



May 2016

WEST VIRGINIA INFORMATIONAL LETTER

NO. 197

**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 2016 Legislation**

This Informational Letter summarizes significant insurance and workers' compensation legislation enacted during the 2016 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](http://www.legis.state.wv.us).

***Senate Bill 7 – Relating to Comparative Fault (Effective May 24, 2016)***

This legislation requires that a defendant in a civil action give notice to the plaintiff within one hundred eighty days after service of process upon the defendant that a nonparty to the suit was wholly or partially at fault. The bill clarifies that when a plaintiff has settled with a party or nonparty before verdict, the plaintiff's recovery is reduced in proportion to the percentage of fault assigned to the settling party or nonparty and not by the amount of the party's or nonparty's settlement. It also provides a plaintiff may not recover damages from a defendant if the damages suffered were the proximate result of the plaintiff's commission, attempted commission, or immediate flight from the commission or attempted commission of the felony. The burden of proving when a plaintiff's illegal conduct bars recovery is upon the person who seeks to assert such a defense unless the court determines as a matter of law that the person's damages were suffered as a proximate result of the felonious conduct to which the plaintiff has pleaded guilty or no contest, or upon which the plaintiff was convicted. It further provides that a civil action must be stayed by the court on the motion of a defendant during the pendency of any criminal action that forms the basis of the defense, including appeals, unless the court finds that a conviction in the criminal action would not constitute a valid defense. The bill defines "damages" to include all amounts that may be recoverable for personal injury, death, or loss of or damage to property. The legislation also prohibits the filing of a civil action under the Medical Professional Liability Act and relating to prescription or dispensation of controlled substances when a person's damages are a proximate result of the person's commission of a felony, a violent crime that is a misdemeanor, or a violation of any law related to controlled substances. An exception to this prohibition exists if the health care provider that prescribed or dispensed the controlled substance was in violation of law proximately causing injury.



***Senate Bill 14 – Relating to Successor Corporation Asbestos-Related Liabilities (Effective May 22, 2016)***

This bill limits the liability of successor corporations in asbestos-related civil actions. It sets forth guidelines for the establishment of fair market value of total gross assets and requires the inclusion of intangible assets in the calculation of fair market value. The bill further provides how liability insurance is to be valued and discontinues the adjustment of fair market value of total gross assets once certain conditions are met.

***Senate Bill 15 – Relating to the Liability of Manufacturers and Sellers of Prescription Drugs and Medical Devices (Effective May 17, 2016)***

This legislation provides that a manufacturer or seller of a prescription drug or medical device may not be held liable in a product liability action for a claim based upon inadequate warning or instruction unless the claimant proves that: (1) the manufacturer or seller acted unreasonably in failing to provide reasonable instructions or warnings regarding foreseeable risks of harm to prescribing or other health care providers who are in a position to reduce the risks of harm in accordance with the instructions or warnings; and (2) the failure to provide reasonable instructions or warnings was a proximate cause of harm.

***Senate Bill 270 – Relating to Liability of Landowners (Effective June 9, 2016)***

This bill repealed W. Va. Code § 19-25-7, which relates to the impact of insurance policies on the liability of landowners, or insurers of landowners, who open their property for use by others for military, law-enforcement or homeland-defense training or recreational or wildlife propagation purposes.

***Senate Bill 278 – Relating to Physicians’ Mutual Insurance Company (Effective March 12, 2016)***

This law clarifies that the Physicians’ Mutual Insurance Company is not a state actor or a quasi-state actor, allowing the Mutual Insurance Company to operate as any other commercial insurance company licensed in West Virginia.

***Senate Bill 330 – Relating to Automobile Liability Insurance (Effective June 8, 2016)***

This legislation requires an automobile liability insurer to provide fourteen days’ notice to a policyholder of the insurer’s intent to cancel an automobile liability insurance policy where the reason for cancellation is nonpayment of a premium. If the nonpayment of premium concerns the initial installment, the insurer may void the policy from the effective date that the policy was issued as long as the insurer provides the policyholder with written notice that the policy will be voided absent payment within ten days of any amounts due under the terms of the insurance contract.

