



Legislative Update 10, Session Summary

March 16, 2016

The 2nd session of the 82nd Legislature came to a close on Saturday the 12th. The Republican-led Legislature continued their work on legislation that would make our state friendlier to the business community by passing bills that attract new industry and promote growth. The two most significant pieces being the legislation to make West Virginia a **Right-to-Work** state ([SB 1](#)) and a bill repealing the **Prevailing Wage** ([HB 4005](#)). The Legislature also continued their work on improving the legal climate in our state and, as promised in the months leading up to the session, addressed much needed regulatory reform.

Members of the Legislature knew the most significant challenge they would face during this session would be dealing with the state's growing budget deficient for the remainder of the 2016 fiscal year and passing a budget that addressed those problems for 2017. The two chambers passed vastly different budget bills. The Senate's bill included revenue from the tobacco tax that they passed and the House's budget bill dipped into the state's Rainy Day Fund, cut agency budgets by an additional 4.5 percent and swept large portions of the state's reserve accounts.

On Tuesday, the Governor's office announced tax estimates for 2017 were lowered by about \$240 million, which will require more significant work on the budget than previously anticipated. The lowered estimate accounts for nearly \$150 million in proposed tax increases the Legislature failed to pass, along with an estimated \$92 million in additional tax collection shortfalls. With this new development, legislators were unable to come to an agreement on the budget before the extended budget session ended on Tuesday. It appears legislators will be sent home until all parties are more willing to come together to address the dire economic problems that face West Virginia. We would anticipate the Governor will reintroduce a tobacco tax increase and possibly other increases in the special session "Call" when he brings legislators back to town, which many believe will be mid-April. [You can view the Governor's press release regarding the budget by clicking here.](#)

One important piece of legislation that did not gain much attention this session was [SB 558](#), a bill that maintained the solvency of the State's Unemployment Compensation Fund by allowing Workforce WV to borrow \$50 million from the State's Rainy Day Fund when the Unemployment Compensation Fund fell below the \$50 million dollar mark. This was important legislation as it prevented the state from having to borrow money from the federal government to keep the Unemployment Fund solvent. If this occurred, it would have negatively affected the State's bond ratings. Jan Vineyard worked with legislative leadership to pass this bill at the request of Governor Tomblin. Governor Tomblin did notify the Legislature toward the end of the session that the money was borrowed and he hoped to pay it back within a month or two. Typically mid-April is when the Fund begins seeing an influx of cash.

Of the 1,894 bills introduced this session, 450 passed at least one chamber of the Legislature, while 276 of those passed both chambers and completed the legislative process.

Notice of Intent to Cancel Policy for Nonpayment

[SB 330](#), requiring automobile liability insurers provide 10 days' notice of intent to cancel due to nonpayment of premium, completed legislative action. As introduced the bill was for seven days and it ultimately changed to 14 days. The bill passed on March 10, 2015; in effect 90 days from passage. Text excerpt of the bill:

No insurer may cancel a policy of automobile liability insurance without first giving the insured thirty days' notice of its intention to cancel. Notice of cancellation shall wither be sent by first class mail to the named insured at the address supplied on the application for insurance, or by email or other electronic means if at the request of the policy holder in accordance with the Uniform Electronic Transaction Act and shall state the effective date of the cancellation and provide a written explanation of the specific reason for the cancellation.

An insurer cancels a policy of automobile liability insurance for the failure of the named insured to make payments of premium for he policy or any installment of the premium when due, then the insurer shall first give the insured at least fourteen days' notice of its intention to cancel. Notice of cancellation shall be sent by first class mail to the named insured at the address supplied on the application for insurance, or by email or other electronic means if at the request of the policy holder in accordance with the Uniform Electronic Transaction Act, and shall sate the effective date of the cancellation and provide a written explanation of the specific reason for the cancellation. The notice period provided herein shall begin to run on the date mailed and payment shall be deemed accomplished by depositing in first call mail valid payment on or before the expiration date of the fourteen day notice period.

