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## 2021 Legislative and Regulatory Preview

### Pennsylvania

The first year of the two-year legislative session in Pennsylvania began last week. The Pennsylvania Legislature meets year-round over the two years, recessing for budget negotiations, the holidays and over the summer. Following the 2020 elections, Democrats continue to hold the Governor's and Attorney General's office, but lost the other two statewide offices when the Republicans won the State Auditor General's office and the Treasurer's office. Republicans also picked up seats in both houses of the General Assembly, further strengthening their majorities. Governor Tom Wolf (D) is currently serving his second term as Governor and his term will end in 2022 (Governor in Pennsylvania is limited to two consecutive terms). On the regulatory side, the industry continues to enjoy a generally positive relationship with Commissioner Jessica Altman. The Department generally took a reasonable approach to COVID-19 issues and did not impose burdensome mandates on the industry.

### *Priority Issues*

- Business Interruption: A number of business interruption mandate bills were introduced in 2020, but none received serious consideration in the General Assembly. Most potential problematic activity on this issue was focused in the courts. Nevertheless, legislation on this issue may again be proposed in 2021.
- Workers Compensation Presumption: A COVID-19 workers compensation presumption bill for life sustaining employees was introduced in 2020 but did not receive serious consideration. While there are no current indications that it will, this issue could resurface in 2021.
- Possible Repeal of Stacking Requirements: Resulting, in part, from the recent problematic court decisions related to stacking, pursuing legislation related to stacking is a top proactive priority. Legislation was introduced in 2020 (SB 1212) to amend the Motor Vehicle Financial Responsibility Law and repeal the current UM/UIM stacking requirements. The bill would also allow consumers to purchase more UM/UIM insurance than their bodily injury limits. The bill is opposed by the trial bar and passage will likely require some type of negotiated arrangement with them. While it was originally contemplated that an increase to financial responsibility limits might be part of such negotiations, COVID-19 and resulting financial hardships have made such an increase less viable.
- Statute of Limitations for Sexual Abuse of Minors: Late in 2019, the General Assembly passed legislation (HB 963) which starts the process of amending the Pennsylvania constitution to allow

for a two year reviver window for childhood sexual abuse claims. The bill will again need to be passed in the 2021-22 session and then would need to be approved by the voters through a ballot referendum.

- Legislation Addressing the Tooley Decision: Passing legislation to address the Supreme Court's 2013 ruling in Tooley v. A.K. Steel has been a priority of House leadership and large employers. The Tooley decision allowed workers with latent occupational diseases to sue their employers when their illness manifested beyond the 300 week statute of repose in the Workers Compensation Act. Since this troublesome decision, large employers have sought legislation to mitigate their Tooley exposure. A bill was proposed in the House in 2020 (HB 1234) which would prospectively provide that latent occupational disease claims must be filed within 300 weeks of the date of diagnosis. Relative to retroactive claims, the bill would move pending civil cases to the Bureau of Workers Compensation with damages limited to the relief available under the Workers Compensation Act and retroactive claims brought against an employer who had workers compensation insurance at the time the claim arose will be handled and paid by the Workers Compensation Security Fund. While the bill advanced in the House, the pandemic largely put a stop to serious consideration of this issue in 2020. This issue could return as an issue in 2021.
- Medical Malpractice Venue Rule: The Supreme Court's proposed revision of the 2003 medical malpractice venue reforms remains on hold. The Legislative Budget and Finance Committee report on the impact of the venue reforms and their possible rescission was released prior to the pandemic, but was not as positive for the industry as had been hoped. While the General Assembly seems to lean against changing these rules, the Supreme Court is not bound by the General Assembly in determining procedural rules. We will continue to work in opposition to the repeal of the venue rule.

### **District of Columbia**

D.C. begins a new two-year Council Period in 2021, and Mayor Bowser (D) begins the last half of her second term as mayor. The Democrat majority City Council will have a few new faces after the November elections. On the regulatory side, the Department of Insurance, Securities and Banking saw turnover early in 2020 as the mayor replaced Commissioner Stephen Taylor with Karima Woods. While accessible on certain issues, DISB has been increasingly difficult to work with during the pandemic due to its refusal to lift a moratorium on cancellations for premium nonpayment and its flat prohibition on rate increases during the ongoing public health emergency.

