State Legislatures Back to Work

Here’s a look at some of the key issues the insurance industry is or will be tracking in 2017.

Pennsylvania

- **Budget** - The state deficit for 2017-18 is projected to match that of last year and Governor Tom Wolf is not seeking the broad-based tax increases he recommended and did not get the past two years. Rather, the governor is attempting to balance the budget through "streamlining" government. That leaves few options in closing the gap and could make targeted tax increases possible.

- **Workers’ Compensation** – The House Labor and Industry Committee is considering legislation that would require a drug formulary for workers’ compensation (prevention of opioid abuse in workers’ comp).

- **Statute of Limitations** - The Senate Judiciary Committee unanimously approved SB261 in late January, which matches last session's Senate-amended HB 1947 and did not include the House passed reviver language. With such a quick vote in the Senate just before the budget break, it’s uncertain what the House will do. Even if the House amends the bill to include the controversial reviver language, the Senate would not likely concur.

- **Autonomous Vehicles** – The insurance industry is focusing on safety, liability and access to data issues, not only in Pennsylvania but across the country.

- **Minimum Auto Limits** - The Chair of the House Insurance Committee delayed the bills aimed at increasing minimum limits while the Department of Insurance conducted a data call to quantify how many motorists would be affected. The survey showed that a change in the liability limits would impact 800,000 motorists in Pennsylvania. It remains to be seen how the legislature will view this result.

District of Columbia

- **Negligence Standard** - Last year, D.C. enacted an industry-opposed measure applying comparative fault to motor vehicle collisions involving bicyclists/pedestrians. In 2017, the industry will try to ward off further threats to the city’s contributory negligence standard while looking to fix aspects of last year’s adverse law.

- **Credit Scoring** - The D.C. Department of Insurance, Securities and Banking (DISB) will be back with its bill to restrict insurer use of credit, including the unprecedented inclusion of commercial lines. After stalling the bill last session, the industry will continue to work with DISB to prevent or improve it.
Illinois

- **Budget** - For nearly two years, Illinois remains the only state without a formal, complete state budget. The Senate has voted on some bills in a “grand bargain” package, but action stalled because of disagreement over pension reform. Continued political wrangling between the GOP governor and Democratic legislative majorities has led to speculation that a deal won’t happen until after the 2018 election (when Governor Rauner is up for re-election).

- **Regulatory Rules** - The DOI continues to work on several regulatory items, including Improper Claims Practices, Consumer Complaints, Misrepresentation/False Warranties, Administrative Hearing Procedures, and Rescission for Personal Auto Policies.

- **Auto Insurance Verification** - Legislation to implement the recent Secretary of State’s task force report, which did not specifically recommend the preferred "IICMVA" model for the state’s “web based” system, is expected and will be closely monitored.

- **EMS Fees** - The industry expects fire-service interests to attempt to re-open this issue in 2017 in response to 2016 restrictions on EMS fees for volunteer fire departments.

- **Workers’ Compensation** - Proposed changes to the state’s work comp system remain a significant part of the broader state budget debate. Repeat legislation is expected on moderate issues such as travelling employees, creation of an ombudsman program, and a commission to look at re-writing the statutes, and more contested issues such as prior approval of rates, which has failed in the past because of political gridlock.

Indiana

- **Property Damage Financial Responsibility Increase** (Effective Date Fix) - Industry legislation to clarify that the increase in property damage limits in last year’s enacted SB 40 applies to policies issued or renewed after July 1, 2017 is actively being considered.

- **Innocent Co-insured** - Legislation has returned that would prohibit certain actions by a property or casualty insurer with respect to an innocent co-insured, including denying payment on a claim and refusing to issue or renew a policy.

- **Storm Scammers** - Additional measures related to storm scammers, including adding commercial customers and "more teeth" to the law enacted in 2012, is an industry priority for 2017.

- **Airbnb** - Legislation is being considered that would preempt local bans on and set requirements for local government regulation of short-term rentals of residential properties (such as Airbnb), including insurance provisions that are expected to become a national model for such rentals.

- **Asbestos Litigation Transparency** - Legislation is being considered to address a number of asbestos issues, including the statue of repose recently overturned by the courts, double dipping, and a requirement that plaintiffs file and disclose asbestos trust claims before trial, similar to legislation enacted in other states.

Kentucky

- **PIP Reform/Repeal** - On the heels of the House flipping political control, preliminary conversations have begun about reforming and possibly repealing PIP, but much more evaluation and discussion is needed than year’s “short-session” is likely able to provide.

- **Property Damage Limit** - The issue of increasing the state's minimum property damage limit for auto, which has not changed since the mid-1980s, is under consideration.

- **UM Waiver** - The industry is again seeking legislation to address *Boarman v. Grange* in
which a UM/UIM waiver signed by one named insured did not apply to the other named insured.

