



GOVERNMENT AT A GLANCE

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2023 Legislative and Regulatory Update

Buckle up – this is a long (and important) one.

Below is an update on the first half of the year for our state lawmakers and regulators.

Pennsylvania

The Pennsylvania state budget was supposed to be passed by June 30, 2023 and while both houses have passed a spending plan, there is currently an impasse preventing final enactment of the state budget. Governor Shapiro has indicated that he would line item veto a private school voucher program from a deal that he had previously negotiated with Senate Republicans. As a result, Senate Republicans are refusing to sign the budget (a requirement before legislation goes to the Governor) and certain necessary budget enabling code bills have also not yet been passed. End result: no budget. The Senate has left for the summer and is not scheduled to be back in session until September 18, 2023, however, they remain on call and could return prior to that if a resolution is reached to the current budget impasse.

- UM/UIM Stacking Legislation - The industry continues to work to arrive at legislation that will repeal mandatory stacking in a manner that meets industry concerns as well as language issues recently raised by the Insurance Department.
- Rebates and Inducements - The industry has put forward rebate and inducement legislation in accordance with the NAIC model.
- PA DOT Reporting - HB 1534 has been introduced to require auto insurers to notify PADOT of the issuance of new policies within ten days. Currently, carriers are only required to report policy cancellations within the first 180 days of initial policy issuance. The prospects for this bill do not currently seem promising and PADOT may even have concerns with the approach.
- Reviver - The reviver issue continues to be stalled in Pennsylvania and there has been no recent movement on this issue. Both the House and Senate have passed different constitutional amendments and neither seems willing to budge on the issue.

District of Columbia

2023 is the first year of a new two-year D.C. Council Period. Proposals by the city's regulators continue to threaten the industry's traditional rating/underwriting practices, as follows:

- Prior Approval Legislation – In early March, the D.C. Department of Insurance, Securities and Banking (DISB) surprised the industry with emergency legislation to negatively change the city's personal lines rate-filing process. ERIE's trades have worked with DISB to clarify and address the bill's flaws through amendments.
- "Unintentional Bias" in Personal Auto – DISB has continued its initiative to evaluate if personal auto underwriting/rating criteria results in "unintentional bias." Despite the industry's vocal concerns about the project, the agency conducted a recent data call and is working with an actuarial firm on further analysis.
- Algorithm Anti-Discrimination – The D.C. attorney general's office requested reintroduction of its onerous bill to target alleged "discrimination by algorithms" by businesses. ERIE's trades are working with the same broad business coalition that helped defeat last session's version.

Illinois

The General Assembly concluded its spring session in advance of the May 31 deadline and will return in the fall for a handful of veto session days. Key legislation the industry tracked this session is as follows:

- Biometric Information Privacy Act (BIPA) – An industry and business coalition sought legislation to address recent negative Illinois Supreme Court rulings affecting businesses subject to lawsuits under BIPA. While the legislation didn't pass, proponents will continue to pursue the issue.
- Impaired Minor Responsibility – Legislation was enacted to amend the Drug or Alcohol Impaired Minor Responsibility Act to expand liability to a person who supplied drugs or alcohol to minors at residences.
- Rental Vehicle Liability – Industry-opposed legislation was passed and sent to the governor to delete language limiting the liability of a renter for damage to a vehicle.
- Transportation Network Companies – Trial bar-supported legislation was passed and sent to the governor opening rideshare companies to the same lawsuits that can be filed against taxi companies. The bill clarifies that rideshare drivers will remain independent contractors.
- Wrongful Death – Legislation pushed by the trial bar was passed and sent to the governor to allow punitive damages in wrongful death cases despite strong industry and business opposition. Grassroots efforts continue asking Gov. Pritzker to veto the bill.
- Dog Breed Insurance Underwriting – Legislation based on a National Council of Insurance Legislators model was enacted to restrict dog-breed underwriting options.
- Auto Rate Regulation/Underwriting and Rating Factors – Legislation was considered to prohibit auto insurers from using established factors such as gender, credit-based insurance score, education level, and employment to set insurance rates, and give the Illinois DOI power to reject or modify rate increases submitted by auto insurers. While the bill died this session, due in part to extensive industry-wide education and outreach, similar proposals are expected to return.
- Insurance Data Security Law – Legislation was enacted to create the Insurance Data Security Law, modeled after the NAIC Model, setting forth provisions concerning an information security program, investigations of cybersecurity events, and notifications of cybersecurity events.
- Voluntary Supplier Diversity Program Reporting – Legislation was passed and sent to the governor to require companies authorized to do business in or accredited by the state with assets of at least \$50,000,000 to submit to the DOI a report on its voluntary supplier diversity or procurement program.
- Market Conduct – The DOI sought legislation concerning various aspects of market conduct and nonfinancial examinations. The bill ultimately failed this session but is likely to resurface.
- Public Adjusters – Industry-supported legislation was enacted making various changes to public adjuster laws, including licensing, fees, contracts, and disclosures.