#### *Priority Issues*

- Business Interruption - In May 2020, legislation to retroactively mandate business interruption coverage in the District came uncomfortably close to passing the Council. Only a massive lobbying/grassroots effort by the national industry raised enough concerns with key allies to stop it. While the issue did not formally resurface the rest of the year, the industry will remain vigilant in 2021 given last year's experience with such a harmful proposal.
- Insurer Use of Credit - A continuing issue will be the onerous credit restriction bill being pushed by DISB the past two Council Periods. The agency's bill would limit use of credit by insurers in not only personal but also commercial lines. While ERIE's trades have managed to fend this off at the Council the past few years, the economic fallout from the pandemic-related shutdown as well as a focus on social justice issues could provide new momentum.

### **Illinois**

Before swearing in the new 102<sup>nd</sup> General Assembly on Wednesday, the 101<sup>st</sup> assembly wrapped up its

lame duck session with the passage of a workers' occupational disease COVID-19 presumption extension and a measure strongly opposed by the industry regarding pre-judgment interest (more details below). Both bills will soon go to the governor for his likely signature. Heading into the new session, Democrats hold solid majorities in both legislative chambers and the governor's office, as Gov. J.B. Pritzker won't face election until 2022. Overall, the Illinois Legislature remains a challenge politically for most of business and industry and one that continues to be dominated by influence of the plaintiffs' bar and labor. The Illinois House also elected a new Speaker Wednesday, as Rep. Chris Welch (D-Chicago) replaces former Speaker Michael Madigan who held the role for 40 years. The insurance regulatory climate is generally fair, and that is expected to continue under the leadership of the new director, Dana Popish Severinghaus, who brings extensive legal, policy, government relations, and insurance industry experience to the role.

### *Priority Issues*

- Pre-Judgement Interest – The bill that passed early Wednesday provides that in all actions brought to recover damages for personal injuries or wrongful death resulting from or occasioned by the wrongful conduct of any other person or entity, the plaintiff shall recover prejudgment interest at 9 percent per annum on all damages set forth in the judgment. The bill's provisions apply to any personal injury or wrongful death occurring before the effective date of the law and the prejudgment interest shall begin to accrue on the later of the effective date of the law or the date the alleged tortfeasor has notice of the injury. This industry and other opposing groups will seek the governor's veto on this measure, but it is considered a long shot.
- Tort - The industry expects to defend against numerous pro-plaintiff/trial bar proposals again in 2021, including venue reform.
- Business Interruption Task Force Resolution – The bipartisan Business Interruption Task Force finalized its work in a report to the legislature on business interruption insurance coverage in December. Industry trades were closely involved in the task force's work, serving on it and offering a variety of resources. The recommendations stress the importance of education and call for a state legislative resolution that asks the federal government to provide continued funding for relief and to enact a federal legislative solution, which is pending introduction.
- Underwriting/Rating Restrictions - In 2021, the industry expects to defend against attempts to limit insurers' use of various underwriting and rating tools for both personal and commercial lines of insurance.
- Workers' Compensation –The industry expects to face a variety of workers' compensation proposals in the new session, including premium regulation/excessive insurer profits, coverage for repetitive injuries, rating prohibitions in certain situations, and coverage for PTSD for police and firefighters.
- Insurer Assessment – An item that has come up recently in discussions surrounding criminal justice reform and funding police training is the possibility of a \$1 assessment on each insurance policy issued in the state. While few details are available at this time, industry trades are attempting to, at the least, ensure such assessment is labeled/categorized in a way to avoid possible retaliatory tax implications.
- State Budget - With an estimated \$3.9 billion deficit in the current year's budget, a projected \$4.8 billion deficit in the budget year that starts in July, billions in unpaid bills and unfunded pension liabilities, and the failing of a 2020 ballot initiative to amend the Illinois Constitution to allow for a graduated income tax, lawmakers and Gov. Pritzker are looking at a combination of

expense cuts and corporate and business tax adjustments to plug the gap.

- Cyber/Data Privacy – More than a dozen cyber/data privacy related bills, including the NAIC Model Cyber Bill and various California-style cybersecurity bills were introduced for consideration last session but did not progress. These combined subjects will certainly be at the top of the legislature’s “to do” list in 2021.
- Towing – The industry will look to build off positive interim discussions on towing reform this year and continue to pursue much-needed towing reforms.

## **Indiana**

The Indiana General Assembly returned for its long legislative session on January 4, 2021. Indiana holds its long session in odd years to address the budget and a short session in even years. Governor Eric Holcomb (R) begins his second term, having easily won re-election in November. Republicans currently hold all executive offices and continue their supermajorities in the senate and house.