***Senate Bill 419 – Relating to Workers’ Compensation Debt Reduction Act (Effective February 26, 2016)***

This bill terminates taxes imposed under the Workers’ Compensation Debt Reduction Act of 2005 and reallocates deposits of revenue in relation to the Old Fund.

***Senate Bill 429 – Relating to the Financial Condition of Health Organizations (Effective June 7, 2016)***

This bill adopted a National Association of Insurance Commissioners’ model to establish standards for minimum capital and surplus to be maintained by a health organization and provides for the early detection of a potentially hazardous or otherwise dangerous financial condition of a health organization in order to protect its enrollees and the general public. A “health organization” includes a health maintenance organization licensed under Article 25A of Chapter 33; limited health service organizations licensed under Article 25D of Chapter 33; provider-sponsored networks licensed under Article 25G of Chapter 33; hospital, medical and dental indemnity or service corporations licensed under Article 24 of Chapter 33; and other managed care organizations licensed under Article 25 of Chapter 33. The definition does not include an organization that is licensed under Article 3 of Chapter 33 as either a life or health insurer or a property and casualty insurer and that is otherwise subject to either the life and health or property and casualty risk-based capital requirements.

***Senate Bill 465 – Relating to Professional Employer Organizations (Effective June 10, 2016)***

This legislation provides that if a professional employer organization offers to its covered employees any health benefit plan that is not fully insured by an authorized insurer, the professional employer organization must comply with the provisions of Article 31 of Chapter 33 pertaining to captive insurance.

***Senate Bill 517 – Relating to PEIA Plans (Effective June 9, 2016)***

This bill clarifies that the Public Employees Insurance Agency and any plan it establishes or administers is exempt from Chapter 33, except where those provisions are made expressly applicable.

***Senate Bill 621 – Relating to Workers’ Compensation Coverage for Taxicab Companies (Effective June 10, 2016)***

This legislation exempts taxicab companies, whose drivers are independent contractors, from providing workers’ compensation coverage for the drivers.

***House Bill 4038 – Relating to Insurance Requirements for the Refilling of Topical Eye Medication (Effective June 10, 2016)***

This bill provides that a health plan which covers prescription topical eye medication may not deny coverage for the refilling of such medication when: (1) the medication is to treat a chronic condition of the eye; (2) the refill is requested by the insured prior to the last day of the prescribed dosage period and after at least seventy percent (70%) of the predicted days of use; and (3) a person licensed under Chapter Thirty of the West Virginia Code and authorized to prescribe topical eye medication indicates on the original prescription that refills are permitted and that the early refills requested by the insured do not exceed the total number of refills prescribed.



***House Bill 4040 – Relating to Step Therapy Protocols in Health Benefit Plans (Effective June 10, 2016)***

This law provides for the regulation of step therapy protocols in health benefit plans. “Step therapy protocol” means a protocol or program that establishes the specific sequence in which prescription drugs for a specified medical condition, and medically appropriate for a particular patient, are covered by a health plan issuer or health benefit plan.

***House Bill 4146 – Relating to Insurance Coverage for Abuse-Deterrent Opioid Analgesic Drugs (Effective June 10, 2016)***

This bill requires health benefit plans to provide coverage for abuse-deterrent opioid analgesic drugs.

