



GOVERNMENT AT A GLANCE

STATE AND FEDERAL NEWS YOU CAN USE

2023 Legislative and Regulatory Preview

Buckle up – this is a long (and important) one. Below is a preview of what we can expect during state legislative sessions in ERIE's footprint. And we're always prepared for the unexpected.

Pennsylvania

Democrat Josh Shapiro was sworn on January 17 as the Commonwealth's 48th Governor. Austin Davis made history becoming Pennsylvania's first Black Lieutenant Governor and the second-youngest individual to hold the office. Republicans maintain the majority in the Senate. The situation in the House is far less clear. It appeared that Democrats would narrowly control the House following three special elections on February 7 to fill vacancies - all of which will likely be won by Democrats and give the Democrats a 102-101 majority. In an unexpected development on the opening day of session (January 3), Rep. Mark Rozzi (D-Berks) was elected Speaker with a pledge that he will become an Independent, which will ultimately mean that the House will have 101 Democrats, 101 Republicans and 1 Independent. Mike Humphreys, who took over as Acting Commissioner following the resignation of Commissioner Altman in February, 2022, is being retained by Gov. Shapiro.

Priority Issues

- Stacking Reform - Legislation from last year would have eliminated stacking and allow policyholders to purchase as much UM/UIM coverage as they choose, increase financial responsibility limits from \$15,000/\$30,000/\$5,000 to \$30,000/\$60,000/\$10,000, require UM/UIM coverage in those amounts, require insurers to offer four times as much UM/UIM coverage as bodily injury coverage, and prohibit the regular use exclusion. Last year's bill passed the Senate but did not pass the House. Revised legislation is expected to be proposed in the senate.
- Reviver for Minor Sexual Abuse Claims – On January 11 the Senate passed a constitutional amendment to establish a two-year window to revive child sex abuse claims otherwise barred by the statute of limitations. The measure was part of a package of constitutional amendments that also addressed voter identification and regulatory reform. Since the House has yet to formally organize itself pending the outcome of the special elections, it is unlikely the measure will pass the House by the end of this month.
- Cybersecurity - Last year, the Insurance Department pursued passage of the NAIC Cybersecurity Model along with the industry sought improvements to the model. While the bill passed the House last year, it did not pass the Senate. We will continue to work on this legislation in 2023.
- Auto and Homeowners Policy Changes at Renewal - Last year, legislation passed the House but did not advance in the Senate which would allow some flexibility to allow insurers to make a minor coverage reduction to an auto or homeowners policy at renewal. The insurance industry supported the bills, though they were limited to modest changes and such changes would still need to be filed and approved by the Insurance Department. We will continue to work in support of this legislation in 2023.
- Third Party Litigation Financing (TPLF) – Insurance trades are working with industry allies to assess the extent of the problem in Pennsylvania and determine the best path forward. Disclosure provisions would need to be made by court rule, so legislation would not be the vehicle to obtain

this important TPLF element. It is unclear whether pushing legislation to regulate TPLF without disclosure provisions would be positive.

District of Columbia

D.C. begins a new two-year Council Period in 2023. The Democrat-dominated City Council has slowly shifted to less moderate members; however, industry ally Kenyan McDuffie won a competitive race for an at-large seat and will again chair the main industry committee. On the regulatory side, the Department of Insurance, Securities and Banking (DISB) has created recent challenges, such as delays on industry filing and escalating scrutiny of key underwriting/rating factors.

Priority Issues

- Defense of Rating/Underwriting Practices
 - DISB Examining “Unintentional Bias” in Personal Auto - DISB will issue a data call soon under its ongoing initiative to determine if auto insurers’ underwriting/rating practices result in “unintentional bias” based on application data. This follows a 2021 workgroup recommendation to ban use of credit, education, occupation, gender, and marital status in personal lines.
 - Algorithm Anti-Discrimination Legislation - Last year’s adverse algorithm restriction bill that was pushed hard by the attorney general’s office should return in 2023. The industry will continue to oppose alongside a business coalition also affected negatively by the bill.

