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Mid-Year Legislative and Regulatory Update

Below is a mid-year recap of state legislative sessions in ERIE's footprint, and for some states, a glimpse at what lies ahead for the remainder of 2022.

Pennsylvania

On July 8, the Senate voted 47-3 to concur in House amendments to Senate Bill 1100, sending the FY 2022-23 state budget to Governor Wolf for his signature and enactment. The spending proposal passed the House of Representatives a day prior by a 180-20 margin. This year's budget contains no broad-based tax increases and authorizes \$45.2 billion in spending, a 2.9% increase over the previous fiscal year. It retains \$3.6 billion in the General Fund for use in future budgets and deposits an additional \$2.1 billion into the state Rainy Day Fund. The budget plan also reimburses over \$2 billion in borrowed state funds, including \$350 million to the state Workers Compensation Security Fund (WCSF). The WCSF has been used in recent years to backfill state revenue shortfalls and to subsidize a 2021 COVID relief package targeting the restaurant and hospitality industry. The FY 2022-23 budget notably provides for a gradual reduction in Pennsylvania's Corporate Net Income Tax (CNIT) from 9.99% to 4.99%, establishes a new state child tax credit, and increases property tax rebates for senior citizens. The General Assembly adjourned for a prolonged summer recess. The legislature will then sit for an abbreviated fall voting session before shifting its attention to the November General Election. Following are various priority insurance issues:

- Stacking Reform - The Senate voted 26-24 to Senate Bill 676, sending the bill to the House of Representatives for further consideration. As amended and approved by the Senate, the bill repeals the "stacking" provisions in Pennsylvania's Motor Vehicle Financial Responsibility Law (MVFRL), allowing drivers to purchase unstacked Uninsured/Underinsured Motorist (UM/UIM) coverage in amounts independent of Bodily Injury (BI) coverage. The bill also increases the state-mandated minimum coverage amounts for BI and Property Damage (PD) from 15/30/5 to 30/60/10; requires that insurers offer four times as much UM/UIM coverage as BI coverage; and requires the Insurance Department to post approved auto policy filings to its public website. Senate Bill 676 has been referred to the House Insurance Committee with long-term prospects still to be determined.
- Reviver for Minor Sexual Abuse Claims - Both houses have passed a bill to restart the constitutional amendment process, but a statutory reviver bill is also being pushed by advocates because they believe that it would get reviver provisions in place more quickly than the constitutional amendment process. The constitutional amendment legislation would need to be passed again by the General Assembly in 2023 and then submitted to

the voters. At this time, it appears that the constitutional amendment will be the vehicle for the reviver.

- Cybersecurity - The Insurance Department is pursuing the NAIC Cybersecurity Model this year (HB 2499). While this legislation is acceptable to the insurance industry, it is unclear whether the legislation will be enacted in 2022.
- Consumer Data Privacy Act - The current draft is troubling, but the industry is working with legislators on amendments to add the GLBA and HIPAA exemptions along with other necessary amendments. While this legislation seems unlikely to pass during this session, positive discussions have been ongoing and it is likely that the bill will be positively amended or that the legislation will be amended prior to reintroduction in 2023.
- Auto and Homeowners Policy Changes at Renewal - These bills would allow some flexibility to allow insurers to make a minor coverage reduction to an auto or homeowners policy at renewal. The industry supports these bills, though the bills are limited to modest changes and such changes would still need to be filed and approved by the Insurance Department. These bills have passed the House but have not advanced in the Senate.
- Group Capital Calculation - The bill requires insurers who are registered as a member of an insurance holding company system to file reports regarding group capital calculations and liquidity stress testing.