- **NICB Fraud Reporting** - NICB continues to lead an industry effort to seek civil immunity for reporting suspected fraudulent insurance acts to NICB or furnished to or received from an authorized insurer, agent, or representative of an insurer.

- **Roofing Fraud Enforcement** - The industry is united again in pursuing legislation similar to failed 2016 legislation to enhance roofing fraud statutes.

- **Landlord Liability for Dog Bites** - Landlord liability for dog bites is again an industry priority with stronger chances to move in 2017 due to the House’s new political makeup and broader tort reform goals.

- **Tort/Pre-judgement Interest** - The industry is supporting efforts to lower the state's current 12 percent rate for pre-judgement interest.

- **Workers’ Compensation** - Broad workers’ compensation legislation is under consideration covering a variety of topics including limitation of medical benefits, urine drug screenings, treatment guidelines, pharmaceutical formulary, reduction of interest paid on awards, limitations on attorney’s fees, and extended subrogation recovery of medical expenses.

**Maryland**

- **Enhanced UIM Coverage** - The trial bar’s “enhanced underinsured motorist” coverage bill is on a fast track, passing the House in early February. Recent reports suggest the bill is likely to pass despite industry opposition. Such coverage would eliminate the offset in UM/UIM cases, allowing a driver/victim to access the limits of both the tortfeasor’s policy and the enhanced UIM policy, and is similar to existing laws in West Virginia, Georgia and Connecticut. The insurance industry is now fighting to keep this coverage elective (“opt-in”) and to limit the scope of its definition.

- **Tort Issues** - The industry will continue to battle bills to triple the cap on non-economic damages in certain wrongful death cases and to expand the application of punitive damages. The industry is also opposing a harmful new bill to allow third-party claimant “direct actions” against insurers in personal lines claims.

- **Auto Underwriting/Rating Restrictions** - The industry will again face a bill to restrict the use of certain rating/underwriting factors for auto insurers, including marital status and credit scoring. This issue has received renewed attention the past two years.

**New York**

- **Transportation Network Companies** - Governor Cuomo included TNC provisions in his proposed executive budget and has signaled his support for the passage of TNC legislation. The deadline for passage of the budget is April 1, so it is likely that the TNC issue will be dealt with in the first half of the legislative session.

- **Bad Faith** - Defeating harmful bad faith bills which would create a private right of action for unfair claims violations with very expansive provisions relative to damages will continue to be a top defensive priority for 2017. In preparation for the 2016 session, the insurance industry secured a Milliman study on the potential impact of this legislation which found a potential $4 billion premium impact if this legislation were to pass. The study helped keep the bills from gaining traction in 2016.

- **Photo Inspection** – The insurance industry has long supported legislation to make the auto photo inspection requirement voluntary for insurers. Unfortunately this legislation has failed
to pass for many years. Our industry is considering a new approach for legislation on this issue in 2017: the inspections would not be made voluntary, but insurers would be allowed to make an option available for policyholders to take and submit their own photographs/inspection of the vehicle, thereby reducing the consumer hassle posed by this requirement and, hopefully, reducing the instances in which an insured fails to obtain the inspection (which requires the insurer to strip physical damage coverage). The new proposed idea for legislation would allow insurers to decide whether they wish to offer the self-photo option to their policyholders.

- **Threats to Underwriting** - The Department of Financial Services has been attempting to ban the use of education and/or occupation in underwriting through various administrative actions since 2015. Despite their lack of legal authority to take such action, the Department has continued its quest in this regard. While this has not been a serious threat in prior years, recent activities of the Department could spur more interest in banning education and occupation in underwriting and the insurance industry will be opposing any such legislation should it receive serious consideration.

**North Carolina**

- **Property Insurance** - Defense is the familiar theme on property insurance in North Carolina. The industry managed to amend last session’s property bill favorably, but coastal legislators will likely target “consent-to-rate” (CTR) again, including a bill to require the Department of Insurance to publish aggregated property CTR data collected from the industry.

- **Roofing Contractor Fraud** - In an ongoing effort, the Insurance Federation of North Carolina (IFNC) will be looking to get its roofing fraud bill enacted after it passed the House during the last long session in 2015. ERIE has been working with the IFNC on behalf of Claims/ISS to get this done the past few years.

- **Regulatory Modernization** - A segment of the industry, including ERIE, will continue to advocate for modernization of the state’s antiquated personal lines insurance regulatory system. However, the industry remains divided, and new Commissioner Mike Causey has signaled for less drastic reform approaches. These include an auto reinsurance facility surcharge disclosure bill, and a combination of possible prior reform ideas such as allowing insurers to file their own “Safe Driver Incentive Plans,” to opt-out of the Rate Bureau, and to use flexible pricing for “clean risks” currently ceded to the state’s outsized auto residual market.