Illinois

The Illinois Legislature convened its 2023 legislative session on January 11, 2023. Democrats have full control of state government, holding all statewide offices and supermajorities in the House and Senate. The insurance and business communities expect ongoing challenges. On the regulatory side, while the industry has a good working relationship with the insurance department, continued regulatory pressure for greater transparency of insurers’ financial information is expected in response to pressure from several legislators and consumer groups.

Priority Issues

- Public Adjusters – While a bill was enacted in the final days of last general assembly’s session that made minor improvements to public adjuster contract law, the department is expected to pursue more comprehensive legislation in 2023.
- Negative Legal Climate/Lawsuit Abuse - Illinois suffers from a hostile legal climate due to long-standing trial bar influence. The industry is looking to join a legal reform coalition with business and other interested groups.
- Third-Party Litigation Financing – Negative third-party litigation financing legislation supported by litigation funders was enacted in 2022 despite strong industry opposition. Advancing legislation to appropriately regulate litigation financing is a top industry priority in 2023.
- Market Conduct Exams – The Department of Insurance will pursue legislation to enhance its authority to use market conduct exams to achieving greater transparency.
- Risk-Based Pricing – The industry will continue defending against threats to insurers’ use of underwriting criteria for automobile insurance rates (credit, occupation, etc.).
- Auto Repair - The industry expects to again defend against threats to insurers’ automobile repair practices and systems.

Indiana

The Indiana General Assembly convened the first year of its two-year legislative session on January 9 and is scheduled to adjourn on April 29. While Republicans continue to hold all executive offices and super-majorities in the Senate and House, the significant number of plaintiff's attorneys in the Senate will be challenging for tort reform efforts and liability issues. Gov. Holcomb is in the middle of his first term. On the regulatory side, industry trades continue to report a positive working relationship with the department overall.

Priority Issues

- Public Adjusters –A top industry priority is legislation to seek additional safeguards to address growing concerns with public adjusters.
- Third Party Litigation Financing (TPLF) - Indiana already has a law on the books that requires disclosure of TPLF to a plaintiff attorney, but industry-supported legislation is anticipated to seek to provide disclosure of TPLF to all parties.
- Insurer Data Transparency – An insurer data transparency proposal from 2022, designed to be a NCOIL model, will require significant industry time and attention this session. The focus is on providing consumers rationale for adverse actions while working through industry concerns.
- Personal Information and Social Media Policies – Legislation to establish a regulatory framework for businesses regarding consumer data, privacy, and social media that failed last session is expected to return this year. What started as a California-style proposal last year was heavily amended due to considerable concern and opposition and ultimately failed. The industry will continue to seek a Gramm-Leach-Bliley Act exemption and oppose a private right of action in such proposals.

Kentucky

The Kentucky General Assembly convened its 2023 session on Tuesday, January 3 and the session will adjourn by Thursday, March 30. Republicans continue to have supermajorities in both the House and the Senate, but some challenges will continue for the industry because of strong trial bar influence. Democratic Gov. Andy Beshear is up for re-election this year. On the regulatory side, there is open communication between the industry and department.

Priority Issues

- Third-Party Litigation Financing – Despite failed efforts in 2022, the industry is monitoring for negative legislation supported by the litigation financing industry. The industry and business community will continue to oppose such legislation and seek transparency.
- Distracted Driving – The industry will again work with safety advocates to support “Hands Free” driving legislation this year. Prospects are uncertain given prior resistance by certain legislators, but advocates are considering obtaining statewide polling data to show voter support.
- Medical Cannabis – There is growing support for legislation that would establish a medical cannabis program. The industry remains focused on ensuring property and casualty insurers (not just workers’ compensation insurers) are not required to provide reimbursement for medical cannabis.
- Autonomous Vehicles – The Autonomous Vehicle Industry Association will pursue legislation providing for the operation of autonomous vehicles on Kentucky roadways. Kentucky manufacturers and the trucking industry are among the groups supporting the effort.
- Delivery Network Companies –Delivery Network Company legislation has been introduced, providing for insurance requirements for companies such as Grubhub that allow people to use personal vehicles for deliveries.