District of Columbia

2022 is the second year of a two-year Council Period in D.C., with the Council's primary focus on fiscal and non-insurance issues. However, adverse proposals by the city's insurance regulator and attorney general's office have the potential to overturn longstanding industry pricing practices. Here's an overview of these problematic issues:

- DISB Examining Algorithm Use in Personal Auto – The D.C. Department of Insurance, Securities and Banking (DISB) held a hearing on June 29 regarding its recently announced partnership with a consulting firm to determine if “unintentional bias” is resulting from auto insurers’ underwriting/rating criteria based on initial customer applications. This will require a data call of insurers regarding application data. APCI and the D.C. Insurance Federation testified against this idea, raising serious questions about the entire approach and process.
- DISB Multiple Factor Ban – Last year, as part of the agency’s diversity workgroup recommendations, DISB announced its intention to expand prior legislative efforts restricting use of credit into a full ban on personal lines insurers’ use of credit, education, occupation, gender and marital status. While such a bill has yet to be introduced, our trades indicate that the algorithm review process is likely intended to build a case for such legislation, as occurred last year in Colorado with the same firm involved.
- Algorithm Anti-Discrimination – D.C.’s attorney general introduced a bill in December targeting alleged “discrimination by algorithms.” This broad approach would “hold companies and organizations accountable if their algorithms harm vulnerable communities,” according to the AG. A bill hearing is now scheduled in September, and ERIE’s trades are working with a wide-ranging coalition of business groups to oppose.

Illinois

The 2022 session of the Illinois Legislature adjourned April 9 and returns in November for its fall veto session. While the veto session technically exists for the legislature to consider items the governor vetoed during session, bills that stalled in committee during session sometimes re-emerge. Some of the more onerous legislation in this category includes bills on business interruption coverage, cyber security/data privacy, original equipment manufacturer (OEM) repair specifications, punitive damages in wrongful death actions, enhanced market conduct exams, and various threats to risk-based pricing. The following items of interest to the industry were enacted during the regular session:

- Accident vs. Crash – Amends various acts by replacing the term "accident" with the term "crash."
- Statewide Towing Database – Requires the creation of a statewide database for any licensed tow operator to enter information regarding vehicles towed for safety or relocation purposes.
- Processing of Salvage and Junking Certificates – Provides that if a salvage dealer posts annually a bond in the amount of \$100,000, up to a maximum aggregate amount of \$100,000, the Secretary of State must automatically process any properly submitted application by the dealer for a salvage certificate or junking certificate and issue the appropriate certificate.
- Uninsured Motor Vehicle Coverage - The Department of Insurance's omnibus regulatory package included language eliminating the prohibition on providing uninsured motorist property damage and collision coverage.
- Natural Catastrophe Insurance: Flood – Industry-supported measure to authorize and regulate private residential flood insurance.
- Producer Continuing Education – Provides that an insurance producer's active participation in a state or national professional insurance association may be approved by the director of insurance for up to four hours of continuing education credit per biennial reporting period.
- Lawsuit Lending - The Consumer Legal Funding Act, which represents the litigation funders' language to provide a regulatory framework for the consumer litigation financing industry. The industry strongly opposed the measure due to its high interest rate and insufficient disclosure provisions.
- Department of Insurance (DOI) Regulatory Items
 - Auto Rental Coverage for Comprehensive and Collision Losses - A bulletin informed auto insurers that rental reimbursement coverage must be afforded to both comprehensive and collision losses if those underlying coverages are present on the policy.
 - Homeowners Policy Cancellations/Property Condition – A bulletin reminded insurers that no insurance company may give an insured any notice of cancellation or nonrenewal of a policy of fire and extended coverage insurance covering property, which is capable of being rehabilitated, without allowing the named insured a reasonable period of time to repair defects in the insured property or relevant portion, to an extent reasonably sufficient to facilitate continued coverage thereon.

Indiana

The 2022 General Assembly adjourned on March 9, 2022, and brought this year's short legislative session to a close. Key legislation the industry tracked this session is as follows:

