

Kalbaugh, Pfund & Messersmith, P.C. is pleased to offer its special Legislative issue of our newsletter. This update contains summaries of bills of interest to our readers that were enacted by the General Assembly in its 2010 session and take effect as of July 1, 2010. This information is taken from the VADA Bulletin and the Summary of the 2010 Session of the General Assembly published by the Division of Legislative Services. The abbreviations used are as follows: HB – House Bill; SB – Senate Bill. If you wish to read the entire text of a bill, please visit the Virginia General Assembly Legislative Services website at <http://leg1.state.va.us/>.

Civil Remedies and Procedure

Passed

HB 723 and SB 82 *Health professions; practice of podiatry; expert witness*. Clarifies that the practice of podiatry includes the prevention, diagnosis, treatment, and cure or alleviation of physical conditions, diseases, pain, or infirmities of the human foot and ankle, including the medical, mechanical, and surgical treatment of the ailments of the human foot and ankle. The bill also provides that a podiatrist shall not be permitted to testify as an expert witness against a doctor or osteopath where such doctor or osteopath is a defendant in a medical malpractice case or medical malpractice review panel proceeding.

HB 1106 and SB 427 *Disclosure of insurance policy limits; wrongful death action*. Allows the personal representative of the estate of a decedent who died as a result of a motor vehicle accident, or his attorney, to request the disclosure of the liability limits of an insurance policy prior to filing a civil action for wrongful death resulting from a motor vehicle accident.

SB 382 *Jury panel; disclosure to counsel*. Changes from 48 hours to three full business days the time period when a copy of the jury panel shall be made available to all counsel of record in the case. As introduced, this bill was a recommendation of Boyd-Graves Conference.

SB 384 *Attorney-client privilege; work product protection; limitations on waivers*. Provides that when the disclosure of a communication or information covered by attorney-client

privilege or work product protection made in a proceeding or to any public body operates as a waiver of the privilege or protection, such waiver only extends to undisclosed communications or information if (i) the waiver was intentional, and (ii) the disclosed and undisclosed communications or information concern the same subject matter and ought in fairness be considered together. Inadvertent disclosures do not operate as a waiver if reasonable steps were taken to prevent disclosure and to rectify the error. The bill also provides that an agreement between parties as to the effect of a disclosure is only binding upon the parties to the agreement unless it has been incorporated into a court order.

Failed

HB 465 *Jury verdict; excess damages; amendment of pleadings*. Allows a court, in the event a jury returns a verdict for damages in excess of the amount requested, to amend the pleadings to conform them to the amount awarded and enter a judgment for such damages.

SB 363 *Civil remedies; depositions as basis for motion of summary judgment or to strike evidence*. Allows depositions to be the basis for a motion for summary judgment or to strike evidence.

SB 366 *Offers of judgment; costs*. Provides that a party defending a claim may serve upon an adverse party not less than 10 days before trial an offer to allow judgment to be taken against him on specified terms, including the costs then accrued. If the offer is accepted, the court shall enter the judgment. If the offer is not accepted, and the adverse party does not obtain a judgment more favorable than the offer, the adverse party shall pay all costs incurred from the time of the offer.

Insurance

HB 93 *Uninsured motorist insurance coverage*. Permits a liability insurer to be relieved of the costs of defending the owner or operator in a claim involving property damage or bodily injury, including death, incurred after the liability insurer makes an irrevocable written offer to pay the limits of its policy and notifies any insurer providing underinsured motorist coverage with respect to the claim. The provisions of the bill shall not apply to costs incurred in connection with an appeal. Amends Code

§ 38.2-2206.

HB 260 *Insurance; restitution*. Authorizes the State Corporation Commission to require a person to make restitution in the amount of the direct actual financial loss if the person improperly withholds, misappropriates, or converts any money or property received in the course of conducting business. Currently, the Commission's authority to order restitution is limited to cases where an insurer charges an excessive rate or discriminatory premium or fails to pay undisputed amounts required under an insurance contract.

HB 1018 *Insurance policies; countersignature requirements*. Repeals a provision that prohibits insurance policies from containing any provision that deems the policy to be invalid due to the absence of the signature or countersignature of an agent or company representative.

HB 1106 *Disclosure of insurance policy limits; wrongful death action*. Allows the personal representative of the estate of a decedent who died as a result of a motor vehicle accident, or his attorney, to request the disclosure of the liability limits of an insurance policy prior to filing a civil action for wrongful death resulting from a motor vehicle accident.

Failed

HB 44 *Insurance coverage; Chinese drywall*. Declares that exclusions in an insurance policy on an owner-occupied dwelling for property damage from environmental pollution or from defects in material, construction, or design or from deterioration shall not be construed in a manner that limits or excludes coverage for property damage resulting from sulfur compounds released from Chinese drywall or for the replacement of the Chinese drywall. The measure also provides that an insurance policy is not subject to cancellation on grounds that the dwelling is vacant or unoccupied beyond a period of 60 consecutive days if the dwelling's vacancy is due to either (i) work to remove or replace Chinese drywall or (ii) the dwelling posing a substantial risk to human health as a result of gas released from the Chinese drywall. The measure will be in force from its passage.



HB 45 and SB 298 *Homeowners insurance; Chinese drywall*. Prohibits an insurance company from canceling, refusing to renew, or increasing rates on a policy on an owner-occupied dwelling solely because the dwelling was built using Chinese dry-wall.

Workers' Compensation

Passed

HB 705 and SB 612 *Workers' Compensation Commission; awards*. Repeals provisions that require the Workers' Compensation Commission to send copies of awards by priority mail with delivery confirmation or equivalent mailing option. The measure also increases the period in which an application for review of an award may be made from 20 to 30 days.

HB 807 and SB 597 *Workers' compensation insurance; proof of coverage*. Authorizes workers' compensation insurance carriers to file proof of coverage within 30 days of an insurance policy's inception. The filing shall be made electronically in the form prescribed by, and to the agent designated by, the Workers' Compensation Commission.

HB 156 *Workers' compensation; occupational disease presumption*. Expands the presumption that specific types of cancers in firefighters and certain other public safety employees are occupational diseases compensable under the Workers' Compensation Act to include kidney cancer and any other type of cancer that results from the inhalation, ingestion, or absorption of a toxic substance. A toxic substance is currently defined as a known or suspected carcinogen, as defined by the International Agency for Research on Cancer, that causes, or is suspected to cause, leukemia or pancreatic, prostate, rectal, throat, ovarian, or breast cancer.

Motor Vehicles

Passed

HB 856 and SB 537 *Highway speed limits*. Increases the general highway speed limit on highways where it is presently 65 mph to 70 mph.

HB 1159 *"Move over" law*. Requires drivers to move left on a four lane highway when approaching vehicles displaying flashing blue, red, or amber lights. The offense is punished as a traffic infraction, formerly a Class 1 misdemeanor. A second or subsequent

violation, when such violation involved a vehicle with flashing, blinking, or alternating blue or red lights, is punishable as a Class 1 misdemeanor. Does not apply in highway work zones.

Failed

HB 22 *Use of handheld personal communications devices; penalty*. Prohibits any use of a handheld personal communications device while operating a motor vehicle, bicycle, electric personal assistive mobility device, electric power-assisted bicycle, or moped on the highways in the Commonwealth and makes such use a primary offense.



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