



Volume 10

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## **Legislative Summary**

The Legislature concluded their business for the 60-day 2015 Regular Session at the stroke of midnight on Saturday, March 14<sup>th</sup>. The Legislature began their extended session to address the state's budget on Monday, March 16<sup>th</sup> and concluded their work today.

For the record, 1,607 bills were introduced this session. Legislation was completed on a total of 261 bills (roughly 16% of the bills introduced) including - 135 Senate bills and 126 House bills. The Regular Session ended with 115 casualties that survived "crossover day" by passing the initial chamber in which they were introduced but ultimately did not pass both chambers. Ten percent of the completed legislation was either an appropriations or rules bill. For a complete listing of legislation passed this session, click [here](#).

The OMEGA/IIAWV team worked very hard this session to promote bills to help not only our industry but the entire business community of the state. The new leadership at the Legislature promoted a very transparent and professional operation that encouraged common sense legislation to improve our state. It was a refreshing change of pace from historically being on the defensive side of the lawmaking process for the majority of a session to actually playing offense with many seats at the table on a number of important pieces of legislation. There was a broad coalition behind a comprehensive number of bills aimed at improving the legal and business environments of West Virginia.

A success for us this session was [SR 15 - Recognizing independent insurance agent Timothy W. Dyer](#). Not only was this well-deserved for Tim but it also showed the importance independent agents to West Virginia.

## **Insurance Highlights**

Senate Bill 385, which would have allowed for and regulated network transportation companies or better known as the Uber bill, was unexpectedly controversial towards the end of the session due in part because of anti-discrimination language included in the bill along with concerns of transferring oversight of the taxi industry from the Public Service Commission (PSC) to the Department of Motor Vehicles (DMV). We worked closely with legislators and other stakeholders over insurance coverage concerns for individuals who would work for these network transportation companies. The insurance community worked hard to sure that commercial insurance coverage was obtained by individuals and applied when said individual initiated the network transportation software application and actively sought passengers. We most likely will see similar legislation in the 2016 session.

[SB 248 - Requiring certain insurance and owner information be provided following car accident](#). This bill requires a person involved in a car crash to provide certain insurance and car owner information and requires law-enforcement officers at the scene of the crash who obtain certain information to distribute certain information to all persons involved in the crash.

**SB 373 - Allowing wireless communication image serve as proof of motor vehicle insurance.** This bill allows an image displayed on a wireless communication device (smart phone) to serve as proof of insurance on a motor vehicle.

**HB 2395 - Storm Scammer Consumer Protection Act.** This bill provides consumers with the right to cancel residential roofing contracts where the contract is expected to be paid from a property and casualty insurance policy.

**HB 2493 - Relating to requirements for insurance policies and contracts providing accident and sickness insurance or direct health care services that cover anti-cancer medications.** This bill prohibits insurance policies and contracts providing accident and sickness insurance or direct health care services that cover anti-cancer medications from charging higher copayments, deductibles or coinsurance for orally administered anti-cancer medications than is required for anti-cancer medications administered by injection or intravenously.

**HB 2536 - Relating to travel insurance limited lines producers.** This bill authorizes the Insurance Commissioner to issue a limited lines travel insurance producer license to a business entity and to allow travel retailers and their employees to offer and disseminate travel insurance under the limited lines travel insurance business entity producer license.

**HB 2557 - Clarifying that an insured driver of a motor vehicle is covered by the driver's auto insurance policy when renting or leasing a vehicle.** This bill clarifies that an insured driver of a motor vehicle is primarily covered by the driver's auto insurance policy when renting or leasing a vehicle. If the renter of a vehicle does not have auto insurance coverage, the rental or leasing car company is the provider of security. If an individual purchases optional additional insurance or waiver products from the rental or leasing company those products are primary.

**HB 2790 - Relating to minimum responsibility limits of car insurance.** This bill increases the minimum proof of financial responsibility in motor vehicle insurance coverage while minimizing administrative burdens on insurers through the transition. The bill increases those minimums from \$20k/\$40k/\$10k (bodily injury or death of one person/bodily injury or death of two people/destruction of property) to \$25k/\$50k/\$25k. This bill gives effect to the explicit terms of a bargained-for motor vehicle liability policy where certain drivers are excluded from coverage. Specifically, this bill is intended to overturn *Jones v. Motorists Mutual Insurance Company*, 177 W. Va. 763 (1987) and its progeny that require insurers to nevertheless provide minimum financial responsibility limits coverage for drivers who are excluded from coverage under the terms of a motor vehicle liability policy.