### *Priority Issues*

- COVID-19 Civil Immunity - Civil immunity legislation is a top industry priority and will take up most of industry’s focus this legislative session. Legislative leaders intend to fast-track legislation to provide civil protection from lawsuits from individuals claiming they were infected with or exposed to COVID-19. Differing legislation has already been introduced in the House and the Senate:
  - The Senate proposal broadly exempts any individual or entity from COVID-19 liability, absent clear and convincing evidence of gross negligence or willful or wanton misconduct. Liability protection would be retroactive to March 1, 2020.
  - The House version would grant broad COVID-19 liability protections to individuals and other entities including specific added protections to health care organizations relating to their provision of health care services during a state disaster emergency. Provides retroactive protection back to February 29, 2020, unless it can be shown that the cause of injury or death by COVID-19 was due to gross negligence or willful misconduct.
- Civil Statute of Limitations/Sex Crimes Against a Minor – Legislation to retroactively remove the statute of limitations for civil causes of action concerning child sexual abuse has been introduced and is expected to again receive significant attention this session.
- Marijuana – The industry will be tracking at least two marijuana bills that have already been introduced this session, one that would focus on decriminalization of marijuana possession and another that would establish a medical marijuana program and permit the use of medical marijuana by persons with serious medical conditions as determined by their physician.
- Statewide Electronic Lien and Title System – Legislation has been introduced that would require the bureau of motor vehicles to implement a statewide electronic lien and title system to process: (1) vehicle titles; (2) certificate of title data in which a lien is notated; and (3) the notification, maintenance, and release of security interests in vehicles; through electronic means instead of paper documents.

## **Kentucky**

The Kentucky Legislature convened for a 30-legislative day “short session” on January 5, 2021 and will adjourn on March 30, 2021. Key legislative leaders have indicated that the ongoing COVID-19 pandemic will reinforce the need to limit the focus to priority budgetary and legislative issues. PIP Reform, Distracted Driving, Asbestos Trust Transparency and Classification of Workers’ in the Construction

Industry will be deferred until the 2022 session. With Republicans strengthening their balance of power in the legislature heading into 2021, tensions between the Republican controlled legislature and Democratic Gov. Andy Beshear will continue on issues including redistricting, the governor's emergency powers, and COVID-19 liability limitation legislation. The influence of the trial bar will also continue to be a concern, particularly in the House, as statute of limitations/reviver legislation is expected to be refiled in 2021.

#### *Priority Issues*

- Risk-Based Pricing and the Intersection with Social Equity and Justice – The Industry is monitoring for potential legislation on social justice reform and potential threats to risk-based pricing. Should legislation be introduced, the industry will work to protect insurers' ability to appropriately manage risk, the payment of claims, and related issues.
- Liability Limitations for COVID-19 Claims – Both the House and Senate have introduced bills limiting the liability of individuals, businesses, and entities for COVID-19 claims.
- Towing Reform – A high priority industry bill based on the NCOIL Consumer Protection Towing Model Act has been introduced. The bill would establish provisions for emergency towing and private property towing, require rates be posted in the place of business of a tow company or storage facility, require an itemized invoice for towing and storage charges, establish notification requirements for towed vehicles, establish payment and release requirements for towed vehicles, and establish prohibited fees, among other provisions.
  - Auto Title Transfers – Delinquent Taxes – The towing bill contains another priority item for the industry regarding an outstanding tax issue. Some local jurisdictions are seeking to require payment of delinquent ad valorem property taxes by the person taking title to the vehicle. The current law prohibiting transfer to or from a person owing delinquent taxes exempts automobile dealers. The industry is will be working to address this issue and hopefully similarly exempting transfers to insurers occurring because of an insurance claim.
- Sexual Abuse Statute of Limitations – The industry expects legislation to be reintroduced addressing the civil statute of limitations for alleged sexual abuse against minors. Discussions with the House and Senate Judiciary Chairs have focused on the unconstitutionality of a reviver provision.
- Auto Title – “Cosmetic Damage” Brand – Legislation was introduced that would provide for issuance of a “cosmetic damage” branded title. As introduced, “cosmetic damage” is undefined.
- Peer to Peer Car Sharing - It is unclear whether the unrelated tax issues raised by Enterprise Car Rental will arise again in 2020. The industry will continue to support the NCOIL Model Act and oppose any proposed harmful amendments.

#### **Maryland**

In Maryland the 2019 departures of the two longtime centrist House and Senate leaders have since led to a more progressive posture at the legislature and continued changeover among committee chairs. This means more uncertainty and challenges for the industry going forward into 2021 and beyond. On the regulatory side, Gov. Hogan appointed Kathleen Birrane as Insurance Commissioner at the Maryland Insurance Administration (MIA) in May 2020. Commissioner Birrane, an attorney who had previously served as the AG's liaison to the MIA, has continued the agency's balanced and open approach.