- COVID-19 Vaccine Mandates - The original House version of the bill would have required businesses to accept religious and medical exemptions with little exceptions. Under the final enacted version, employers are required to continue to accept religious exemptions to a vaccine but can do so based on Title VII of the federal Civil Rights Act, which provides employers the opportunity to deny exemptions in favor of keeping the workplace safe. A medical exemption would still require a signed note from a medical professional under the bill. Lastly, the new law includes "natural immunity" language, which says an employee who tests positive for COVID-19 is exempt from any testing for three months.
- Insurance Omnibus Bill – Contained provisions to allow property and casualty insurers to offer insurance on a group basis to qualified groups and increase the minimum allowable premium volume for farm mutual insurance companies.
- Underwriting Transparency – Originally included several provisions of concern to the industry that were removed from the bill before enactment, including language amending the grounds for cancellation of an insurance policy and requirements that insurers provide consumers with factors used to calculate premiums as well as factors influencing adverse actions. With the removal of these provisions from the bill, the sponsor moved to the development of a model underwriting transparency act at the National Council of Insurance Legislators (NCOIL), using this language as a basis for that model.
- Motor Vehicle Insurance for Foster Children – Legislation to establish the insuring foster youth trust program and fund. The bill originally included language to require the state Auto Plan to make insurance available to foster youth, but the bill was amended to deal only with funding.
- Workers' Compensation – An omnibus bill amends the laws governing workers' compensation payments, including language adding an ambulatory outpatient surgical center to the definition of "medical service facility" under the workers' compensation law.
- Personal Information and Social Media Policies – Legislation was introduced to establish a regulatory framework for businesses regarding consumer data, privacy, and social media. Due to considerable concern and opposition raised, the proposed bill was heavily amended in committee and ultimately failed to advance this session.

Kentucky

The 2022 Session of the Kentucky General Assembly adjourned on April 14. All legislation that failed must be reintroduced to be considered during the 2023 Session. Key legislation the industry tracked this session is as follows:

- Peer-to-Peer (P2P) Car Sharing – Industry-supported provisions based on the NCOIL Model were added to P2P legislation to address insurance provisions applicable to P2P providers, vehicle owners, and drivers. The bill was enacted into law.

- Insurance Rebate Reform – Reforms the laws governing insurance rebates and the marketing of insurance products and services by insurers, raising the minimum cost of allowable gifts to \$250 per year and raises to \$500 the minimum value of prizes for sweepstakes or drawings. The law also allows insurers to offer free or discounted products that relate to an insurance policy under certain circumstances.
- Minor Settlements – Allows a person with legal custody of a minor to conduct certain financial settlements on the minor's behalf.
- Termination of COVID-19 States of Emergency – Terminates all COVID-19 “executive orders, emergency administrative regulations, suspensions of statutes, and other directives which rely upon the declaration of emergency in 2020.”
- Cyber Security – Based on the NAIC Insurance Data Security Act, enacted with amendments to ensure consistent provisions regarding “nonpublic” information, materiality, and confidentiality.
- Third Party Litigation Financing – Industry-opposed bill initially passed out of the House Judiciary Committee but ultimately failed to advance.
- Risk-Based Pricing/Credit – Legislation that would have prohibited financial institutions from utilizing a “social credit score” failed to advance.
- Distracted Driving – “Hands Free” legislation was introduced but failed to advance.
- Workers’ Compensation -Utilization Review/Medical Director – Nullifies utilization review regulations issued by the Department of Workers’ Claims was enacted over the governor’s veto.
- Medicinal Cannabis – A comprehensive medicinal cannabis regulatory regime passed the House but failed to advance in the Senate.
- Data Privacy - Bills to require entities collecting data to protect the confidentiality of the data and provide for a private cause of action for violations were introduced but failed.
- Regulatory Sandbox – Legislation to revise the 2019 sandbox law to address insuretech, fintech, artificial intelligence, blockchain and cryptocurrency innovations failed to advance.

Maryland

The Maryland General Assembly adjourned its 90-day regular session on April 11. Industry accomplishments during the 2022 session were marked mostly by what legislation did not pass versus what did. Insurers faced a broad cross section of issues, including the following:

- “Enhanced UIM” Coverage – This bill was the trial bar’s top priority this session and would have changed current default coverage for enhanced underinsured motorist (UIM) coverage from “offset” to enhanced coverage, thus forcing the consumer to have to “opt out.” The industry, thanks in part to a grassroots campaign that included by ERIE agents/employees, was able to stop the bill in the Senate.
- Auto Credit Ban Bill – There were two separate bills to ban use of credit in personal auto, along with others to limit territory and ban gender, but only one credit bill got traction. Before passing the House, this credit bill was amended to contain not only industry-accepted model language about extraordinary life circumstances but also an onerous

data-collection provision. The latter change bogged the bill down in negotiations with consumer groups and the Insurance Administration, eventually leading to its defeat.