Indiana

The 2023 General Assembly adjourned on April 28 and brought this year's "long" legislative session to a close. Key legislation the industry tracked this session is as follows:

- Delivery Network Companies – Industry-supported legislation was enacted that establishes a framework for delivery network companies (DNC), including certain motor vehicle insurance coverage requirements for DNCs and DNC drivers and other public safety measures.

- Third-party Litigation Financing – Legislation was enacted that requires consumer claimants or their attorneys to provide notice that the claimant has entered into a civil proceeding advance payment contract.
- Auto Insurance for Foster Youth – Legislation was enacted which requires the assigned risk automobile insurance plan to make automobile insurance available to foster youth.
- Insurance Omnibus Legislation – An omnibus bill with several insurance-related provisions was enacted, including the following:
 - Producer Continuing Education - Permits an insurance producer that actively participates in a professional insurance organization to get up to two hours of continuing education credit.
 - Public Adjusters – Provides several consumer protections related to public adjuster contracts, disclosures, and practices.
 - Value-Added Products or Services - Permits insurers and producers to provide, in conjunction with a policy, value-added products or services primarily intended to mitigate and reduce risk, severity, or frequency of loss.
 - Insurer Data Transparency – Requires an insurer that makes certain material changes to an insured’s personal auto or homeowners’ policy to provide written notice explaining the principal factors for the material change or informing the insured of their right to the explanation. The industry worked closely with the sponsor to improve this language.

Kentucky

The 2023 session of the Kentucky General Assembly adjourned on March 30. Key legislation the industry tracked this session is as follows:

- Public Adjusters – Industry-supported legislation was enacted revising provisions governing public adjuster contracts, responsibilities, compensation, and financial responsibility requirements.
- Medical Cannabis – Legislation was enacted that provides for the regulation and use of medical cannabis in Kentucky. The new law specifies that workers’ compensation insurers are not required to provide reimbursement. Next session, prior to the January 1, 2025, effective date, the industry will seek to broaden that provision to apply to any property/casualty insurer.
- Third Party Litigation Financing – Legislation that was introduced on behalf of the litigation financing industry trade association ultimately failed this session, but it may return next year.
- Data Privacy – While the industry worked to secure favorable amendments to data privacy legislation, the bill ultimately failed this session.
- Delivery Network Companies – Industry-supported legislation to establish a framework for delivery network companies (DNCs), including insurance coverage requirements for DNCs and DNC drivers, ultimately failed this session over concerns expressed by Amazon, DoorDash, and Walmart regarding the “delivery service period” definition. The issue is expected to resurface.
- Distracted Driving – The industry continued to work with advocates to build support for “hands-free” legislation, but unfortunately the bill failed.