The Maryland General Assembly convened on January 13 for its 2021 regular session. The session will be

held virtually with strict rules about access/testimony and some initial doubt about whether it will go the full 90 days due to the pandemic.

### *Priority Issues*

- Auto Rating Factors - The past few years in Maryland have seen an increase in bills to ban or restrict various traditional auto insurance rating factors like gender and geography, as well as relatively newer factors like credit scoring, education and occupation. Similar threats are anticipated in 2021, particularly on credit and zip codes, and will be intensified by the recent economic downturn and focus on social justice issues.
- COVID-19 Legislation - Two major COVID-19 issues were not debated in Maryland in 2020 with the General Assembly's early adjournment and no later special session, but are expected to come up in 2021:
  - Liability Immunity - Two immunity protection bills for COVID-19 lawsuits have been introduced. A general business immunity bill, based on North Carolina's 2020 law, is being pushed by the state Chamber and supported by insurers, but could be a heavy lift in the state's political climate. A much narrower bill to provide liability immunity for healthcare workers is being advanced by the state's hospitals and medical community with better odds of success.
  - Workers' Compensation Presumption - Likewise, two bills creating presumptions that COVID-19 contraction is job-related will be introduced. The industry has generally opposed such efforts unless they have narrow scope of employees (e.g., frontline healthcare workers) and specified provisions, such as an expiration date and testing requirements. APCI has reported that both versions have various deficiencies and has reached out to business organizations to help oppose.
- Statute of Limitations Reviver - Last year's "revivers" bill regarding childhood sexual abuse has been pre-filed and sponsored again by the same delegate who was an abuse victim. The industry will continue to argue in the background against the bill as bad legal precedent, but the Catholic Church remains the only visible opposition. This year, the bill is cross-filed with a Senate sponsor so is more likely to pass.
- Jury Limits - The Maryland trial bar is again submitting legislation to raise the jury threshold from its current limit to \$15,000 to \$30,000, which would also require a voter referendum in 2022. This effort is opposed by the industry as creating a difficult court environment and far out of step with the rest of the country. The House Judiciary Chair has mentioned that the backlog of jury cases from the pandemic may create further impetus for the bill.

### **North Carolina**

During the 2020 general election, Gov. Cooper (D) won reelection and Republicans maintained control of the state's General Assembly. This outcome should mean a continued favorable environment for insurers and business, although the split between executive and legislative branches will mean further budget battles. On the regulatory side, Insurance Commissioner Mike Causey won reelection for a second term in 2020. Under Causey, the Department of Insurance (DOI) has focused on gradual changes to the state's restrictive regulatory system using stakeholder groups. ERIE's trades have built good rapport with department staff. Moreover, the agency has been flexible and accessible to the industry during the pandemic, while Commissioner Causey was outspoken in defense of the industry on COVID-19 issues like business interruption and workers' compensation presumptions.

The North Carolina General Assembly convened on January 13 to begin its two-year legislative session (2021-22), including this year's "long" portion.

### *Priority Issues*

- COVID-19 Workers' Compensation Presumption - The industry will continue to oppose legislation to establish a presumption that COVID-19 contraction is job related. This bill was brought up in 2020 by the Democratic Minority Leader but failed to gain any momentum due to strong business opposition. If needed, ERIE's trades have a fallback position to a focused approach with a narrow employee class and other specified common-sense criteria.
- Roofing Contractor Anti-Fraud Legislation - ERIE and our trades have continued to fight for consumer protections against abusive roofing contractors over the years in North Carolina. After seeing the bill stall in the Senate during a number of prior biennial sessions, the industry will continue its approach from the 2019-20 session of starting in the Senate with sponsorship by a Charlotte-area senator who is also an ERIE agent and committed to the issue given her on-the-job experience.
- Distracted Driving - The industry, led by the independent agents, will be back again with its anti-distracted driving bill which is finally beginning to attract some support from the libertarian wing of GOP legislators. While the bill stalled last session, recent positive public relations efforts by our trades have been encouraging.
- Peer to Peer Car Sharing - North Carolina is starting to discuss regulating the practice of peer-to-peer car sharing this session, as several other states have done in recent years, according to APCIA. ERIE's trades have been participating in preliminary discussions on the issue with the usual stakeholders of car-sharing platforms, car rental industry, legislators and regulators. The industry will advocate for its model provisions to protect insurer underwriting and claims-handling.
- ALI Restatement of the Law of Liability Insurance - ERIE's trades are likely to test the waters again with an industry-accepted version of the bill to repudiate the American Law Institute's recent harmful restatement that threatens longstanding industry claims litigation practices. Recent discussions have shown progress in getting past the hurdles from the prior session, such as constitutionality issues raised by legislative staff.