- Commercial Towing Reform – APCIA worked with the trucking industry and business interests to achieve further regulation of commercial vehicle tows. Despite pushback from towers at the hearing, the bill passed and will establish basic requirements for police-initiated commercial tows to help address the overcharging and abuse insurers and our customers experience regularly.
- Maryland Insurance Administration (MIA) Bills:
 - Claims Payment Enforcement Authority – The MIA’s bill regarding its enforcement authority for the payment of claims went through with industry-accepted amendments to clarify the agency’s power after stalling last session because of concerns about potential overreach.
 - NAIC Data Security Model – The MIA enacted its version of the NAIC Data Security model law. While certain deviations from the model remained, APCIA worked with the agency to achieve significant changes from the introduced version including certification carve-outs for domiciles in other states, among others.
- Legalization of Marijuana – As anticipated, the General Assembly passed legislation that gives voters the choice to legalize marijuana for recreational use as a ballot measure in this fall’s election.

New York

The 2022 New York legislative session adjourned on June 4, 2022. While a number of problematic were defeated, some concerning bills did pass both houses and the industry will be seeking a veto on those bills. Bills can be sent to the Governor any time before the end of the year. The Governor has ten days to act once a bill has been sent to her by the legislature. The following bills passed both houses and unless otherwise noted are awaiting action by the Governor.

- Adult Reviver - The Adult Victims Act provides a one-year window to revive previously time-barred claims related to sexual offenses when the victim was eighteen years of age or over at the time of the offense. The bill passed both houses and was signed by the Governor.
- Wrongful Death - The bill expands permissible damages for wrongful death actions to include non-economic damages and expands the parties who may bring wrongful death action.
- Reviver for Claims by Public Water Suppliers Relating to Emerging Contaminants - Bill would provide a one year and six-month window to revive time barred claims brought by public water suppliers relating to emerging contaminants.
- Defining Temporary Total Disability - Bill would expand the definition of Temporary Total Disability.
- Increasing Minimum Workers Compensation Award - Bill would increase the minimum award for permanent or temporary partial or total disability to one-fifth of the New York State average weekly wage.

- No Collateral Estoppel for Issues Determined By Workers Compensation Board or Judge - Bill would provide that there is no collateral estopped effect in a subsequent action for issues determined by the Workers Compensation Board or a workers compensation judge.
- Workplace Stress Coverage - A bill was pending to allow workers compensation benefits for all workers due to workplace stress.
- Risk-Based Pricing - Prohibiting Underwriting/Rating Based on a Hate Crime - Bill would prohibit underwriting or rating based upon a claim that was the result of a hate crime
- Clarifying Law Prohibiting Underwriting/Rating Based on Dog Breed - Bill clarifies law passed last year that banned underwriting/rating by dog breed by specifically providing that insurers may not exclude, limit, restrict or reduce coverage based on the breed of a dog.
- Allowing Multiple Rating Plans in the Same Company for Commercial Lines - Bill allows multiple rating plans in the same company for commercial lines
- Eliminating Photo Inspection Requirement - Bill would make the current automobile physical damage inspection requirement optional (would allow insurer to choose not to require the inspection).
- Requiring Supplemental Spousal Liability Coverage Absent Written Declination - Bill would require auto insurance policies to include supplemental spousal liability coverage unless the policyholder declines such coverage in writing.

North Carolina

The North Carolina General Assembly started the final short portion of its two-year biennial session in mid-May with a focus on the budget and key eligible bills from the 2021 long session. Legislators adjourned with a budget on July 1. Here's an overview of the industry issues considered this biennial session:

- Tort Issues:
 - Trial Bar Bills: The trial bar introduced several unfavorable measures in 2021 (contributory negligence, billed versus paid changes, etc.) raising concerns among the business community and insurers. While none of these were brought up for votes, ERIE's trades are working closely this year with the state Chamber, retailers and other interests to educate lawmakers and fund a potential actuarial study in preparation for 2023.
 - Third Party Litigation Financing – An adverse bill introduced by the litigation financing industry would have established only nominal regulatory requirements under the Department of Insurance. The bill never moved during the short session.
- DOI Omnibus Bill – The industry got some onerous provisions removed, including one forcing insurers to pay expenses if rejecting an umpire's auto damage appraisal. Additionally, the new law contains an overhaul of the state's post-disaster premium deferral requirements to clarify industry procedures.
- Distracted Driving – The independent agents, in concert with the industry and Department of Insurance, have been leading a long-term effort to enact "hands free"

highway safety legislation like those recently enacted in Virginia and Georgia. The bill failed to move during the short session, so the push will continue to 2023.