Maryland

The Maryland General Assembly adjourned its 90-day regular session on April 10. Insurers faced a broad range of proactive and defensive issues. Here are a few of each that made it into law:

- Adverse EUIM Bill – The trial bar finally pushed through its bill to force consumers to “opt out” of enhanced underinsured motorist (EUIM) coverage after years of trying. The industry worked to limit the opt-out to new business only and delay the effective date to July 1, 2024.
- Statute of Limitations Sex Abuse – “The Child Victims Act of 2023” sailed through with renewed momentum from the AG’s report on abuse in the Baltimore Diocese. The law repeals the statutes of limitations and repose for child sex abuse claims, allowing civil lawsuits at any time and an unlimited lookback for reviving prior claims, while capping per-incident liability. Constitutionality challenges are expected.
- Rebating Reform – The Maryland Insurance Administration advocated for a new rebating law with industry support to give insurers increased flexibility to provide loss mitigation products and services.
- MAIF Funding Issues – A new law was enacted to address the funding of the Maryland Auto Insurance Fund (MAIF), the state’s struggling residual market mechanism. It includes reforms to MAIF’s share of uninsured motorist penalties and its assessment process, which was last used in 1989.
- Commercial Towing – A new industry-supported law builds upon last year’s commercial towing reforms by establishing a rate-setting and complaint resolution committee for large tows within the Maryland State Police.

North Carolina

The North Carolina General Assembly convened its “long” session in January and is still in session after missing its mid-year budget deadline. Here’s a quick overview of industry issues:

- Roofing Contractor Fraud – The industry’s roofing contractor fraud bill stalled again, but ERIE’s trades are still trying to add related enforcement language to the state’s consumer protection statutes.
- Minimums/UIM Changes – A legislative effort to raise minimum auto limits to 50/100/50 from 30/60/25 ended up in the insurance department’s agency bill. Unfortunately, the bill was amended in the House to include the trial bar’s adverse UM/UIM “offset” provisions, so the industry is attempting to get these deleted in any final version.
- Tort Defense
 - TPLF Regulation – A bill to regulate “third-party litigation financing” (TPLF) was reintroduced. While it matches the industry’s national agreement, ERIE trades are trying to resolve a last-minute definitional issue.
 - “Phantom Damages” – The industry again bottled up the trial bar’s bill to repeal a key rule of evidence counting billed (not actually paid) damages in medical awards.
- Rebating Reform – The industry is working to pass a rebating modernization bill, which allows insurers to provide risk control and mitigation services with a policy.
- Beach Plan Maximum Limits – The insurance department agency bill now contains industry-approved language to raise the property policy maximum limits of the state’s coastal residual market (Beach Plan).

New York

While the legislative session concluded on June 10, the Assembly indicated at that time that they had unfinished business that they did not have time to get to and would return at a later date. As such, the Assembly convened session on June 20-21 and took up a number of additional bills which will be going to Governor Hochul for action, which are described below. While the legislature's regular

business has now concluded for 2023, it is possible that they could return for one or more special session days at some point before the end of the year.

- Auto Verification of Driving History - This bill would require insurers that utilize driving history in underwriting or rating private passenger motor vehicle insurance to make a good faith effort to verify the driving history of the applicant and all named drivers prior to binding the policy and at each renewal. The bill has now passed in both houses and will be going to the Governor for action.
- No Collateral Estoppel for No-Fault Arbitration Decisions - This bill provides that decisions in no-fault arbitrations shall not be given collateral estoppel effect in subsequent personal injury actions. The bill has now passed in both houses and will be going to the Governor for action. The insurance industry is seeking a veto.
- Prohibition on Non-compete Agreements - This bill prohibiting employers from entering into non-compete agreements with employees and independent contractors in the state and provides for a civil remedy for covered individuals. The bill does, however, provide that certain agreements relating to confidentiality/disclosure of trade secrets are permitted as long as competition is not otherwise restricted. The bill was strongly supported by Labor. The bill has now passed in both houses and will be going to the Governor for action.