### **New York**

Democrats hold every statewide office in New York and veto proof majorities in both houses of the legislature. Democrats gained three seats in the Senate and one seat in the Assembly in the 2020 elections. Also, both houses saw the election of a number of progressive legislators, some of whom replaced legislators of a more moderate inclination. This political environment, and particularly the anti-business sentiment of many progressive legislators, will continue to pose challenges for the insurance industry and the business community in general as we head into the 2021 session. Governor Cuomo is serving his third term as Governor and his popularity, in New York and nationally, was buoyed by his COVID-19 press conferences and continued visibility. On the regulatory side, the Department of Financial Services continues to pose challenges. Superintendent Linda Lacewell, Governor Cuomo's former Chief of Staff, continues to be very close to the Governor. She also has expressed potentially troublesome views relative to risk based pricing. 2021 is the first year of a two year legislative session in which in excess of 20,000 bills will likely be introduced. Bills from the 2020 session will not carry over to the 2021 legislative session and will need to be reintroduced with new bill numbers.

### *Priority Issues*

- Business Interruption - None of the business interruption bills introduced in 2020 advanced from Committee in either house, but the insurance industry continues to get pressure on this issue

from the Assembly Insurance Chair, who claims that the Assembly bill sponsor has rallied many Assembly colleagues in support of retroactive mandate legislation. The Assembly sponsor as well as certain proponents in the Senate have on multiple occasions told the industry to "come up with something" on this and we continue to explain why that won't work and why a federal solution is necessary. The Assembly Insurance Committee Chair also introduced a bill in 2020 to require the Insurance Department to study the issue. While the bill did not advance, it is likely that this bill will be reintroduced in 2021. The Senate Insurance Chair has been very strong in working against these bills and clearly understands the potentially catastrophic impact that passage and mandate legislation may have.

- Workers Compensation Presumption - A number of bills were introduced in 2020 on the workers compensation presumption issue, but there was not a strong push to pass these bills. It is unclear at this time to what extent the bills will gain renewed momentum in 2021 given the resurgence of the pandemic.
- Recreational Marijuana - Momentum on this issue has been growing in recent sessions and budget shortfalls and other issues appear to have made this issue ripe for potential action in 2021.
- Bad Faith - A worldwide pandemic notwithstanding, the trial bar still made a major push for the pending very expansive (both first and third party) bad faith bill during 2020. The insurance industry updated its Milliman study on this bill and utilized the daunting \$6.9 billion estimated annual premium impact widely in opposition efforts. The Assembly advanced the bill from the Insurance Committee and other committees but did not end up bringing the bill up for a vote on the floor. In addition to industry advocacy efforts, this was due in part, to the Senate's strong refusal to take this bill up which continues to be largely fueled by the efforts of Senate Insurance Chair Breslin against the bill. We anticipate that the trial bar will, once again, make passage of expansive bad faith legislation a priority in 2021 and will again work in opposition to this effort.
- Wrongful Death - The trial bar will also likely make a strong push for legislation expanding damages which may be awarded in a wrongful death action to allow expansive non-economic damages. The Assembly advanced this bill to the calendar last year, but did not bring the bill up for a vote on the floor. We will continue to strongly oppose this legislation in 2021.
- Peer to Peer Car Sharing - The Assembly made a push to get this bill passed in 2020 and advanced it through the Insurance and Codes Committees. While the industry had concerns with certain provisions of the 2020 bill, we continue to actively work with the Assembly sponsor and Assembly program & counsel staff to secure legislation in 2021 that is in accordance with our position on this issue.
- Prohibiting Consideration of Dog Breed in Underwriting/Rating - Legislation on this issue has been around for many years and has regularly advanced in the Assembly but it had never previously been given serious consideration in the Senate. That all changed when the bill unexpectedly appeared on the Senate Insurance Committee agenda near the end of committee activity in July, 2020. The insurance industry strongly opposed this bill and the Senate Insurance Chair was able to get the bill's sponsor to agree to hold the bill in committee. At the committee meeting, however, the Insurance Chair expressed a willingness to continue to work on this issue in the coming months. To date, there has not been further activity/discussion on this bill, though the bill could again gain serious consideration in 2021.