- Roofing Contractor Anti-Fraud Bill – The state trade’s roofer fraud bill was ineligible for consideration after stalling last year over misplaced concerns about its small business impact. However, our trades have worked to keep the issue on the radar of legislators and the Department of Insurance for future reintroduction.

Ohio

Lawmakers have recessed the Ohio General Assembly’s 134th session. Aside from a handful of scheduled session dates in September, they will remain in recess until after the November election. Details on the status of key legislative issues are outlined below.

- Third Party Litigation Financing – Legislation that would require a company engaged in the business of non-recourse civil litigation to register with the state and to obtain a corporate surety bond is under consideration. The bill would also limit the fees, interest, and duration of the contract, require the consumer to notify the court and the opposing party of the contract, and add several new consumer protections relating to these transactions.
- Asbestos Over-Naming - Legislation that seeks to rein in the practice of over-naming defendants in asbestos suits has been heard in committee several times and the industry will continue to advocate for enactment.
- Storm Scammers – Storm scammer legislation that would prevent assignment of benefits to roofing contractors and prevent a roofer from acting as an adjuster remains in committee after several hearings
- Omnibus Insurance Package - A package dealing with travel insurance, electronic regulatory signature, group capital calculation, rebating modernization, corrective title insurance language, and annuity nonforfeiture rates was enacted.
- Digital Insurance Communications - A bill was enacted that enables insurers using an online platform to automatically enroll purchasers in digital communications, allowing policyholders to request that they receive communications in paper format.
- Data Privacy - Data privacy legislation introduced in 2021 remains under consideration this year that mirrors the measure passed in Virginia. The measure includes language that would protect insurers, independent agents, and others from additional regulation beyond the NAIC Model Act language that exists in the current Ohio statute.

Tennessee

The Tennessee General Assembly completed its work for the year and adjourned on April 28, 2022. Key legislation the industry tracked this session is as follows:

- Increase in Auto Property Damage Limits -Legislation was enacted to raise auto property damage limits from \$15,000 to \$25,000 with an amendment that clarifies that the effective date of the increase in proof of responsibility is for policies issued after December 31, 2022. A policy in effect as of December 31, 2022, is deemed to comply if the minimum is increased at the next renewal date.

- Personal Vehicles to Deliver Goods and Services – Legislation was enacted to require that if an entity that engages drivers who use the drivers' personal vehicles for the delivery of the entity's goods or services does not provide automobile insurance coverage to those drivers, the entity must provide written notification to the driver that the drivers' automobile insurance may not cover commercial uses and requires the driver's signature.
- Tort Settlements Involving Minors – Legislation was enacted to remove the requirement for court approval on tort claim settlements involving minors that is less than \$10,000.
- Insurance Producer License – Legislation was enacted to impose a time limit for consideration of prior misdemeanors for purposes of insurance producer licenses. The new law prohibits the Insurance Commissioner from considering offenses in these categories, which occurred more than 10 years prior to the license application date.
- Workers' Compensation Firefighter Presumption – Legislation was enacted to amend the laws governing the presumption of disabilities suffered in the course of employment by firefighters by adding leukemia and testicular cancer to the list of disabilities presumed to be arisen out of employment unless otherwise shown by competent medical evidence.
- Required Recognition of Acquired Immunity to COVID-19 – Legislation was enacted that requires private businesses, governmental entities, local education agencies, and schools to recognize acquired immunity to COVID-19 when adopting or enforcing a practice arising from the COVID-19 pandemic.
- Records of Insurers that Issue Commercial Motor Vehicle Insurance Coverage – Industry-opposed legislation that would require any insurer that issues commercial motor vehicle insurance coverage to maintain a record of each commercial motor vehicle insurance policy in effect for vehicles registered in this state that were issued by that insurer failed to advance.
- Data Privacy – Legislation that was proposed in 2021 as a California-style privacy bill was followed by a 2022 amendment to model the bill after the Virginia law, which the industry supports. Although the bill failed, it might resurface in 2023.