If the named insured fails to make the initial payment of premium or any initial installment of the premium after the initial issuance of an automobile liability insurance policy, the insurance policy is voidable from the effective date and time the policy was issued: Provided, that the insurer shall send the insured written notice that the policy will be voided absent payment within ten days of any amounts due under the terms of the policy. Such notice shall either be sent by first class mail to the named insured at the address supplied on the application for insurance, or by email or other electronic means if at the request of the policy holder in accordance with the Uniform Electronic Transaction Act and shall explain the specific reason for the voidance.

Transportation Network Companies

[HB 4228](#), which relates to transportation network companies or better known as the "Uber Bill", was sent to the Governor on March 9th, but he has yet to take action on the legislation. The language in this bill adequately protects the interests of the insurance industry, following National Conference of Insurance Legislators (NCOIL) suggested language.

Legal Reform

While last year's session saw more sweeping and significant legal reform bills, this year's session continued to address the issue with small but needed changes including: [SB 7](#), which prohibits a person from profiting off their own illegal activities. This bill was in response to a West Virginia Supreme Court decision which awarded damages to illegal drug users who sued a pharmacy. [SB 15](#), the Learned Intermediary doctrine, provides protections for a pharmaceutical manufacturer when it provides warnings and instructions on a particular drug to a provider. The manufacturer cannot be held jointly liable in a product liability case when that provider fails to issue warnings or instructions to a patient. Other legal reform bills include [SB 29](#), regarding tolling statute of limitations, and [HB 4007](#), which codifies a transparent bidding process for the Attorney General hiring outside counsel. These pieces of legislation will continue to improve the legal climate in our state.

Two legal reform bills that did not pass this legislative session, that are worthy to note, are [SB 9](#) and [SB 542](#). SB 9, which would have established an intermediate appellate court in the state. We believe this would be incredibly beneficial to the business community in our state. SB 542 related to whether or not an adult motor vehicle occupant was using or not using a seat belt in regard to a plaintiff's mitigation of damages. This bill may have allowed for limited insurance payouts and settlements which could in turn improve the insurance environment in our state.

Regulatory Reform

The main legislation addressing reforming the State's regulatory practices, [SB 619](#), also known as the 2016 Regulatory Reform Act, narrowly passed the Senate along party lines and passed the House rather handily on a 82-14-4 vote. The bill changes the current rule-making statute, including mandating both an economic and a health impact statement on each proposed rule and requiring all proposed rules include data on whether the rule will be "overly burdensome" to business and industry. The bill was sent to the Governor for approval or veto. Several other regulatory reform bills, including [HB 2101](#), were passed this session, which will erase obsolete regulations from state code and reviews state agencies, boards and other entities to determine their necessity going forward.

Highway Bill

The IIAWV Legislative Committee endorsed SB 555, a bill that originally would have increased the gasoline tax, but quickly became an omnibus highway funding bill. This bill failed to complete legislative action. The legislation would have raised over \$300 million in additional revenue for the State Road Fund by increasing the consumers' sales tax by one percent, raising DMV fees, as well as a few other measures. The bill passed the Senate with strong bipartisan support, but failed to garner the same support in the House.

There were no new fees, taxes or surcharges added to our industry this legislative session.

Additional Insurance Legislation That Passed:

SB 270 – Repealing Code Relating to Insurance Policies

The purpose of this bill is to repeal §19-25-7, which states, “any policy or contract of liability insurance providing coverage for liability sold, issued or delivered in this state to any owner of lands covered under the provisions of this article shall be read so as to contain a provision or endorsement whereby the company issuing such policy waives or agrees not to assert as a defense on behalf of the policyholder or any beneficiary thereof, to any claim covered by the terms of such policy within the policy limits, the immunity from liability of the insured by reason of the use of such insured's land for recreational, wildlife propagation or military, law-enforcement or homeland-defense purposes, unless such provision or endorsement is rejected in writing by the named insured.”

SB 429 – Adopting Two National Association of Insurance Commissioners' Models

This bill is to protect enrollees and the general public and to permit great oversight. A form of the model legislation has been adopted in 48 states and has no financial impact to our state.