## Ohio

The 134th session of the Ohio General Assembly has begun, with Republicans controlling majorities in both the House and Senate. Gov. Mike DeWine continues in his first term in office, having been elected



in 2018. There is new leadership in both the House and Senate, and Ohio remains a business and insurance industry friendly state where several key priorities were enacted last year, paving the way for success on key issues that will carry over into the new session. The industry maintains a strong working relationship with the Ohio Department of Insurance, and this is expected to continue in 2021. Acting Director Tynesia Dorsey continues to run the department while a permanent replacement is yet to be named by Gov. DeWine.

#### *Priority Issues*

- Statute of Limitations on Contracts - A carryover priority from the previous session, this bill would reduce the statute of limitations on written contracts from eight years to six. This bill was slated to pass during the lame duck session at the end of 2020 but fell victim to timing and priority. The original House sponsor is now in the Senate and has committed to moving this forward in 2021, with assurance from leadership of this being a priority.
- Storm Scammers - Storm scammer legislation will again be a top priority in 2021. This legislation would prevent assignment of benefits to roofing contractors and prevent a roofer from acting as an adjuster by specifically prohibiting a contractor from directly interacting with the insurer on behalf of the insured. Moreover, the bill prohibits a contractor from “covering the deductible” or advertising that the contractor will give the consumer a “free roof.”
- Third Party Litigation Funding - An ongoing issue for a number of years, third party litigation funding legislation was introduced last year that was intended to move conversations forward on this issue with key stakeholders. This conversation will continue in 2021 and the industry will work with other partners to attempt to curb this practice.
- Distracted Driving - Bipartisan distracted driving legislation was introduced last session that would make the use of an electronic handheld device while driving a primary offense. A broad coalition of industry groups and law enforcement organizations strongly supports this bill. While the legislation did not move forward last session, progress was made and it will continue to be a priority in 2021.
- Graduated Driver's License Revisions – The industry will look to again support legislation that would revise the minimum age at which a minor may obtain a probationary driver's license. The bill will be introduced again this session.

#### **Tennessee**

Tennessee's 112th General Assembly convened Tuesday. The political make-up of the legislature remains largely the same as last session – with Republican supermajorities in both chambers, plus Republican Gov. Bill Lee, who was elected in 2018 and continues his first term. On the Regulatory side, Lee appointed Carter Lawrence as insurance commissioner in November, who is expected to maintain the positive working relationship between the industry and the Department of Commerce and Insurance.

#### *Priority Issues*

- NAIC Model Credit for Reinsurance – The NAIC model update is anticipated to be pursued by the Tennessee Department of Commerce and Insurance in 2021. It would have passed in 2020 but for the COVID recess of the legislature.
- Auto Minimum Limits – The industry again expects there to be an effort to increase auto minimum financial limits like last session’s attempt to increase from \$15,000 to \$25,000 the minimum amount of insurance coverage for property damage.

- City Codes to Demolish Buildings - Under a Mt. Juliet City Building Code, buildings with more than 50 percent damage are to be demolished. When that happens, the home is supposed to be torn down and completely rebuilt. This code is putting homeowners and insurers at odds as it has come into play as a result of the tornadoes this past spring. The matter received media attention and a legislator has indicated interest in introducing legislation to require insurers to pay for the demolition and rebuild. The industry will work to oppose this bill.
- Notice of Possible Lack of Coverage – Last session there were several bills dealing with notification of possible coverage gaps ranging from requiring insurance companies to notify private passenger auto insureds in writing of existing exclusions for commercial transportation services to requiring entities that employ/contract with who use their personal vehicles to inform drivers that their insurance may not cover commercial vehicles and to check with their insurance about coverage. The industry is monitoring for any such legislation this session.
- Workers' Compensation – Several workers' compensation bills failed or stalled last session that could be re-introduced this year, including a COVID-19 presumption, firefighter PTSD presumption, adding advanced practice registered nurses and physician assistants to the panel that an injured employee can choose when receiving treatment, and adding the hepatitis B virus to presumptive disability in acquiring certain infectious diseases in the line of duty by emergency rescue workers. The Bureau of Workers' Compensation is also expected to introduce language to provide enhanced enforcement on business and independent contractors who are misclassifying for workers compensation purposes.
- Regulatory Sandbox - The Department pursued legislation last session that would create a regulatory sandbox to support insurer innovation efforts. The bill didn't gain much momentum but will likely be back in 2021.
- NAIC Cybersecurity Model - The Department of Commerce and Insurance plans to introduce the "Consumer Protection Act," which contains the NAIC Cybersecurity Model. APCA has provided the department with suggested amendments and is supportive of the bill, assuming the amendments are accepted.