Virginia

While the legislative environment for businesses and insurers was much improved from the two prior sessions, there continued to be challenges in 2022. Here's a look at highlights of the session:

- UIM "Offset" Bill – The major battle of the session was the return of the underinsured motorist "offset" coverage bill, which the industry and ERIE unsuccessfully opposed. The new bill changes current UIM auto coverage to an excess coverage by eliminating any liability coverage "offset" or credit in claims situations unless chosen as an "opt out" at purchase. This year, the trial bar was supported by the state's major independent agent association, making opposition more difficult on a technically complex issue. Despite the industry's strong grassroots and lobbying efforts, the bill passed and will take effect in July 2023.
- Towing Reform – APCIA collaborated with a stakeholder group, including truckers and the prior attorney general's office, to get a comprehensive towing abuse reform bill introduced. Unfortunately, political backlash from towers in the Senate sponsor's district

and lack of commitment from the new AG's office led to the bill's reduction to a mere notice on large tows. A legislative study and heightened issue profile among legislators should help future efforts.

- Salvage Definitions – Virginia enacted a critical measure to make permanent the current definitions for certain salvage vehicle terms, including “nonrepairable.” These definitions, first made law in 2017 with ERIE/industry input, give carriers cost-saving and customer-friendly flexibility in auto claims-handling.
- Defensive Tort Efforts:
 - The trial bar brought back its state class action bill which had been narrowly defeated the prior session. The bill failed to move forward.
 - There were also three separate efforts at establishing “dram shop” liability for cases of underage sales by specified alcoholic beverage or cannabis retail licensees. The industry worked with restaurants, beverage associations and the state Chamber to stop this problematic new cause of action.

West Virginia

West Virginia's 2022 regular session ended in mid-March after 60 days. Here are some highlights from the session:

- Proactive Tort Reforms Stall – The industry brought an aggressive tort reform agenda with ERIE's trades pushing two key bills directly while supporting a long-term workers' compensation issue from the broader business community. However, none were passed.
 - Phantom Damages & Collateral Source Rule – This long-term effort to fix a state Supreme Court “phantom damages” decision would have made medical expense damage awards based on the amount actually paid, not the “sticker price” and without regard to other sources of payments. While the bill failed to move, the Senate did pass a study resolution to keep the issue on the radar for 2023.
 - Restatement & Secondary Source Bill – The industry's bill to repudiate the American Law Institute's (ALI's) recent restatement threatening industry claims litigation practices again found tough sledding.
 - Workers' Compensation Deliberate Intent Reform – The business community made a concerted push to reform the state's “deliberate intent” statute regarding worker injuries, aimed at lowering the state's high tort costs on this issue versus neighboring states. The bill narrowly passed one committee but did not move forward. It remains a controversial issue with heavy union and trial bar opposition.
- Distracted Driving – The West Virginia Insurance Federation (WVIF) drafted and pushed this bill to expand the restrictions on distracted driving. During the session, the bill was renamed in memory of a cyclist tragically killed by a distracted driver. While the bill received favorable media coverage and had momentum in passing two House committees, leadership struck it from the docket before crossover. The WVIF and industry will build on this important effort going forward into 2023.
- Auto Dealers Law Parts Provisions – The WVIF was able to get language into an auto dealers association bill to protect industry claims practices. As introduced, the bill had a provision that could have impacted insurer flexibility and freedom in using aftermarket and OEM replacement auto parts.

Wisconsin

The 2021-22 legislative session in Wisconsin adjourned on March 8, 2022, and will not return until January 3, 2023, for the start of the 2023-24 legislative session. Key items the industry tracked this session are as follows:

- Consumer Data Privacy – Legislation was introduced for a California-like model on data privacy, similar to a bill from last session. The bill included appropriate exemptions for the insurance industry. While the measure passed the Assembly, it died in the Senate but may resurface next year.
- Agreed-upon Workers Compensation Bill – Legislation was enacted to update the law governing workers' compensation disability and death benefits and make other minor revisions to workers' compensation law.
 - Commercial Lines Modernization - The Wisconsin Office of the Commissioner of Insurance adopted a rule exempting certain commercial property rates and forms from filing requirements.