SB 599 and HB 4739 – Relating to Uniform Unclaimed Property Act

These bills clarify obligations insurance companies have regarding life insurance policies and annuities.

HB 4734 - Relating to Mine Subsidence Insurance

This bill increases the limit of mine subsidence insurance reinsured by the Board of Risk Management from \$75,000 to \$200,000.

SB 278- Clarifying Physicians' Mutual Insurance Company is Not State or Quasi-State Actor *

SB 465 – Allowing Professional Employer Insure Certain Risks through Pure Insurance Captive *

The purpose of this bill is to allow a professional employer organization to insure certain risks through a pure insurance captive.

SB 517 – Clarifying PEIA plans that are exempt from regulation by Insurance Commissioner

HB 4038 – Relating to insurance requirements for the refilling of topical eye medication*

The purpose of this bill is to permit the early refill of topical eye medications.

HB 4146 – Providing Insurance Cover Abuse-Deterrent Opioid Analgesic Drugs

This bill provides insurance coverage for the above stated drugs. It provides that direct health care services cover the drugs while providing certain contracts cover the same.

HB 4655 – Prohibiting Insurers, Vision Care Plan or Vision Care Discount Plans from Requiring Vision Care Providers to Provide Discounts on Noncovered Services or Materials

The purpose of this bill is to prohibit insurers, vision care plan or vision care discount plans from requiring vision care providers to provide discounts on noncovered services or materials. It prohibits eye care providers from charging more to enrollees for noncovered services than the normal and customary fee. The bill provides that insurers, vision care plan

or vision care discount plans may not provide for a nominal reimbursement in order to claim that a service or material is covered and prohibits insurers, vision care plan or vision care discount plan from falsely representing benefits provided to sell coverage or communicate benefits to enrollees. The bill prohibits the requirement that eye care providers be credentialed through a designated vision plan and provides pay parity for optometrist and ophthalmologists.

Insurance Legislation That DID NOT Pass:

[SB 358 – Establishing Mining Mutual Insurance Company](#)

[SB 532 – Increasing Surcharge on Fire and Casualty Insurance Policies](#)

[SB 540 and HB 4408, Prohibited Certain Civil Actions against Company Adjusters](#)

[SB 566 – Creating New Tax on Insurance Reserves Held By Accident and Sickness Insurance Carriers](#)

[SB 572 – Defining Criteria Private Insurance Carriers Must Consider in Setting Rates](#)

[HB 2063 - Prohibiting the Use of a Credit Score in Casualty Insurance Rate Filings](#)

[HB 4659 – Authorizing Local Health Departments to Bill Health Insurance Plans for Services](#)

General Business and Other Legislation That Passed:

[SB 298 – Allowing Restaurants, Private Clubs, and Wineries Sell Alcoholic Beverages on Sundays \(Brunch Bill\)](#)*

[HB 2444 – Providing for the Assignment of Economic Development Office Representatives to Serve as Small Business Allies as Facilitators to Assist Small Business Entities and Individuals](#)

[HB 2615 – West Virginia Small Business Capital Act \(Crowdsourcing Bill\)](#)

[HB 2897 – Young Entrepreneur Reinvestment Act](#) *

[HB 2904 – Requiring the Clerk of the County Commission to Maintain a County Ordinance Book](#) *

[HB 4009 – Letting Counties Act Locally Act](#) *

[HB 4228 – Relating to Transport Network Companies \(Uber Bill\)](#)

[HB 4322 – Expanding the Learn and Earn Program](#)

[HB 4364 – Internet Privacy Protection Act](#) *

[HB 4502 – Allowing Reciprocity Agreements with Contiguous States to Establish Regulations, Licensing Requirements and Taxes for Small Businesses](#)

***Denotes the final enrolled or engrossed version of the bill has not yet been posted to the legislative website**

We'd like to thank the IIAWV Legislative Committee, along with all of our members, who made calls or reached out to their legislators in some way to advocate for our industry and against bad legislation. A comprehensive list of all legislation that passed this session can be found by [clicking here](#). If you have any questions, please contact Jan Vineyard at jvineyard@iiawv.org or by calling the IIAWV office at (304)342-2440.