Maryland

The Maryland General Assembly met on January 11 for its 90-day regular session. The November election saw Democrats sweeping state executive offices and keeping supermajority control in the General Assembly. An increasingly tough legislative environment means more battles for business and insurers. On the regulatory side, new Gov. Wes Moore can appoint a new insurance commissioner at the Maryland Insurance Administration (MIA). Current Commissioner Kathleen Birrane seems likely to finish her term ending in May, but there has been no information on that timeline or replacement candidates.

Priority Issues

- Enhanced UIM Default Coverage - The trial bar's top priority will again be a bill to change enhanced underinsured motorist (UIM) coverage to the default, forcing consumers to "opt out" and increasing costs. The House sponsor is strongly committed, so stopping the bill like last year could be even harder.
- Credit and Other Rating/Underwriting Factor Restrictions - Perennial efforts to ban critical variables used in private passenger auto will likely return given recent momentum. Last year's credit ban passed the House, but industry efforts stalled the bill in the Senate.
- Sexual Abuse Reviver - A recent state AG report on child sexual abuse in the Archdiocese of Baltimore should boost past failed attempts at statute of limitation (SOL) reviver legislation. The House Judiciary Chair, an abuse victim himself, pre-filed a bill (HB 1) in November to include indefinite suspension of the SOL for these claims and a two-year window for time-barred claims. Opposing groups like churches/private schools are seeking to get the same liability cap as public entities into the bill. APCIA indicated passage is likely.
- Maryland Auto Affordability Issues - Maryland Auto, the state's residual market, is trying to address its recent severe loss trends. In industry discussions, the organization reported that an assessment is likely in late 2023, the first since 1989. It also mentioned possible related legislation to allow assessments as an expense in carrier ratemaking instead of a dec page recoupment, among other changes.
- Workers' Compensation Medical Marijuana - Prior bills to force workers' comp carriers to pay for medical marijuana treatments have been reintroduced. These may get more traction after last fall's voter referendum legalizing recreational marijuana effective this July 1.

New York

Democrats hold every statewide office and veto proof majorities in both houses of the legislature. Recent elections resulted in an increase in progressive legislators, many of whom have an anti-business sentiment. This political environment continues to pose challenges both for the insurance industry and for the business community generally. On the regulatory side, the Department of Financial Services (DFS) continues to be a challenging regulator. DFS is currently short-staffed and is looking to fill a number of positions. This has resulted in additional delays in filing approvals and certain other matters.

Priority Issues

- Bad Faith - As has been the case in recent years, the trial bar will likely again make the passage of very expansive bad faith legislation (both first and third party) a top legislative priority. Industry trades will utilize the industry's Milliman study on similar bad faith legislation which estimated a potential annual premium impact of \$6.9 billion. This defensive effort will likely ramp up in the last month of session and, in recent years, has included intense traditional lobbying, grassroots, digital advertising, earned media and other tactics.
- Deceptive Acts and Practices - Legislation to greatly expand New York's deceptive acts and practices statute has been under consideration in recent years and could be seriously considered again in

2023. The legislation is very broad and, if passed, would give NY the distinction of having the most expansive unfair trade practices law in the nation. The industry will continue to work with business and lawsuit reform allies in opposition to this legislation.

- Prohibiting Lead Paint Exclusions in Rental Policies - This legislation has passed the Assembly in recent years but has not passed the Senate. The current Senate sponsor (who was the previous Assembly sponsor) continues to apply pressure to try to advance the bill. The Senate Insurance Committee Chair has not been inclined to advance this bill in the past. The industry partners will continue to need to work defensively on this legislation.
- Third Party Litigation Financing - Advancing legislation to regulate litigation financing continues to be a top offensive priority.
- Online Auto Insurance Verification - New York's current insurance verification system (Insurance Information Enforcement System - IIES) was put in place over twenty years ago and is antiquated by modern standards. Insurance industry partners and other allies continue to urge the Governor's office and the Department of Motor Vehicles to move to a modernized online insurance verification system.
- Opposing Limitations on Risk-Based Pricing - While bills limiting underwriting factors have been proposed in New York for many years, they have not previously gained traction. Last year, DFS issued a data call relative to the use of credit scoring in underwriting. DFS has not shared any information relative to the data call, but there could be increased interest in legislation to restrict underwriting factors and risk-based pricing this year.