Ohio

The Ohio General Assembly recessed on June 30 after passing a state operating budget and will return in September. The legislature traditionally focuses on the budget in the first six months of a new assembly, but the pace of this session has been noticeably slower than usual with only six bills reaching the governor in the first six months of session. Key industry legislation this session is as follows:

- Distracted Driving - In January, a law was enacted making distracted driving a primary offense, which took effect on April 4, 2023, with a six-month warning period, after which the law will be fully enforced. The industry is collaborating with the Ohio Departments of Transportation and Public Safety to continue educational efforts on the new law.
- Biennial Operating Budget – The state’s enacted biennial operating budget included several policy changes relevant to the property/casualty insurance industry, including granting to county commissioners mine subsidence authority for optional counties, requirements for a distracted driving safety course for offenders of the law, and industry-neutral modifications to Ohio’s Peer-to Peer Car Sharing Statue consistent with the national model law.
- Vicarious Liability – Legislation is being considered that attempts to fix the plaintiff bar’s perceived issues in the Ohio Supreme Court’s Clawson decision that stated that a professional employer will not be liable for the actions of the employee if that employee cannot be held liable. The legislation also attempts to correct the holding in the Court’s Durrani decision dealing with the absconded defendant rule.
- Storm Scammers – Long-time industry priority legislation has been re-introduced that would provide essential consumer protections in residential roofing transactions and crack down on scammers who seek to profit off the misfortunes of property owners.
- Third-Party Litigation Financing - Legislation is being considered to reform the abusive practice of third-party litigation financing in Ohio. The industry continues to work with the Ohio Alliance for Civil Justice and U.S. Chamber of Commerce to advocate for this legislation.

- Asbestos Litigation Reform – Legislation is being considered to require a plaintiff in a tort action alleging an asbestos claim to file specified disclosures. The bill is intended to address the practice of “over-naming,” which is a type of abuse occurring in asbestos lawsuits.

Tennessee

The Tennessee General Assembly completed its work for the year and adjourned on April 21. Key legislation the industry tracked this session is as follows:

- Comparative Fault – Joinder of Third-Party Defendants – Legislation was enacted specifying that a defendant in a civil action where comparative fault is an issue includes an insurance company that issued an uninsured motor vehicle coverage policy and was served with process. An amendment was included that allows the plaintiff 90 days to join parties alleged to have contributed to the accident and not create a direct cause of action against the insurer. The industry was neutral on the bill, as amended.
- Recovery of Costs on Appeal – Legislation was enacted that specifies what costs can be recovered on appeals, including the costs of preparing and transmitting the record, transcripts of evidence or proceedings, copies of briefs and the record, bond premiums to preserve rights pending appeal, litigation taxes, and court fees.
- COVID-19 Provisions Made Permanent – Legislation was enacted that makes permanent various provisions regarding COVID-19, including business liability protections and restrictions on mask and vaccine mandates.
- Workers' Compensation – Legislation was enacted to make various changes to the Workers' Compensation Law including award timeframes, attorney's fees, payment of medical expenses, and benefits of settlements. The bill originally had language that would have eliminated the bad faith standard, but the industry secured an amendment that fixed the language.
- Workers' Compensation Survivor Benefits – Legislation was enacted to change the benefits available to a surviving spouse who remarries and to set up a process for insurers to request information from certain dependents to determine that they still qualify for benefits.
- Data Privacy – Legislation was enacted to establish personal information rights for consumers and responsibilities for data controllers. The industry worked to ensure the bill contained exemptions for insurers and other entities already regulated under the Gramm-Leach Bliley Act.

Virginia

The Virginia General Assembly adjourned its “short” regular session back in late February, amidst a key election year in 2023 for all legislative seats. Redistricting has brought comprehensive changes to all district maps, resulting in a wave of retirements and many new candidates. Party control of the narrowly divided legislature will be up for grabs in November’s election. Despite the election distraction and a budget stalemate, legislators focused on some industry issues during the session, like the following:

- Towing Battles – Competing towing bills (nearly 10 total) ended up with the industry losing some ground despite strong efforts:
 - Defense – The towers pushed several new adverse laws, including ones to allow recovery of a fuel surcharge as well as attorney fees. However, the industry was able to favorably amend these.
 - Proactive Reforms – Industry-supported bills did not survive the last part of the session, including legislation to make towing complaints subject to the Virginia Consumer

Protection Act, to cap local storage fees after 24 hours, and to prohibit tower “wreck-chasing.”

