

JUNE 2007

WEST VIRGINIA INFORMATIONAL LETTER

NO. 158

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 2007 Legislation

The purpose of this Informational Letter is to summarize significant insurance legislation enacted during the 2007 Regular Session of the West Virginia Legislature. This letter 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.

To view the following bills, you may access the website of the West Virginia Legislature at www.legis.state.wv.us. To obtain a copy of particular legislation, please 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. The rules may be viewed on the Insurance Commissioner's website at www.wvinsurance.gov or the Secretary of State's website at www.wvsos.com.

Senate Bill 169 – Relating to salvage certificates for certain wrecked vehicles (effective May 28, 2007)

This bill allows an automobile owner to retain possession of a vehicle after it has been declared a total loss; the title would, however, have to be branded if the vehicle is rebuilt, regardless of whether title is taken by the insurance company or retained by the vehicle owner after the settlement of the claim. It also increases criminal penalties for tampering with titles.

Senate Bill 381 – Relating to insurance fraud (effective June 8, 2007)

This bill permits the Insurance Commissioner's Fraud Unit investigators to go directly to a magistrate with criminal complaints rather than having to have a police officer or prosecutor present it; the investigators must, however, first receive the local prosecutor's approval. The bill also makes several technical changes.

Senate Bill 511 – Repealing code section relating to insurance policies (effective June 8, 2007)

The Code gives immunity from certain negligence actions to landowners who allow their land to be used as part of the Hatfield McCoy Authority's recreation area; however, prior law provided that any such landowner's liability insurance policy would be read to include an endorsement by which the insurance company agreed not to assert its insured's immunity unless the insured waived such implied endorsement in writing. The bill removes this "implied waiver of immunity" provision so as to permit immunity to be raised by the companies without the policyholder's written consent.

Senate Bill 559 – Relating to predatory insurance sales practices; and authorizing the Insurance Commissioner to promulgate emergency rules to protect military personnel (effective June 7, 2007)

This bill specifically authorizes the Insurance Commissioner to promulgate emergency rules to protect military personnel from deceptive sales practices. The bill is a response to recent federal legislation clarifying that state insurance departments had the authority to regulate insurance sales on military installations. The National Association of Insurance Commissioners has recently adopted a model rule on the subject.

Senate Bill 595 – Relating to the transition to a private workers' compensation insurance system (effective March 10, 2007)

This bill makes a variety of amendments to the 2005 legislation that replaced the monopolistic state workers' compensation system with a private market. The bill

- permits the Insurance Commissioner to exempt 20 employees from the classified civil service;
- exempts the Insurance Commissioner from state purchasing rules with regard to “professional services” needed to regulate the workers' compensation system;
- revises several aspects of the process of applying for and maintaining self-insured status;
- eliminates old “premium tax” language in light of the current use of regulatory “surcharges”;
- changes how and when carriers must report changes in coverage to the Insurance Commissioner;
- rewrites the ratemaking provisions to account for the designation of a single rating organization (NCCI) to develop loss costs;
- eliminates the provision that would have kept all the private carriers' rates within a certain percentage (5% for FY '09 and 10% for FY '10) of the “base rates” established by the Insurance Commissioner;
- strengthens language regarding state agencies' duty to revoke professional licenses of employers in default of paying premiums; and
- requires that only the Office of Judges or the Board of Review may issue a stay of an order to pay benefits and prohibits stays of orders to pay medical or rehabilitation benefits.

Senate Bill 643 – Relating to investigations of violations of insurance laws (effective June 7, 2007)

The Code currently contains specific authority for criminal fraud investigations and financial and market conduct exams. This bill clarifies that the Insurance Commissioner also has the authority to undertake investigations of *non-criminal* violations of the insurance and Workers' Compensation codes. The bill also gives these investigators immunity from testifying in civil trials about information obtained in such investigations, permits the sharing of such information with other agencies in the same manner as the criminal fraud unit, and provides that this information remains confidential.