North Carolina

The North Carolina General Assembly convened on January 11 to begin its two-year legislative session (2023-24), including this year's "long" portion. Last fall, Republicans regained a supermajority in the Senate plus picked up two House seats, maintaining solid control of the General Assembly. The legislature, along with moderate Gov. Roy Cooper (D), has created a business-friendly political environment. On the regulatory side, elected Insurance Commissioner Mike Causey (R) has continued a solid working relationship with the industry.

Priority Issues

- Tort Defense
 - Comparative Fault - The primary issue is expected to be the trial bar's continued push to abolish contributory negligence. ERIE's trades are part of a broad coalition opposing this change and educating lawmakers about its possible adverse effects.
 - "Billed versus Paid" Tort Defense - The industry may also again be facing two trial lawyer bills aimed at repealing prior tort reforms that established strong rules of evidence for medical billing to allow only actually paid amounts in court awards.
 - Third-Party Litigation Financing - The industry expects the return of an adverse bill creating a weak regulatory scheme for the problematic practice of litigation financing. The industry will have strong national model language ready to substitute as needed.
- Roofing Contractor Anti-Fraud Legislation - Discussions on "storm chaser" roofing abuses are ongoing among stakeholders, including ERIE's state trade and the agents. ERIE's trades are trying to get the industry's reform bill introduced again. Despite much effort, this issue has bogged down politically for several consecutive sessions.
- Distracted Driving - The industry, led by the agents, is continuing a multi-year push for anti-distracted driving legislation. PR efforts by the industry and Department of Insurance appear to be moving GOP legislators closer on this public safety issue.

Ohio

The first year of the two-year session of the 135th Ohio General Assembly convened the week of January 3, 2023. Republicans continue with full control of state government having secured increased majorities in both legislative chambers and Gov. Mike DeWine's re-election in 2022. On the regulatory side an overall positive relationship with the industry is expected to continue.

Priority Issues

- Storm Scammers - The industry continues to seek consumer protection legislation that would prevent assignment of benefits to roofing contractors, prevent a roofer from acting as an adjuster by specifically prohibiting a contractor from directly interacting with the insurer on behalf of the insured, prohibit a contractor from "covering the deductible" or advertising that the contractor will give the consumer a "free roof," and require the registration of residential roofing contractors.
- Third party Litigation Funding - An ongoing issue for several years, industry-supported third-party litigation funding legislation will be introduced again in 2023 to deal with the scourge of third-party litigation financing.
- Statute of Limitations on Sexual Abuse - Legislation introduced in the previous General Assembly that would modify the statute of limitations for childhood sexual abuse actions against minors is likely going to be introduced in 2023.
- Asbestos Over-Naming - Industry-supported legislation will likely be introduced again in 2023 to rein-in the practice of over-naming defendants in asbestos lawsuits. The bill would require a plaintiff to file a sworn statement specifying the basis for each claim against each defendant along with supporting documentation.

Tennessee

The first year of the Tennessee General Assembly's session convened on January 10, 2023. It will meet for 90 session days over the two-year period. Tennessee is a Republican trifecta state with Gov. Bill Lee, who was re-elected in November, beginning his second four-year term and GOP supermajorities in the House and Senate. The regulatory climate in Tennessee has generally been viewed as positive and balanced.

Priority Issues

- Auto Liability Damage Limits - A legislator has indicated that he will introduce legislation this year to increase auto liability limits. Property damages limits were increased in 2022 from \$15,000 to \$25,000.
- Data Privacy - Discussions began in 2021 regarding a California-style privacy bill. Legislation faltered in 2022 but is anticipated to return in 2023. The industry will continue to strongly oppose the inclusion of any private right of action and will look to favorably amend any proposal to have a narrower definition of consumer.

Virginia

On January 11, the Virginia General Assembly convened for its "short" regular session. 2023 is a key election year with all state legislative seats on the ballot and control of both houses likely up for grabs after major redistricting. The current legislative divide is narrow – Republicans control the House by two seats and Democrats control the Senate by the same margin. Over the past year, the changeover to Gov. Glenn Youngkin (R) and a split legislature has provided a much less adverse political climate for business interests. Meanwhile, Bureau of Insurance Commissioner Scott White, now in his fifth year, has maintained the state's balanced regulatory environment.

