

West Virginia Informational Letter 145

June 2003

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 2003 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 consumer, nor should it be construed as a comprehensive explanation of the bills addressed. Rather, it is intended to highlight the more important bills.

Persons seeking a copy of particular legislation should 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.

S.B. 56 – Mail Order Pharmacies

This bill prohibits the required use of mail order pharmacies in connection with policies or contracts that provide coverage for prescription drugs by the following entities: insurers issuing group accident and sickness policies in this State; hospital, medical, dental and health service corporations defined in Article 24 of Chapter 33 of the West Virginia Code; health care corporations issuing a contract under Article 25 of the West Virginia Code; and health maintenance organizations issuing coverage in this State pursuant to the provisions of the HMO Act. The bill further prohibits these entities from escaping the provisions by using an agent or contractor or through the action of an administrator of prescription drug benefits.

This bill becomes effective on **June 5, 2003**.

S.B. 356 – Changes Required by Gramm-Leach-Bliley

This bill amended various sections of Chapter 33 pursuant to the federal Gramm-Leach-Bliley Act (“GLBA”). The bill did the following:

- Clarified that the Commissioner has 60 days to collect information and take action on a plan filed by a company to merge with or otherwise take control of a domestic insurer;
- Added depository institutions to the list of businesses an insurer may acquire; and
- Added federal regulators to the list of persons to whom the Insurance Commissioner may disclose confidential information.

This bill becomes effective on **June 6, 2003**.

S.B. 358 - Redomestication

This bill authorizes the Insurance Commissioner to regulate the method and manner by which a domestic insurer can redomesticate to another state, by requiring:

- Notice of the insurer's intent to redomesticate as well as details concerning the proposed transfer;
- Withholding of approval if the transfer is not in the best interest of the policyholders of this state;
- That existing policies of the transferring insurer remain in full force and effect; and
- Submission of new policy forms before the date of the transfer unless exempted by the Commissioner.

This bill becomes effective on **June 6, 2003**.

S.B. 400 – Changes Required by Gramm-Leach-Bliley Regarding Sharing of Information with Federal Regulators

GLBA requires that the state insurance regulators and the federal banking agencies cooperate and share information. The bill authorizes the Commissioner to share confidential information with the federal banking agencies such as the Office of the Comptroller of the Currency, The Director of the Office of Thrift Supervision, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation, as long as they take all reasonable steps to insure that confidentiality is maintained.

This bill becomes effective on **June 6, 2003**.

S.B. 485 - Settlement Authority

This bill authorizes the Insurance Commissioner to enter into Compromise Agreements over any tax, surcharge, interest, additional tax, fee, fine or penalty arising under Chapter 33 of the West Virginia Code and rules.

Any dispute which has resulted in a civil action being brought on behalf of the Insurance Commissioner and which involves a tax controversy in excess of \$15,000 requires a recommendation from the State Attorney General.

This bill becomes effective on **June 6, 2003**.

S.B. 486 - Notification of Adverse Financial Condition

This bill requires that any independent certified public accountant who examines the financial statements of an insurance company immediately notify the insurer's board of directors or its audit committee and the Insurance Commissioner of any determination that the insurer has materially misstated its financial condition.

This bill becomes effective on **June 6, 2003**.

S.B. 488 – Farmers Mutual Limited Risk

This bill amended W.Va. Code §33-22-10 to change the surplus requirement needed for a Farm Mutual Company to issue a policy without contingent liability to the member from \$100,000 to a requirement of having a net premium written to surplus ratio of no more than 4 to 1.

In addition, the bill added language that any Farm Mutual Company that has received an extension of its license to permit it to issue liability policies, policies covering loss or damage to property from theft, vandalism, etc., or personal property floater insurance is subject to W.Va. Code §33-4-16. W.Va. Code §33-4-16 prohibits an insurer from retaining any risk on any one subject of insurance in an amount exceeding 10% of its surplus.

This bill becomes effective on **June 6, 2003**.

S.B. 534 - Third Party Administrators

This bill provides regulatory authority to the Insurance Commissioner over third party administrators ("TPA's"), by establishing the following:

- Requirements and exemptions for the licensing of TPA's;
- Record keeping requirements and standards for TPA's;
- That a TPA may use only advertising pertaining to the business underwritten by an insurer, and the advertising must be approved in writing by the insurer in advance of its use;
- That TPA's hold all insurance charges or premiums collected on behalf of an insurer, and the return of premiums received from that insurer in a fiduciary capacity;
- That a TPA may not be compensated in a manner which is contingent upon savings effected in the adjustment, settlement and payment of losses;

- That a written notice approved by the insurer must be given to covered individuals advising them of the identity of, and relationship among, the TPA, the policyholder and the insurer;
- The requirement of a certificate of authority to act as a TPA and reciprocity provisions for nonresident TPA's; and
- An annual report that is to be filed by the TPA.

This bill becomes effective on **June 6, 2003**.

H.B. 2700 – Peer Review

The amendment gives HMO and Hospital, Medical, Dental, and Health Service Corporation peer review organizations the same protections and immunity as peer review organizations that are part of hospitals, health insurance plans, and others entities.

The bill further removes the requirement that the health care professionals being reviewed in connection with a peer review, as well as the reviewers, be licensed in West Virginia in order to benefit from the protections of the statute.

This bill becomes effective on **June 6, 2003**.

H.B. 2702 – Risk Retention Group Examination Fee

This bill removed the provision from W.Va. Code §33-32-5 that required Risk Retention Groups to pay, in addition to premium taxes, an examination assessment fee levied by §33-2-9 to cover the costs of financial examinations.

This bill becomes effective on **June 6, 2003**.