**Ohio**

- **"No Pay/No Play"** - Legislation on this priority issue of the agent association will likely resurface this session.

- **Combo Billing** – The insurance industry has drafted legislation to enable nonpayment cancellation notifications for certain forms of insurance to accompany a bill. Discussions between the DOI and industry continue on this issue.

- **Used Tires** - Legislation to reform the state's used tire laws will again be put forth by the Rubber Manufacturers Association this session.

- **Insurance Verification** - An insurance verification system to address financial responsibility compliance and replace the outdated random verification program remains in discussion.

- **Storm Scammers** - The industry will once again pursue a "storm scammer" law similar to laws in neighboring states/the NCOIL model.
Tennessee

- **Auto Insurance Verification** - The Tennessee Department of Revenue, which has been working on implementing the state’s new program, has been receptive to industry feedback thus far. Legislation is expected in 2017 to make some tweaks to the law.

- **Insurance of Property Destroyed by Fire** - A proposal is expected from the Insurors of Tennessee dealing with insurance of a property destroyed by fire.

- **Rental Study Committee** - Legislation is expected to propose forming a committee to study potential legislation related to the use of property rentals such as Airbnb.

- **Civil Litigation Financing** - Legislation is again expected to attempt to weaken Tennessee's existing civil litigation funding (lawsuit lending) law.

- **Workers’ Compensation Opt-Out** - “Opt-out” continues to be widely discussed and proponents will likely have a new draft in 2017 that addresses the court decision in Oklahoma. PCI reports that the issue will likely span multiple states in 2017, and they will continue to address it comprehensively via multiple disciplines.

Virginia

- **Property TNCs** - The transportation network company (TNC) debate is back, only this time it’s about delivering property instead of passengers. Virginia is a potential national test case for TNCs in their effort to roll back coverage for the first “app-on” period and weaken the livery exclusion. The TNCs had initial momentum and the DMV on their side, but the industry fought hard through lobbying and grassroots to turn the tide. The favorable result is that insurance coverage for property TNCs will be consistent with that already required for passenger TNCs.

- **Auto Salvage** - ERIE Claims participated alongside PCI in the DMV’s salvage task force meetings in 2016, resulting in an industry-supported bill to eliminate the 90 percent damage threshold for nonrepairable and rebuilt vehicles.

- **Anti-Fraud Bills** - Roofing Contractors and Prosecutor Funding
  - The industry is pushing a consumer protection bill to prohibit the abusive practice of rebating insurance deductibles often used by shady roofing contractors following storm activity.
  - PCI has reported apparent success in its recent attempt to get into the state budget authorization of existing funds for dedicated insurance fraud prosecutors.

West Virginia

- **Eliminate Personal Liability for Adjusters** - The West Virginia Insurance Federation (WVIF) will again be promoting its bill to limit certain private causes of action to insurers only and not to their adjusters personally. This would permit removal of cases to federal court and would spare adjuster employees the stress of being named personally in lawsuits. ERIE’s trades are cautiously optimistic that the third time will be the charm for this bill.

- **Uniform Standards for Medical Protective Orders** - The WVIF will once more be pushing a bill that sets uniform standards for the retention and protection of medical records. This ongoing legislative effort follows many years of litigation driven by trial lawyers over this issue in the state, including a case that went to the U.S. Supreme Court.

- **Eliminate “Phantom Damages”** - The industry will also be supporting tort reform legislation to base damages awards on the amount actually paid, not on the “sticker price” of
medical expenses. This would help fix the 2014 Kenney v. Liston high court case, which allowed such inflated “phantom damages” in plaintiffs’ awards.

Wisconsin

- **Collateral Source** - Legislation remains an industry priority but medical industry opposition continues to be the main challenge to its advancement.
- **E-salvage** - The industry is seeking legislation to allow for electronic signatures for titles on total loss vehicles to help facilitate speedier handling of such claims.
- **Affiliate Renewal** - Legislation is being considered to attempt to fix the current requirement that an insured be non-renewed if a carrier wishes to transfer the customer between affiliate companies.
- **Financial Responsibility Enforcement** - Legislation is expected that would increase penalties for driving uninsured and enhance financial responsibility enforcement.
- **Rental Car Loss of Use** - The industry remains opposed to expected legislation that would change the statute in favor of rental car companies concerning loss of use.
- **Contractor Financial Responsibility** - Current law requires contractors to maintain general liability insurance from an "authorized" (interpreted to mean "licensed") insurer. The industry is seeking to add to the statute surplus lines insurers to help expand market opportunities for hard-to-place contractor liability insurance.
- **Workers’ Compensation** - The Workers’ Compensation Advisory Council has begun meeting to work on its “agreed-to” bill, which is expected to be introduced in the Fall.