

**WEST VIRGINIA INFORMATIONAL LETTER**

**NO. 80**

**MAY, 1992**

**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 Informational Letter is to briefly summarize significant insurance legislation enacted during the 1992 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 to highlight the more important bills.

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

## **SUMMARY OF 1992 LEGISLATION**

### **Senate Bill 1 – Authorization of Administrative Regulations**

This bill authorizes the following legislative rules: Excess Line Brokers; Examiners Compensation, Qualification, and Classification; West Virginia Essential Property Insurance Association; Medical Malpractice Annual Reporting Requirements; Medical Malpractice Loss Experience and Loss Expense Reporting Requirements; Transitional Requirements for the Conversion of Medicare Supplement Insurance Benefits and Premiums to Conform to Medicare Program Revisions; Insurance Adjusters; Accident and Sickness Rate Filing; Group Coordination of Benefits; AIDS Regulations; Health Insurance Benefits for Temporomandibular and Craniomandibular Disorders; Guaranteed Loss Ratios as applied to Individual Accident and Sickness Insurance Policies; Permanent Regulations on Medicare Supplement Insurance; "Tail" Malpractice Insurance Covering Certain Medical and Allied Health Care Providers.

This legislation became **effective March 14, 1992.**

### **Senate Bill 128 -- Surcharge on Fire Insurance and Casualty Insurance Policies**

This bill imposes on the policyholder of any fire and casualty insurance policy a policy surcharge equal to one percent of gross direct premium paid by the policyholder for each such policy. The surcharge will not be subject to premium taxes, agent commissions, or any other assessment against premiums. It will be collected and remitted by the insurer to the Insurance Commissioner on a quarterly basis. Any insurer failing to collect and remit any surcharge is liable for a civil penalty of up to one hundred dollars (\$100.00) for each day of delinquency. The Commissioner may suspend the insurer until all surcharge payments and penalties are remitted in full.

Fifty percent of the monies collected will be distributed to volunteer fire departments throughout the state. The remaining fifty percent will be distributed to the teachers' retirement system.

This legislation becomes **effective July 1, 1992.**

### **House Bill 4148 -- State Fire Commission**

This bill amends current law by increasing the number of State Fire Commission members from eleven (11) to thirteen (13). The Professional Independent Insurance Agents of West Virginia are directed to recommend the names of two persons to represent the fire insurance industry. The Governor will select one of the two recommended persons to serve on the commission, and must make such appointments within 90 days after the bill takes effect. The Fire Commission is responsible for all fire programs within the state, including the Fire Marshals Office. The commission may also make recommendations to the Insurance Commissioner regarding town classifications for fire insurance rates.

This legislation becomes **effective June 4, 1992.**

### **House Bill 4182 -- Automobile Glass Replacement or Repair Services**

This bill prohibits an insurer from requiring an insured to use a particular company to obtain automobile glass replacement or repair services. An insurer may not engage in any act of intimidation, coercion, or threat against the insured to use a particular company. However, nothing in the bill prohibits the insurer from entering into an agreement with any company regarding glass prices or services, or from providing to an insured a list that includes the names of such companies. If such a list is provided, the insurer, agent or adjuster must advise the insured that he or she may use any other company. The insurer must fully and promptly reimburse the cost of service from a nonlisted company, less applicable deductibles, at no less than the prevailing market price.

No automobile glass company may waive deductibles or offer rebates, discounts, or other incentives for automobile repair which is being reimbursed by insurance.

This legislation becomes **effective May 24, 1992.**

### **House Bill 4184 -- H.C.F.A. 1500**

This bill requires the Insurance Commissioner to develop standard forms and procedures regarding health care claims and requires all insurers, third party providers, and health care providers to implement and use such standards in a uniform manner. The provisions of the article apply to all insurers writing accident and sickness policies, hospital service

**House Bill 4184 -- H.C.F.A. 1500 (continued)**

corporations, health service corporations, medical service corporations, dental service corporations, third party providers, state agencies and departments, including, but not limited to, the Public Employees Insurance Agency, Workers Compensation insurance, and providers of services under medicare and medicaid. The Insurance Commissioner shall establish rules regarding the use of forms, terms, or procedures including, but not limited to: 1) the health care financing administration fifteen hundred (HCFA 1500) claim form; 2) the international classification of disease (ICD-9-CM) and common procedural terminology (CPT) codes; and 3) current practices involving reimbursement of claims and explanation of benefits. The Insurance Commissioner will be advised by a thirteen-member panel consisting of representatives of providers, insurers, third party administrators, consumers, the Workers Compensation Fund and the Public Employees Insurance Agency. The panel is to be appointed thirty (30) days after the effective date of this bill.