Priority Issues

- Towing Issues - After last year's comprehensive towing reform bill was watered down, several competing towing bills have been introduced. Industry-supported reform bills include one to subject towers to complaints under the state's Consumer Protection Act, one to allow localities to set storage fee limits, and another to prohibit towers from chasing wrecks by monitoring law-enforcement communications. On the other hand, a tower-supported bill would allow towers to create a lien on commercial trucks and their cargo. Given the short session and conflicting interests, the fate of these bills is uncertain.
- Dram Shop Liability - Bills to create liability for the sale of alcohol to impaired customers and to those underage, respectively, have been introduced. The industry will again ally with restaurant and beverage associations in opposition.
- Workers' Compensation Defense
 - Repetitive Motion - This industry-opposed bill would classify carpal repetitive stresses conditions, as well as hearing loss, as occupational diseases. The issue is challenging because Virginia is an outlier among states in this area.
 - Timely Compensation - The industry is opposing a trial bar effort to add a weekly escalating penalty fee of up to \$500 for failure to pay benefits, beyond the existing 20 percent penalty.

West Virginia

The West Virginia Legislature kicked off its 60-day regular legislative session on January 11. Last November's election saw the historic expansion of GOP supermajorities (now 88-12 in the House and 30-4 in the Senate). Despite a favorable legislative environment, our trades report that a populist, anti-business streak among the supermajority and growing influence by trial lawyers have presented hurdles. On the regulatory side, the Offices of the Insurance Commissioner has kept open communication with the industry under Allen McVey, who came back in 2021 after a stint as the state's Secretary of Administration.

Priority Issues

- Phantom Damages & Collateral Source Rule - After failed efforts the past few sessions, ERIE's trades are dividing "phantom damages" and collateral source tort reforms into separate bills. One would make medical expense damage awards based on the amount actually paid, fixing the 2014 "phantom damages" Supreme Court case. The other would show jurors the collateral sources of payments to plaintiffs in damage determinations. This strategic change can hopefully jumpstart these industry priorities towards passage.
- Proactive Auto Issues
 - Distracted Driving - ERIE's trades are pushing the failed 2022 "hands free" bill, reintroduced and named in memory of a cyclist tragically killed by a distracted driver. Despite favorable press last year, this may face tough sledding given the libertarian bent of many legislators.
 - Delivery Network Model - The industry is supporting national model legislation to regulate delivery network companies (e.g., Uber Eats, Grubhub) and protect drivers with adequate insurance. The bill is expected to pass with strong sponsors in both houses.
- Potential Defensive Auto Dealer Issues
 - Auto Body Expenses - In discussions last year with the Senate President, the auto dealers raised claim reimbursement issues, particularly labor and paint costs, and suggested overreaching "solutions" like labor rate surveys, paint invoicing mandates, and aftermarket parts restrictions. The industry is on alert for any adverse legislation.

- Liability Change for Test Drives - The auto dealers are again floating a possible change to garage policies to make the driver primary and the dealer secondary during test drives. The industry will continue to oppose should formal legislation be introduced.

Wisconsin

Democratic Gov. Tony Evers begins his second term Republicans hold a majority in the Senate and the Assembly. The Office of the Commissioner of Insurance continues to work collegially with the insurance industry on issues of mutual concern.

Priority Issues

- Towing Reform – The industry is seeking towing and storage reform this year to combat challenges with towers charging a wide variety of miscellaneous towing and storage fees without appropriate regulatory standards.
- Peer-to-Peer Car Sharing - Proposed legislation would require that peer-to-peer motor vehicle sharing programs assume liability, as specified under the bill, for the owners of shared vehicles and set forth other requirements on these programs.
- Third Party Litigation Financing – Legislation will likely be introduced that creates provisions governing consumer lawsuit lending transactions. The industry supports efforts to enact third-party litigation financing reform that will address litigation funding that drives up tort costs in the legal system.
- Rebating – The industry will continue to push for legislation that specify permit practices under the Unfair Marketing Practices Act allowing an insurer or intermediary to provide products or services not specified in the policy that are generally characterized as relating to “risk-mitigation.”