## **Virginia**

Democrats control all of Virginia's statewide offices, including governor, as well as the General Assembly which they retook during the 2019 election. During the 2020 regular and special sessions, the legislative environment shifted decidedly to a defensive battleground for the business community, a trend that will carry over to 2021. Virginia holds off-year state elections, and 2021 will see all House seats plus the Executive Branch up for election. Gov. Northam is term-limited, and the offices of Lieutenant Governor and Attorney General will be on the ballot. Republicans are likely to have an uphill climb to reclaim the House and any executive seats. On the regulatory side, the state's environment remains favorable as the Bureau of Insurance has long used a balanced approach with the industry. This has proved true during the pandemic when the agency has been highly accessible and flexible in guidance to ERIE and the industry.

The Virginia General Assembly convened on January 13 for its 2021 "short" 45-day legislative session. Due to budget timing and the ongoing pandemic, there is uncertainty about whether the regular session will be followed by a special session either directly after or later in the year.

## *Priority Issues*

- Tort Issues - 2021 will likely be the most challenging year yet on the tort front in the Virginia, as the trial bar is ready to press an aggressive agenda under Democratic party control. Among many incoming adverse tort issues are the following:
  - UM/UIM Bad Faith - The trial bar will again be pushing a bill to insert an ambiguous bad faith cause of action around certain uninsured/underinsured motorist (UM/UIM) claims. The industry defeated this effort in the past, although that will be difficult to replicate.
  - UIM Offset Removal - The trial bar is also looking to press for a change to the “trigger” or the definition of “underinsured” in auto claims from based on a comparison of the two parties’ limits (offset) to a damage or excess trigger, where UIM pays should the damages exceed the tortfeasors limits. This change would increase loss costs along with resources devoted to claims-handling.
  - Bystander Claims for Emotional Distress - Legislators are reintroducing a trial lawyer bill to provide that bystanders who witness an event where a victim is injured or killed may recover damages for the resulting emotional distress. This initiative was defeated in 2020 due to concerns of hospitals and insurers but should be another tough fight in 2021.
  - General District Court Jurisdictional Limits - This bill would raise the current threshold from \$25,000 to \$50,000 for General District Court. APCIA indicated this would affect many insurance accident cases and allow more cases to be filed in district court versus circuit court, providing more tactical advantages to plaintiffs. The bill may have momentum given the current case backlog in circuit court from the pandemic.
- COVID-19 issues - The two 2020 special session ended in a tie for the industry on two COVID-19 related issues – the negative workers’ comp presumptions were defeated but the proactive liability immunity failed. In 2021, this status quo could continue as neither issue may be revisited.
- FR Minimum Limits - The trial lawyers are bringing back the auto financial responsibility minimum limits bill back with even higher numbers at 100/200/40, which would be tops in the country, according to APCIA. The new version of bill excludes taxicabs, which were a key part of the industry’s opposition coalition in 2020, and the trial lawyer senator sponsoring the bill says he has the votes in both houses. While ERIE remains neutral on this issue, overall industry opposition means it will be a focus this session.
- Marijuana Legalization - As expected, Gov. Northam is advocating strongly for full marijuana legalization this session, following the successful decriminalization efforts of 2020. His administration has a bill to legalize recreational use of the drug after the November release of a workgroup report. The industry will work to ensure that auto and worker safety enforcement measures as well as employer protections are included.

## **West Virginia**

The November election strengthened the West Virginia GOP control of both Houses and the governor’s mansion. Gov. Justice won by 30 plus points over his Democratic challenger. The GOP also wiped out gains Democrats made the past two election cycles by winning super-majority status in the House and three seats in the Senate. This should mean a continued business-friendly climate for the industry. On the regulatory side, the industry has maintained its open and communicative relationship with the West Virginia Offices of the Insurance Commissioner under the two-year tenure of James Dodrill. The Commissioner had previously served as claims counsel for a national insurer and as chair of ERIE’s state trade, so brings solid industry background to his role. While the OIC has been active during the COVID-19 crisis, it maintains an overall “firm but fair” posture.

In 2021, the West Virginia legislative session will begin a month later than usual in mid-February, as it does every four years after the gubernatorial election.