This legislation becomes **effective June 3, 1992.**

**House Bill 4207 -- Charitable Institutions**

This bill amends current law by allowing charitable institutions to qualify as possessing insurable interests under life insurance policies.

This legislation becomes **effective June 2, 1992.**

**House Bill 4212 -- Coverage for Loaned or Leased Motor Vehicles**

Every policy of liability insurance which insures a motor vehicle with collision, comprehensive, property, or bodily injury coverage shall extend coverage to the insured while operating a vehicle which he or she is permitted to use by a person, firm, or corporation that owns the vehicle and is engaged in selling, repairing, leasing, or servicing motor vehicles. Coverage under such insureds policy shall be primary and coverage owned or obtained by a person, firm, or corporation that owns the vehicle is secondary. Any coverage available to the insured shall be secondary to insurance owned by the person, firm, or corporation engaged in selling, repairing, leasing, or servicing motor vehicles, if the insured is an employee of the business owner and is operating the vehicle while acting within the scope of his or her employment or the insured is test driving the vehicle for possible purchase or lease.

This legislation becomes **effective June 2, 1992.**

**House Bill 4506 -- Notification of Cancellation or Nonrenewal  
of Automobile Liability Policy to Loss Payee**

This bill requires an insurer, when it provides notice to an insured of its intent to cancel or nonrenew an automobile liability policy, to also provide notice of cancellation or nonrenewal to any loss payee under the policy. "Loss payee" is defined as the person or persons not a named insured designated on an automobile liability policy as being entitled to proceeds or payments under such policy.

This legislation becomes **effective May 24, 1992.**

**House Bill 4576 -- Consumer Advocate**

This bill requires health care facilities and health care providers filing applications for certificate of need or change in rate schedules with the Health Care Cost Review Authority to submit a copy of the same to the Office of the Consumer Advocate.

This legislation became **effective March 7, 1992.**

**House Bill 4584 -- Credit Life and Accident and Sickness Insurance**

This bill clarifies existing law regarding cancellation of credit life and health insurance upon payment of a consumer loan. The duties of the lending institution and the insurer are outlined. Whenever a consumer loan is paid off, the creditor must: 1) inform the debtor/insured that his or her credit insurance will be cancelled; 2) advise the debtor/insured that any unearned premiums will be applied to the loan balance (in cases where the creditor provides the insurance); 3) notify the debtor/insured that he or she has the right to recover such unearned premium (when the insurance was obtained elsewhere); 4) advise the debtor/insured of his or her obligation to notify any other insurer (when the creditor is not the insurer) of the loan payoff and insurance cancellation; and 5) when the creditor was the seller of insurance, notify the insurer of the cancellation.

Previously, the law required the creditor to inform the debtor/insured of his or her right to cancel credit insurance, placing the burden of cancellation on the insured. This bill requires the creditor or insurer to automatically refund the unearned premium without notification from the insured. The insured is only required to notify the insurer when the insurance has been obtained through a provider other than the creditor.

This legislation became **effective March 6, 1992.**

**House Bill 4666 -- National Association of Insurance  
Commissioners (NAIC) Accreditation Legislation  
and Medicare Supplement Revisions**

The primary focus of this bill was to adopt NAIC model legislation necessary for accreditation according to the Associations standards. The bill does the following:

Quarterly Financial Statements: Requires domestic insurers **only** to file quarterly financial statements with the Commissioner within forty-five days of the end of each of the first three quarters. These quarterly statements are to be filed on the appropriate NAIC blank. The Commissioner may require that the information contained in the blank be reported to the NAIC. Any licensed insurer, at the Commissioners discretion, may be required to comply with the provisions of this section.