**HB 2811 - Deleting obsolete provisions regarding the Physician's Mutual Insurance Company.** This bill deletes the obsolete provisions in the West Virginia Code regarding the Physician's Mutual Insurance Company, and to provide that the company need not be organized as a nonprofit corporation provided that the company remains a domestic mutual insurance company owned by its policyholders.

## **Legal Reform – Session Highlight**

A significant number of tort reform and business friendly legislation was passed this session in a bipartisan manner. This legislation was long overdue and greatly needed to improve the business and legal climate in our state. Major legislation that passed which will help foster in the greatly needed reforms includes:

**SB 6 - Relating to medical professional liability.** This bill intends to control the increase in cost of liability insurance and maintain access to affordable health care services for West Virginians. It provides a mechanism to increase the limitation on civil damages in medical malpractice cases to account for inflation by linking increases to the Consumer Price Index (CPI). It also requires appellate courts to review de novo certain decisions made by circuit court judges; adds provisions limiting the admissibility and use of certain information; and requires adjustment of verdicts for past medical expenses.

**SB 13 - Reinstating open and obvious doctrine for premises liability.** This bill permanently reinstates the open and obvious doctrine for premises liability law, which has been the law of West Virginia for more than one hundred years, and overrules the decision of the Supreme Court of Appeals of West Virginia in the case of *Hersh v. E-T Enterprises, Limited Partnership*, 232 W.Va. 305, (November 12, 2013). The bill provides that a possessor of real property owes no duty of care to protect against dangers that are obvious, reasonably apparent, or as well known. This will help negate “jackpot justice” lawsuits from hurting among others, our small business owners, especially retailers. Senator Nohe of Wood County and Delegate Waxman were lead sponsors of this legislation.

**HB 2002 - Predicating actions for damages upon principles of comparative fault.** Better known as the “joint and several” bill, it provides the fairest way for juries to allocate liability among the parties based on the percentage of their fault. Liability for tortious action should be based on fault above all else and this bill provides for that. West Virginia was an outlier among bordering states as the current judicial system allows for a joint distribution of liability among all defendants in a suit regardless of their share of fault. This way unfairly penalized individuals and small businesses who may have had very little responsibility for damages or injury by forcing them to pay for liability that does not belong to them. This legislation provides for “several” instead of “joint” liability so a defendant is only responsible for the compensatory damage allocated to them in direct proportion of their percentage of fault. Delegate Wagner and Senators Gaunch and Carmichael were lead sponsors of this legislation.

**HB 2011 - Relating to disbursements from the Worker’s Compensation Fund where an injury is self-inflicted or intentionally caused by the employer.** This bill is better known as the “deliberate intent” bill. As currently defined, deliberate intent damages the state’s business climate and the passage of this bill will be significant step in negating that negative business climate and bring West Virginia’s workplace liability law in line with most other states. The bill imposes a narrower and more stringent requirement upon deliberate intent litigation, and overrules case law from the West Virginia Supreme Court of Appeals, *McComas v. ACF Industries*, that currently stands for the proposition that an employer may not use lack of actual knowledge as a defense to a deliberate intent action when the employer willfully ignores an unsafe working condition or safety regulation requirement to prevent actual knowledge from occurring. Passage of this bill will help relieve some litigation burdens on our business and industrial communities. Delegate Hanshaw and Senator Gaunch were lead sponsors of this legislation.

**SB 37 - Creating Revised Uniform Arbitration Act.** This bill revises West Virginia’s Arbitration Act which currently provides no significant guidance to parties engaged in the process of arbitrating disputes. Creating uniform arbitration is an efficient and cost effective way of resolving disputes. The bill provides uniform rules, terms and processes for arbitration that are in line with eighteen other states that adopted uniform arbitration rules. Senator Palumbo was the lead sponsor of this legislation.

**SB 315 - Relating to civil actions filed under Consumer Protection Act.** This bill amends legislation relating to civil actions filed under the Consumer Protection Act; provides a statement of legislative intent that courts be guided by federal court and agency interpretations of similar federal statutes; clarifies who may bring private cause of action; establishes requirement of out-of-pocket loss proximately caused by alleged violation in actions for damages; and provides right to demand a jury trial.