- Scrap Vehicle Documentation – Auto insurers and their vendors advocated for a new law that will allow carriers to get nonrepairable certificates for certain scrap vehicles without titles, saving time and money in claims adjusting.
- Workers’ Compensation Defense
 - Repetitive Motion – The industry again defeated a bill to classify repetitive stress conditions and hearing loss as occupational diseases, despite Virginia’s unique status in this area among states.
 - Timely Compensation – The industry also overcame a trial bar effort to add a monetary weekly escalating penalty fee for failure to pay comp benefits.
- Traffic Safety Threats – The industry derailed two unanticipated traffic bills: 1) a bill to allow motorcycles to “lane split” or travel between stopped cars in traffic; and, 2) a bill to weaken the violation for passing stopped school busses and disallow its use for “insurance purposes.”

West Virginia

West Virginia’s 60-day regular legislative session ended back in mid-March. Here are some industry highlights:

- Distracted Driving – The industry successfully pushed for a tougher distracted driving law, capping its difficult multi-year effort on this key traffic safety issue.
- Auto Insurance “Sharing Economy” Issues
 - Car-Sharing Modifications – A new law was enacted to conform state statutes to recent changes in the national peer-to-peer car-sharing model law.
 - Delivery Network Companies – A separate bill backed by ERIE’s trades to regulate insurance for Delivery Network Company (or DNCs, like DoorDash) failed because other stakeholders tried to weaken the insurance protections.
- Proactive Tort Reforms
 - Secondary Source – The industry again championed a bill to clarify that secondary sources (like American Law Institute Restatements) are not the law and public policy of West Virginia. After Senate passage, the House did not agree to the industry’s preferred language.
 - Phantom Damages/Collateral Source – The industry’s familiar bill to eliminate medical billing “phantom damages” and provide jurors with a plaintiff’s other payment sources did not gain traction in the Senate.
 - Deliberate Intent – The business community successfully pressed for a law to limit so-called “deliberate intent” lawsuits in workers’ compensation with a controversial non-economic damages cap and other changes.
 - VFD/EMS Surcharge – The longstanding volunteer fire department (VFD) premium surcharge issue has renewed momentum, but a bill to increase the surcharge and expand its usage to fund emergency medical services (EMS) failed at the last hour in a conference committee.

Wisconsin

The Wisconsin legislature passed the state budget at the end of June, signaling a break in floor action until September, but some committee hearings will continue in the interim. While there has yet to be much movement on industry issues this session, key industry legislation this session is as follows:

- State Operating Budget – The following items of interest were included in the enacted state budget:
 - Driver’s Education - \$6 million for grants to offset the cost of driver’s education, an initiative sought by the Wisconsin Insurance Alliance to remove a barrier for low-income students. Separate enabling legislation to create the grant program will now be needed.
 - Fraud Investigator - Funding for a fraud investigator in the Office of the Commissioner of Insurance.
- Public Safety – Legislation was enacted to increase penalties for reckless driving and reorganize and provide a penalty for the crimes commonly known as “carjacking.”
- Personal Finance Literacy - Legislation that would require personal finance literacy for high school graduation, including risk management and insurance, has passed the Assembly and awaits hearings in the Senate.
- Statute of Limitations for Sexual Conduct with a Child - Legislation has been introduced seeking to increase the time limit for bringing such actions to any time before the injured party reaches the age of 45 (current law specifies age 35) and additionally apply this timeframe to a broader range of actions.
- PFAS - Legislation has been proposed relating to programs and requirements to address perfluoroalkyl and polyfluoroalkyl substances (PFAS), human-made chemicals that have been used in consumer products since the 1940s due to their water, oil, and grease resistant properties.
- Industry Agenda Items – Other items the industry hopes to address this session that have yet to gain traction include peer-to-peer car sharing, third-party litigation financing reform, and rebating reform.