Credit for Reinsurance: This section of the legislation closely parallels, with modifications, the NAICs Model Credit for Reinsurance Act. The legislation redefines the standards for domestic insurers to determine whether or not credit for reinsurance may be taken for financial statement purposes. These standards may be applied to a foreign or alien insurer transacting insurance in West Virginia if such insurer is domiciled in a jurisdiction employing standards regarding credit for reinsurance that are not substantially similar to those adopted by the legislation. Credit for reinsurance shall be allowed when the reinsurance is ceded to an assuming insurer which: 1) Is licensed to transact insurance or reinsurance in this State; 2) Is accredited as a reinsurer in this State; 3) Is domiciled and licensed in, or in the case of a United States branch of an alien assuming insurer, is entered through one of the fifty states of the United States or the District of Columbia which employs substantially similar standards regarding credit for reinsurance (this assuming insurer must maintain surplus at a minimum of twenty million dollars and submit to the examination authority of the State of West Virginia); 4) Maintains a trust fund in a qualified United States financial institution for the payment of valid claims of all of its United States policyholders and ceding insurers and complies with other aspects of the legislation; Credit shall be allowed when the reinsurance is ceded to an assuming insurer not meeting the requirements of 1 through 4, but only with respect to the insurance of risks located in jurisdictions where such reinsurance is required by applicable law or regulation of that jurisdiction. Credit for reinsurance may also be allowed a ceding insurer if adequate "funds withheld" provisions are established as specified by the legislation.

The provisions of this section shall apply to all sessions on or after the first day of January, 1993.

**House Bill 4666 (continued)**

Life Reinsurance Agreements: This section of the legislation applies to all domestic life insurers and to all other licensed life insurers who are not subject to a substantially similar law or regulation in their domiciliary state. It closely parallels the NAIC Model Regulation on Life Reinsurance Agreements. The legislation defines the types of life reinsurance agreements or characteristics of agreements that ceding insurers may not utilize for reinsurance credit. Insurers subject to this act currently taking credit for reinsurance in connection with agreements that would be in violation of this Act are allowed to reduce their reserve credits to zero by 1994 upon application to the Commissioner prior to the thirty-first day of December, 1992, provided that the Commissioner is notified of the existence of such reinsurance agreements and their corresponding credits within ninety days of the effective date of this section of the legislation.

This section of the legislation is **effective July 1, 1992**.

Reinsurance by Domestic Stock and Mutual Insurers: This section of the legislation provides a definition for the term "bulk reinsurance." It requires the approval of the Commissioner for any such reinsurance transaction with a reinsurance cession exceeding the percentage specified by the legislation.

Mergers Between Domestic Mutual and Farm Mutual insurance Companies: This section of the legislation allows domestic farm mutual and domestic mutual insurance companies to merge with the requirement that the domestic mutual insurance company be the surviving entity.

Health Care Corporations: This section of the legislation subjects Health Care Corporations organized under the provisions of Article 25 of Chapter 33 of the Code of West Virginia to the provisions of the West Virginia Life and Health Insurance Guaranty Association Act.

Insurance Holding Company Systems: This section of the legislation updated West Virginias previous insurance holding company systems act to be consistent with the provisions contained in the current NAIC model. The changes primarily consisted of the inclusion of the NAICs model language concerning domestic insurers abilities to invest in various types of subsidiaries. It updated reporting requirements concerning the acquisition of control of or merger with a domestic insurer. It updated the section relating to the registration of insurers and the reporting of dividends. It updated the section on standards for transactions with affiliates and the adequacy of surplus, which included the NAICs tighter standards for determination of whether a dividend or distribution is to be

**House Bill 4666 (continued)**

considered extraordinary. It adopted the NAIC model language on criminal proceedings and penalties and recovery rights in the event of a liquidation or rehabilitation of a domestic insurer.

Risk Retention Act: West Virginia's Risk Retention law was updated to more closely parallel the provisions of the NAIC model act. This included requiring that Risk Retention Groups chartered in West Virginia annually provide the Commissioner and the NAIC a copy of its annual statement. Additionally, Risk Retention Groups will be required to file summary information concerning their plan of operation which will be transmitted to the NAIC by the Commissioner. Purchasing Groups intending to do business in West Virginia are required to supply the Commissioner with information on forms prescribed by the National Association of Insurance Commissioners. Purchasing Groups obtaining coverage for their members from insurance companies not licensed in the State of West Virginia will be required to have printed on each Group's Certificate or Evidence of Insurance a statement concerning the fact that the unlicensed insurer is not subject to the West Virginia Insurance Guaranty Association Act or to all of the protections of the insurance laws and rules of the State of West Virginia.