***House Bill 4228 – Relating to Transportation Network Companies (Effective July 1, 2016)***

This legislation provides for the regulation of transportation network companies. A “transportation network company” is defined as a corporation, partnership, sole proprietorship, or other entity that is licensed by the West Virginia Division of Motor Vehicles and operates in West Virginia using a digital network to connect transportation network company riders to transportation network company drivers who provide prearranged rides. A transportation network company driver or transportation network company on the driver’s behalf must maintain primary automobile insurance that recognizes that the driver is a transportation network company driver or otherwise uses a vehicle to transport passengers for compensation and covers the driver: (1) while the transportation network company driver is logged on to the transportation network company’s digital network; or (2) while the driver is engaged in a prearranged ride. The following automobile insurance requirements apply while a participating transportation network company driver is logged on to the transportation network company’s digital network and is available to receive transportation requests, but is not engaged in a prearranged ride: (1) primary automobile liability insurance in the amount of at least \$50,000 for death and bodily injury per person, \$100,000 for death and bodily injury per incident and \$25,000 for property damage; and (2) uninsured and underinsured motorists’ coverage as required by W. Va. Code § 33-6-31. The following automobile insurance requirements apply while a transportation network company driver is engaged in a prearranged ride: (1) primary automobile liability insurance that provides at least \$1,000,000 for death, bodily injury and property damage; and (2) Uninsured and underinsured motorists’ coverage as required by W. Va. Code § 33-6-31. If insurance maintained by a driver lapses or does not provide the required coverage, insurance maintained by a transportation network company shall provide the coverage required beginning with the first dollar of a claim and has the duty to defend such claim. Insurers may exclude any and all coverage afforded under the policy issued to an owner or operator of a personal vehicle for any loss or injury that occurs while a driver is logged on to a transportation network company’s digital network or while a driver provides a prearranged ride.

***House Bill 4655 – Relating to Vision Care Plans (Effective June 10, 2016)***

This law prohibits insurers, vision care plans or vision care discount plans from requiring vision care providers to provide discounts on noncovered services or materials. It also prohibits eye care providers from charging more to enrollees for noncovered services than the normal and customary fee. The bill provides that insurers, vision care plans or vision care discount plans may not provide for a nominal reimbursement in order to claim that a service or material is covered and prohibits insurers, vision care plans or vision care discount plans from falsely representing benefits provided to sell coverage or communicate benefits to enrollees. The bill prohibits the requirement that eye care providers be credentialed through a designated vision plan and provides pay parity for optometrists and ophthalmologists. The bill further provides that optometrists and ophthalmologists be held to the same credentialing standards and prohibits eye care providers from being required to accept all plans and discount plans offered by an insurer, vision care plan or vision care discount plan in order to be on a panel for the insurer, vision care plan or vision care discount plan. The bill prohibits the insurer, vision care plan or vision care discount plan from changing the terms of an agreement with an eye care provider without communication with and agreement from the eye care provider. It also provides that an insurer, vision care plan or vision care discount plan shall not discriminate against a provider based on geographic location of the eye care provider. The bill authorizes suits for injunctions by persons aggrieved or by the Insurance Commissioner and recovery of monetary damages, costs and attorney's fees.

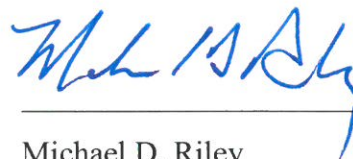
***House Bill 4734 – Relating to Mine Subsidence Insurance (Effective October 1, 2016)***

This bill increased the allowable limit of mine subsidence insurance reinsured by the Board of Risk and Insurance Management from \$75,000 to \$200,000.

***House Bill 4739 – Relating to Unclaimed Life Insurance Benefits (Effective June 10, 2016)***

This legislation created the “Unclaimed Life Insurance Benefits Act.” The Act requires insurers to perform an annual comparison of its insureds who hold death benefit policies against a death master file; provides that such a comparison does not apply to those accounts for which the insurer is receiving premiums from outside the policy value, by check, bank draft, payroll deduction or any other similar method of payment within eighteen months immediately preceding the death master file comparison; requires reasonable steps to be taken to locate and contact beneficiaries or other authorized representatives regarding the insurer's claims process; and authorizes the Insurance Commissioner to promulgate rules that may be reasonably necessary to implement the Act's provisions.

Please e-mail any questions concerning this Informational Letter to [OICInformationalLetters@wv.gov](mailto:OICInformationalLetters@wv.gov) or call (304) 558-0401.



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