

WEST VIRGINIA INFORMATIONAL LETTER

NO. 33

May, 1985

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

The purpose of this Information Letter is to briefly summarize the most significant insurance legislation which was enacted during the 1985 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 consumers, but rather, is intended merely to highlight some of the more important bills.

Persons seeking a copy of particular legislation should contact West Virginia Legislature, Senate Clerks Office, Main Unit, State Capitol, Charleston, West Virginia 25305, telephone 304/357-7800 or House Clerks Office telephone 304/340-3200.

INSURANCE LEGISLATION ENACTED

- S.B. 118 - Group Credit Life Insurance -- This bill amends Section 33-14-3 (d) to provide that the amount of insurance on the life of a debtor under a group policy issued to a creditor may be in an amount up to the amount of the indebtedness. Previously, the statute restricted the amount of insurance on the life of a debtor under a group policy to a maximum of twenty thousand dollars (\$20,000.00). The effective date of this legislation is June 19, 1985.
- S.B. 213 - Continuum Of Care -- This bill changes the date on which insurers must make available coverage for continuum of care services from July 1, 1983 to July 1, 1986. The bill provides, however, that insurers shall not be required to extend funds for underwriting continuum of care coverage until the Continuum of Care Board, in cooperation with the Insurance Commissioner, has completed a written master plan which establishes specific standards and coverages to be provided in such supplement coverage. Additionally, the bill requires that rates for continuum of care coverage accurately reflect the cost of such coverage and not be subsidized by the rate structure of any other coverage. Finally, the bill amends various articles of the Insurance Code in order to clarify the policies and insurers which are subject to the continuum of care requirements. The effective date of this legislation is July 10, 1985.
- H.B. 1290 - Fleet Liability Insurance For Transit Authorities -- This bill adds new Section 29-12-5b which requires the State Board of Risk and Insurance Management to assist state transit authorities in procurement of fleet liability insurance for vehicles operated by the authorities. The cost of the insurance coverage must be borne by the authorities. The effective date of this legislation is July 15, 1985.

- H.B. 1334 - Mine Subsidence Insurance -- This bill makes a number of changes in Chapter 33, Article 30, concerning mine subsidence insurance. The definition of a covered structure is amended by including as covered structures basements, footings, foundations, septic systems and underground pipes directly servicing a covered dwelling or building. Driveways, sidewalks and parking lots are specifically excluded from coverage. Additionally, the previous exclusion from coverage for industrial and commercial buildings is removed. The State Board is permitted to invest the funds in the mine subsidence insurance fund and use the interest therefrom for claim payments and administrative expenses of the program. The bill also provides that mine subsidence coverage is mandatory unless waived by the insured. However, in the following specified counties, coverage is optional and is to be provided only upon the request of the insured: Berkeley, Cabell Calhoun, Hampshire, Hardy, Jackson, Jefferson, Monroe, Morgan, Pendleton, Pleasants, Richie, Roane, Wirt and Wood. The bill provides that the effective date of coverage shall be the thirtieth (30th) calendar day following application. A new provision is added to the effect that the amount of mine subsidence coverage cannot exceed the amount of fire insurance coverage on the covered structure. The bill also permits an insurer to refuse coverage on structures which evidence a loss or damage in progress. The legislation increases the State Boards reinsurance liability from fifty thousand dollars (\$50,000.00) to seventy-five thousand dollars (\$75,000.00). The bill also deletes the existing requirement that insurers remit to the board all monies recovered as a consequence of subrogation. This bill becomes effective on July 1, 1985.
- H.B. 1763 - Rehabilitation And Liquidation -- This legislation makes certain changes in the rehabilitation and Property and Casualty Guaranty Fund statutes. New Section 33-10-19a establishes the priority of distribution of claims from the estate of an insolvent insurer. The legislation also clarifies the definition of covered claims.

Specifically, the bill provides that covered claims do not include: retroactive premiums or premiums subject to adjustment after the date of liquidation; amounts due as subrogation recoveries from the insolvent insurer or an insured of the insolvent insurer; and, claims filed after the date established by the court for filing of claims against a liquidator or receiver. The act further provides that default judgments and stipulated judgments are not binding against the Guaranty Association. Additionally, the Property and Casualty Guaranty Association is now triggered upon an order of liquidation, as opposed to the present language which triggers the Guaranty Association upon a finding of insolvency. Finally, the automatic stay provision of Section 33-26-18 is extended from sixty (60) days to six (6) months, which time begins from the date the liquidator receives the claim in question. This bill becomes effective July 1, 1985.

H.B. 1851 - Claim Settlement Practices -- This bill adds a new sub-section (o) to Section 33-11-4 (9) concerning those activities which constitute unfair claim settlement practices. This new sub-section imposes certain notification requirements upon accident and sickness insurers in regard to acceptance or denial of claims and the status of claim investigations. The sub-section also provides that accident and sickness claims must be paid within ninety (90) days of filing of proof of loss unless the Insurance Commissioner determines that a legitimate dispute exists as to coverage, liability or damages or that the claimant has fraudulently caused or contributed to the loss. If the insurer fails to pay the claim within the ninety (90) day limitation, absent the two exemptions noted above, the insurer must pay to the claimant a penalty at the current prime rate plus one percent (1%). Any penalty paid by an insurer may not be a consideration in any rate filing made by the insurer. This bill becomes effective on July 15, 1985.

H.B. 1861 - Waiver of Immunity Defense -- This bill provides that any public liability insurance policy issued to a charitable association or governmental unit shall be read so as to contain a provision whereby the company issuing such policy waives, or agrees not to

Page 5
Informational Letter No. 33
May, 1985

assert as a defense, on behalf of the policyholder or beneficiary thereto, the immunity from liability of the insured by reason of the insureds charitable or governmental status. Present law requires that such public liability policies contain specific endorsement or provision waiving the immunity defense. This bill becomes effective on July 15, 1985.

Fred E. Wright
Insurance Commissioner