**SB 344 - Relating to duty to mitigate damages in employment claims.** This bill was also known as the “front and back pay” bill. It provides framework for adequate and reasonable compensation to those persons who have been subjected to an unlawful employment action, but ensures that compensation does not far exceed the goal of making a wronged employee whole. West Virginia was the sole outlier that allowed a flat front pay award with no caps and in turn put West Virginia’s employers at an unfair competitive disadvantage. The rationale for limits of front pay, like back pay, is that it should make a plaintiff whole, but not give the employee a windfall to relieve them from having to work again. Senator Trump was the lead sponsor of this legislation.

**SB 411 - Creating Asbestos Bankruptcy Trust Claims Transparency Act and Asbestos and Silica Claims Priorities Act.** This bill creates the Asbestos Bankruptcy Trust Claims Transparency Act and Asbestos and Silica Claims Priorities Act which establishes procedures for the handling of asbestos and silica litigation and enhances the ability of the judicial system to manage such litigation while enhancing the solvency of those trusts. Senator Takubo was the lead sponsor of this legislation.

**SB 421 - Relating to punitive damages in civil actions.** This bill clarifies when punitive damages may be awarded in civil actions, and limits the amount of punitive damages that may be awarded to four times compensatory damages or \$500,000, whichever is greater. Senator Trump was the lead sponsor of this legislation.

**SB 578 - Relating to occupational disease claims.** This bill relates to authorization of compromise and settlement of occupational disease claims; permitting final settlement of medical benefits for non-orthopedic occupational disease claims; and requiring claimant be represented by legal counsel in these claims.

**HB 2010 - Requiring the election of justices of the West Virginia Supreme Court of Appeals, circuit court judges, family court judges and magistrates be nonpartisan and by division.** This bill provides for the nonpartisan election of judges and requires that elections of justices to the Supreme Court of Appeals, circuit court judges, family court judges and magistrates be nonpartisan and by division. This bill was one piece of legal reform

legislation that received the strongest bipartisan support. The bill passed the Senate by an overwhelming 33-1 vote and the House by a 90-9 vote. Delegate Kessinger and Senator Trump were lead sponsors of this legislation.

**HB 2726 - Clarifying choice of laws issues in product's liability actions.** This bill provides that public policy of this state is, in determining the law applicable to a product liability claim brought by a nonresident of this state against the manufacturer or distributor of a prescription drug or other product, all liability claims at issue shall be governed solely by the product liability law of the place of injury.

## **General Business Successes**

**SB 12 - Relating to payment of separated employee's outstanding wages.** This bill relates to when final payment of wages to an employee is due. It defines that the payment is to be made the next scheduled pay period while providing exception for bonuses and fringe benefits. The bill also reduces amount of liquidated damages available for violation and providing an instance when liquidated damages are not available.

**SB 318 - Relating to payment of wages by employers.** This bill amends the current Wage Payment and Collection Act relating to the number of required pay periods in a month, requiring employers to pay employees at least twice every month instead of once every two weeks.

**SB 361 - Eliminating prevailing hourly wage requirement for construction of public improvements.** The bill, in its original form, would have completely eliminated the prevailing wage law. The amendments to the original bill transfer the responsibility of calculating rates from the Department of Labor to WorkForce West Virginia and would exempt prevailing wages from public improvement projects that would cost under \$500,000.

**HB 2233 - Requiring that legislative rules be reviewed five years after initial approval by the Legislative Rule-Making Review Committee and the Legislative Auditor's Office.** This bill requires that legislative rules be reviewed five years after initial approval by the Legislative Rule-Making Review Committee and the Legislative Auditor's Office and to provide rule-making authority by that committee and auditor.

**HB 2878 - Creating a one-step electronic business portal in West Virginia.** This bill requires the Secretary of State to create a single electronic business portal that individuals and businesses can use to complete and file forms, pay taxes and fees and learn about the requirements for doing business in West Virginia. It also requires the Secretary of State to develop a call center to answer questions.

## **Thanks to IIAWV Members**

For those of you who got involved in the process, attended our Legislative Day, made phone calls or sent letters to your delegates and senators, we would like to thank you on behalf of our industry. Your voice does make a difference!

*Congratulations*

Senate President **Bill Cole**, House Speaker **Tim Armstead**,  
Governor **Earl Ray Tomblin** and Members of the 82<sup>nd</sup> Legislature!

The 2015 Legislative Session will go down in history as one of the most impactful in recent memory for the passage of meaningful and holistic legal reform measures and initiatives to keep state government fiscally responsible.

Thank you for a truly productive legislative session!



Independent  
**Insurance**  
Agents of  
West Virginia