H.B. 2003 – Self-Insurance Pools for Political Subdivisions

This bill requires the Commissioner to promulgate rules to implement its provisions with regard to self-insurance pools for political subdivisions.

The bill amended W.Va. Code §29-12A-16 by specifying that a political subdivision (city, school district, county, etc.) may join with one or more other political subdivisions to establish and maintain a self-insurance pool.

The pool will provide coverage for damages in civil actions for injury, death or loss to persons or property caused by an act/omission of the political subdivision or its employee.

This bill becomes effective on **June 6, 2003**.

H.B. 2714 - Fire Equipment Donation Immunity

W.Va. Code §8-15-8c, enacted in 2002, provides civil immunity for those who donate fire control or rescue equipment to a volunteer fire department. Under this section, there is to be no civil liability for personal injury, property damages or death resulting from any defect in the equipment.

The bill changed the language of §8-15-8c(c) to clarify that unless the insured has executed a specific written rejection of such coverage in the policy, an insurer who sells a liability policy to a person, company, etc. who donates fire equipment is barred from asserting civil immunity granted the insured against claims or suits covered by the policy, up to the policy limits. If the insured has signed a rejection of the coverage, the insurer may assert the immunity provisions of the section.

This bill becomes effective on **June 4, 2003**.

H.B. 2715 – Surplus Lines

This bill amended Article 12C of Chapter 33 and adopted the NAIC model legislation for surplus lines insurance. The bill did the following:

- Adopted the NAIC’s quarterly listing of alien insurers;
- Adopted the establishment of a list of eligible surplus lines insurers to be published by the Commissioner for surplus lines insurers domiciled in the United States;
- Established minimum financial solvency requirements for surplus lines insurers;
- Adopted a schedule and reporting form for determining the allocation of surplus lines premium taxes on risks located in multiple states;
- Established jurisdiction and venue in West Virginia for suits against eligible surplus lines insurers for a cause of action arising in this state under a surplus lines insurance contract;
- The surplus lines licensee must give a notice to applicants for insurance to be placed with a nonadmitted insurer;
- Established a misdemeanor offense for violations of Article 12C; and
- Removed the bond required for resident surplus lines licensees.

This bill becomes effective on **June 5, 2003**.

H.B. 2764 – Interrogatories

This bill clarified the Commissioner's subpoena powers in Section 4, Article 2 of Chapter 33, by providing that subpoenas may be issued to any person and may require that person, among other things, to testify or answer written interrogatories under oath; produce documents and tangible things; and permit inspection and copying of documents.

The bill specifies the content of subpoenas and specifies the duties of persons receiving subpoenas.

This bill becomes effective on **June 6, 2003**.

H.B. 2675 – Clinical Trials

The bill adds new language to articles in chapter 33 regulating individual Accident & Sickness, group Accident & Sickness, Hospital, Medical, Dental, and Health Service Corporations, Health Care Corporations, and HMO's.

The bill requires insurers to provide coverage for patient cost in a clinical trial as a result of:

- Treatment provided for a life-threatening condition, or
- The prevention of or early detection of, or treatment studies on, cancer.

The bill includes technical standards for determining which kinds of clinical trials trigger the coverage for patient costs. This bill also adds these provisions to Code sections regulating PEIA, CHIP, and Medicaid.

This bill becomes effective on **June 6, 2003**.

S.B. 287 – Bill Authorizing the Insurance Commissioner to Promulgate Rules

This bill authorizes the Insurance Commissioner to promulgate the following rules:

Title 114, Series 14 – Unfair Trade Practices Act.

Title 114, Series 15 – Examiners' Compensation, Qualifications and Classification.

Title 114, Series 27 – AIDS Regulations.

Title 114, Series 30 – Tail Malpractice Insurance.

Title 114, Series 53 – Quality Assurance.

Title 114, Series 59 – Medical Malpractice "Consent to Rate."

Title 114, Series 61 – Credit Personal Property Insurance.

Title 114, Series 62 – Standards for Safeguarding Customer Information.

Title 114, Series 63 – Standard Motor Vehicle Policy Provisions.

Title 114, Series 64 – Mental Health Parity.

This bill was effective from passage on **March 7, 2003**.

In addition, a joint rule proposed by the Insurance Commissioner and the Secretary of the Department of Health and Human Resources was authorized by H.B. 2625. The rule is found in Title 64, Series 89 and implements Uniform Credentialing of Health Care Practitioners.

PLEASE TAKE NOTE that Title 114, Series 63, Standard Motor Vehicle Policy Provisions, may require changes to policy forms and should therefore be reviewed carefully. The following schedule will apply to any necessary form filings to comply with the rule:

- Companies with names which begin with the letters S through Z must file no later than August 1, 2003.
- Companies with names which begin with the letter K through R must file no later than September 1, 2003.
- Companies with names which begin with the letter A through J must file no later than October 1, 2003.
- If the first word in the company name is "The," the first letter of the company name is T and you must file by August 1, 2003.

If you have any questions regarding this filing schedule, you may contact Mia Rowe, Director of Rates and Forms Division at (304) 558-2094.

Any policy forms that have not been filed with changes necessary to bring them into compliance with the provisions of Series 63 **by the 1st day of October, 2003 are hereby disapproved.**

Study Resolutions passed in 2003:

Three new study resolutions were also passed that involve the Insurance Commissioner:

HCR 66: Requesting the Joint committee on Government Finance to conduct a study of the benefits of captive insurance companies and the most effective means of regulating these entities.

HCR 68: Requesting a study of the availability and affordability of automobile insurance in West Virginia.

HCR 69: Requesting a study of the availability and affordability of commercial, property and casualty insurance in West Virginia.

Jane L. Cline

West Virginia Insurance Commissioner