Business Transacted With Producer Controlled Property/Casualty Insurer Act: The legislation adopted the above referenced NAIC model law. This law regulates the relationship between a producer and an insurer that is controlled by the producer. The legislation restricts the producer from earning commissions at a rate higher than usual, charging lower than usual premiums so as to obtain an unfair advantage, safeguards against placing excessive business with a company that could cause or threaten insolvency, provides guidelines for a clear accounting of monies collected by the producer and provides for loss reserve certifications on the business written by the producer.

Managing General Agents: The legislation adopted the NAICs Model Managing General Agents Act. This law requires that any person or person working for a firm, association or corporation shall not act in the capacity of a managing general agent with respect to risks located in this State for a licensed insurer unless such person is licensed and appointed as an agent of the insurer in this State. The law specifies certain provisions that must be contained in contracts between the MGA and the insurer. These provisions include such things as: the ability of the insurer to suspend the underwriting authority of the MGA; the requirement that the MGA render accounts and remit funds to the insurer on no less than a monthly basis, and the requirement that funds are to be held by the MGA in a fiduciary capacity; the MGA must maintain separate records of business



### **House Bill 4666 (continued)**

written and give free and pen access to the Commissioner to these records. The legislation places certain responsibilities upon the insurers contracting with the MGA. These requirements include such things as: having independent financial examinations performed on the MGA; obtaining actuarial opinions on any loss reserves established by the MGA; and providing written notification to the Commissioner of the appointment or termination of a Managing General Agent.

Medicare Supplement Insurance: This bill removes the language "reason of age" as a standard of eligibility for individual and group medicare supplement policies. The federal government has mandated that the language "reason of age" be removed from state statutes as a criteria for eligibility.

The provisions of this bill become **effective July 1, 1992.**

### **House Bill 4704 -- Unauthorized Insurers**

This bill prohibits any insurer from transacting insurance in this State unless properly licensed to do so. Following notice and hearing, any unauthorized insurer found transacting such business may be fined up to twenty thousand dollars (\$20,000). Any officer, director, agent or employee of an unauthorized insurer who makes or issues an insurance contract is guilty of a misdemeanor and will be fined not more than ten thousand dollars (\$10,000) and/or imprisoned not more than one year. The Insurance Commissioner may pursue either injunctive relief from the courts or administrative hearings as remedies for unauthorized insurers violations. Agents who sell policies from unauthorized insurers will be personally liable. The bill also permits enforcement of foreign decrees and provides for service of process upon the Secretary of State as the agent for an unauthorized insurer.

Any person who maintains that he or she is subject to regulation by a federal agency must provide the appropriate certificate or documentation that he or she is federally exempted before transacting business in the state.

This legislation becomes **effective July 1, 1992.**

### **House Bill 4716 -- Drivers License Reform**

The current law states that when the Division of Motor Vehicles receives notice that an insured has been cancelled, the Division will suspend his or her license for thirty (30) days and suspend his or her registration until proof of insurance is shown. This bill provides that if the cancelled individual shows proof of insurance within the thirty (30) day suspension, his or her license and registration will be immediately removed from suspension.

This legislation becomes **effective June 4, 1992.**

### **House Bill 4752 -- No-Frills Policies and Mandated Benefits**

The first portion of this bill requires coverage for mammograms, pap smears, and prostate cancer screening as mandated benefits under the Public Employees Insurance Plan.

The second part of this bill deals with the no-frills policy created by the 1991 Legislature. It adds a prostate cancer screening benefit as one of the guidelines to be used by the Insurance Commissioner in developing the plan. It also states that any additional benefits an insurer wishes to add to the basic policy must be approved by the Insurance Commissioner.

The bill requires an individual to have been without insurance for at least one year in order to be eligible to purchase a no-frills plan. It also states that if an employer has not provided insurance to all of his/her employees in the past year, the group is eligible for coverage.

This legislation becomes **effective July 1, 1992.**

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