### *Priority Issues*

- Tort Issues - The industry is focusing on tort reforms as its primary priorities in 2021, given the state's continued status on the American Tort Reform Foundation's annual "Judicial Hellholes" watch list. The industry is hopeful the new House Judiciary Chair and an even more beneficial legislative makeup could help with some of these industry priorities:
  - Phantom Damages and Collateral Source Rule - This long-term legislative goal of the industry would fix the flawed 2014 *Kenney v. Liston* decision and allow for consideration of other payment sources. The industry's proposal would base medical expense damages on the actually paid amounts and not on the "sticker price" or without regard to other payment sources.
  - Seat Belt Admissibility - The industry again will attempt to correct this longstanding problem in the state's judicial system where use or no use of a safety belt is not admissible in civil actions with respect to certain negligence and damages decisions. The bill has stalled after getting adversely amended in the House the past two sessions; ERIE's trades are hopeful a cleaner version can finally make it through.
  - COVID-19 Immunity - As in other states and federally, ERIE will be working with its trades on a legislative effort led by the state Chamber of Commerce to protect businesses from the threat of liability associated with lawsuits relating potential COVID-19 exposure.
  - Intermediate Appellate Court - The insurance industry has long supported legislation to create an intermediate appellate court as a layer between lower level courts and the state Supreme Court, like in the vast majority of other states. ERIE's trades will continue to help the business community on this priority.
- Distracted Driving - ERIE's trades are in the early stages of working with its highway safety allies to support legislation that strengthens distracted driving restrictions. At times, highway safety issues have been challenging to pass in the state due to libertarian-leaning GOP legislators, but the industry will continue its educational and public relations efforts.
- Medicaid Subrogation - The industry will maintain vigilance on any effort by the state Department of Health and Human Resources to push its bill to change the state's Medicaid subrogation statutes despite strong insurer concerns about its adverse impact on claims processes. In 2020, strong lobbying efforts by the industry convinced Gov. Justice to veto this bill.

### **Wisconsin**

The Wisconsin 2021 legislative session began on January 4, 2021. Wisconsin is a divided government state, with Democrats controlling the governor's mansion and Republicans holding healthy majorities in both houses of the Legislature. The industry has a strong relationship with Insurance Commissioner Mark Afable and his deputy Nathan Houdek and expects to continue to work well with Commissioner Afable and his team at OCI on key regulatory matters.

### *Key Issues*

- COVID-19 Civil Liability Immunity – Assembly leadership moved quickly on a COVID-19 relief package, passing its bill the first week of session. The bill, introduced by GOP leaders, contains various pandemic relief proposals including broad COVID-19 liability protections for businesses

and other entities that has strong support from the industry and the business community. The Senate, anticipating the governor's opposition and potential veto of the Assembly bill, split the legislative package into two bills to try to get the governor's support and signature on a more limited version of the bill containing liability protections for schools, businesses, and nonprofits. The governor indicated he would sign the Senate version if the House accepts the changes. The industry and business community continue to support liability protections and will continue to monitor these developments.

- Workers Compensation-PTSD/Billing Statements - A new bill for 2021 is being introduced and is exactly the amended version that passed the Assembly last session. Last year's bill was slated to potentially be taken up by the Senate on the final day of session before the session was cancelled due to COVID-19. This legislation would allow law enforcement and firefighters the ability to file PTSD claims for workers compensation. The bill also contains a few provisions from the agreed-upon workers compensation bill, including an ERIE-sought provision that would provide insurers billing statements upon request.
- Data Privacy and Security - Efforts to enact consumer data privacy and security legislation came up short last session, but there will be more legislative attention to this issue again in 2021, including a proposal that exempts the insurance industry from additional regulation. There is also a possibility of privacy measures being included in the governor's proposed budget. Last year, APCIA sent a letter to the Data Privacy and Security Advisory Committee at the Wisconsin Department of Agriculture, Trade, & Consumer Protection to outline key principles and considerations on what data security measures should look like.
- Credit for Reinsurance - OCI is in the process of finalizing a draft rule for public comment in late January or early February that would reflect the NAIC's adopted revisions to its Credit for Reinsurance Model Law. This will ensure that Wisconsin's reinsurance collateral laws will comply with the stipulations of the covered agreement between the United States and the European Union. Further, it will allow the state to maintain its NAIC accreditation and avoid preemption of state law by the covered agreement.
- Commercial Lines Modernization - Last summer, OCI started the initial process of addressing the issue of commercial lines modernization by issuing a scope statement on creating an exemption for most commercial property casualty insurance. Industry trades urged advancement of the issue and OCI's action was a positive step forward for moving this long-standing issue forward. It is anticipated that a draft rule will be available for public comment in early 2021.