House Bill 2590 – Authorizing Department of Revenue to promulgate legislative rules.

--Title 114, Series 77 - Title Insurance

This rule implements a 2006 statutory amendment that made title insurance subject to the general rate-filing requirements for most other lines. In accordance with the statute, the rule distinguishes between commercial and noncommercial lines and provides that the former is subject to the same file-and-use generally applicable to other commercial filers.

--Title 114, Series 78 - Individual Limited Health Benefit Plans & Series 79 - Group Limited Health Benefit Plans

These rules set forth various filing and other requirements for the limited benefit plans authorized by legislation enacted in 2006. These plans are not required to include the mandates required to be in most health insurance plans; instead, the plans need only include some coverage of emergency, hospital, outpatient, preventive and primary care. The rules also detail the eligibility restrictions; the individual plans may only be sold to persons who have not been covered under a health insurance plan for the last year or have lost coverage due to a qualifying event such as the loss of a job, and the group plans are limited to temporary or seasonal employees.

House Bill 2578 – Relating to extending mental health benefit packages (effective June 8, 2007)

The purpose of the bill is to continue current mental health parity for group insurance plans, which had been scheduled to sunset in March 2007.

House Bill 2763 – Relating to financial examinations of insurers (effective June 8, 2007)

This bill, which is based on an National Association of Insurance Commissioners (“NAIC”) model designed to maintain West Virginia’s accreditation for purposes of performing financial examinations of insurers, prohibits the use of indemnification clauses in contracts between insurers and independent CPAs who perform audited financial reports and allows the use of mediation or arbitration clauses in such contracts. Another change allows the Insurance Commissioner to consider certain assets of an insurer -- receivables due from an affiliate, which under prior law could not be considered at all -- when reporting a company’s reserves. This latter change is in keeping with recent changes to NAIC’s accounting standards permitting such receivables to be counted if they are subject to a written agreement and due within ninety (90) days.

House Bill 2764 – Relating to criminal history checks for applicants for insurance producer licenses; defining terms; authorizing Insurance Commissioner to establish and collect fees (effective June 8, 2007)

The purpose of this section is to set forth the requirements to obtain access to and secure information or reports from the FBI for purposes of background checks of resident applicants for a producer’s (agent’s) license; currently-licensed resident producers would not be subject to the new fingerprinting requirements unless a new line of authority is applied for. The Insurance Commissioner does not currently have authority to require fingerprints to perform such checks.

The proposal is another uniformity standard adopted by the National Association of Insurance Commissioners' ("NAIC") Producer Licensing Working Group and is a component of the reciprocity requirements for producer licensing mandated by the federal Gramm-Leach-Bliley Act. This model was adopted by the NAIC in June 2006 and incorporates language required by federal law to permit access to the database. The bill is also in response to the Legislative Auditor's 2005 recommendation that the Insurance Commissioner begin fingerprinting and performing criminal background checks on all producers.

House Bill 2940 – Relating to the public employees insurance program and group accident and sickness insurance (effective July 1, 2007)

Current law requires most group health plans to cover an insured's children/step-children to age 18 or to age 23 if the child is a full-time student. The bill, which applies to both private plans as well as PEIA group policies, raises the "age of dependency" to 25 for any "unmarried child or stepchild" of the insured, regardless of student status, using the tax code's definition of "qualifying child/relative" to determine dependent status.

House Bill 3057 – Relating to programs for all-inclusive care of the elderly, known as "PACE" (effective June 8, 2007)

The purpose of this bill is to facilitate the establishment of a federally subsidized program for all-inclusive care for the elderly ("PACE") by exempting "PACE" programs from regulation by the Insurance Commissioner. A demonstration program, which is being initiated pursuant to a grant from CMS to CAMC, is a state Medicaid option. The program is heavily regulated by the federal government with respect to solvency, financial condition, quality assurance, marketing and rates.

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