

This rule is based on a National Association of Insurance Commissioners’ model regulation. The rule prescribes the 2012 Individual Annuity Reserving Table (“2012 IAR Table”) as the minimum standard of valuation and requires the use of a projection scale known as Scale G2. The 2012 IAR Table was developed by the Society of Actuaries Committee on Life Insurance Research. Since development of the currently used mortality table, the industry has experienced significant mortality improvement. This has caused concern amongst regulators that annuities in payout status are under-reserved. The 2012 IAR Table was formed to take into consideration the more recent industry experience as well as future improvement at each valuation date. This makes the table more dynamic with the intention to keep the table from becoming dated too quickly. As such, the 2012 IAR Table is a generational mortality table. This means that the table contains a set of mortality rates that decrease for a given age from one projection year to the next. The Commissioner will allow a phase-in period for compliance with this rule; however, the rule’s provisions will become mandatory for all annuities issued or renewed on or after January 1, 2016.

Please e-mail any questions concerning this Informational Letter to Informational.Letters@wvinsurance.gov or call (304) 558-0401.


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