Independent Insurance Agents and Brokers of Arizona, Inc.

333 East Flower Street - Phoenix, Arizona 85012
Phone: (602) 956-1851 / (800) 627-3356 Fax: (602) 468-1392
Web: www.iiabaz.com Email: info@iiabaz.com

2015 BULLETINS

Bulletin # 14

DATE: June 2015

TO: IIAB of Arizona Members
IIAB of Arizona Associate Members

FROM: Lanny L. Hair, CIC, RPLU, ARM, AAI
Executive Vice President

RE: 2015 Legislative Summary and Review

The 2015 Legislative Session ended on April 3, 2015. Bills signed into law go into effect 90 days after the last day of session which makes July 3, 2015 the official effective date unless otherwise noted in the legislation.

Included is a summary of insurance industry related bills that that were introduced in the legislature this year.

Our website, www.iiabaz.com provides easy to read bill summaries and the links to the Arizona State Legislature's Overview, Sponsors, Fact Sheets, Versions, and much more of the extensive list of bills that your Association monitored on your behalf under Government Affairs—Legislation—Arizona Legislation.

For further information about a particular bill, please feel free to contact me at (602) 956-1851, (800) 627-3356 or info@iiabaz.com.

IMPORTANT NOTICE: This bulletin is intended to provide information of a general nature regarding legislative developments. None of the information contained herein is intended as legal advice or opinion relative to specific matters, facts, situations, or issues. Additional facts and information and subsequent or future developments may affect or alter the subjects addressed herein.

It is impossible to discuss all aspects of any bill in a brief summary. We will, upon request, make available a complete copy of each bill discussed as well as a Fact Sheet prepared by the Legislature, which discusses the bill in much more detail—all of which is available on our website as previously noted.

Readers should not reply on this document to include ALL legislative issues that may impact our industry or your firm.

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2015 Legislative Summary

H2095: JOB-ORDER-CONTRACTING; BOND; WAIVER
This legislation will allow larger counties (Pima and Maricopa Counties) the ability to waive the required performance bond for job-order-contracting construction services if the amount of construction under the contract does not exceed $500,000, including change orders. Our industry really did not want to see this legislation pass but it was real apparent that this bill had an enormous amount of support and despite our best efforts, it kept coming back "alive". The segment of the surety industry that writes bonds for this type of contractor has serious concerns that underfunded or inexperienced contractors may qualify through the procurement system but not have the capitol to protect the public in the event they are unable to complete the job. This legislation has a "sunset" or expiration date of January 1, 2021. It will take more legislation to extend this legislation past 2021.

H2135: TRANSPORTATION NETWORK COMPANIES
Transportation Network Companies ("TNCs") such as Uber, Lyft, and several other ridesharing platforms all refer to a system similar to that of a taxi service. However, it is a system that the TNCs argue is NOT a taxi company; rather, it is a software system that connects individuals who want to utilize their personal vehicle to provide rides to private individuals. Most TNCs just provide the software system to connect the drivers and riders - there is not just one "standard" model.

Unlike a taxi, TNCs do not provide drivers with a vehicle to be used for commercial purposes; the contract is instead between the driver and the passenger, where the driver provides for all costs associated with the vehicle.

There are several TNCs available to passengers, but the most dominant one is Uber. In less than five years' time, Uber has grown from an unknown entity to a multibillion dollar company, which has enabled them to invest an enormous amount of time and money for the retention of the lobbying services needed to obtain favorable TNC regulations.

Across the board, taxis argue that many of the new TNC laws have resulted in an unbalanced and anti-competitive driver-for-hire market. Unlike TNCs, taxis have a litany of rules and regulations to comply with, ranging from mandated insurance coverages to vehicle inspections and background checks. It is important to note, however, that while TNCs do indeed lack any regulatory framework in most jurisdictions, they are pursuing similar regulations for themselves nationwide.

With regard to the insurance requirements on TNCs in Arizona, the Legislature has opted to adopt model legislation that we are seeing implemented in several other states. It is important to note, however, that while the model TNC language is being advanced in multiple states there are MANY differing ways TNCs are actually being legislated in other states and cities. Thanks to lengthy and oftentimes contentious debate, each state has amended the model legislation to reflect their stakeholder agreements, which has resulted in a "patchwork" of laws state-by-state.

In Arizona, the specific issue that perpetuated the debate between insurance and TNCs throughout the Session was "which insurance company is going to provide coverage in the event of an accident?"

The debate focused primarily on both the Legislature's definition of a "transportation network trip" and which coverage applies during the time that a TNC driver is logged onto the TNC application but has not yet accepted a ride.

Under HB 2135, the Legislature, TNCs, regulators, insurance companies, and the taxi/livery industry consider the following coverage periods while TNC drivers are engaged in a TNC trip:

* Period Zero (logged off): Driver is not logged onto the TNC application.
* Period One: Driver is logged onto the TNC application, but has not accepted a trip.
* Period Two: Driver has accepted a trip and is in route to pick up the TNC passenger.
* Period Three: TNC passenger is in vehicle and is being transported to their destination. Period three ends when the TNC driver ends the trip by indicating through the TNC platform that the passenger has been dropped off.

As many private passenger auto policies exclude coverage when vehicles are used for "livery service," it is necessary for the TNCs to provide coverage while there are passengers in the vehicle. Even in the event of an accident where there are no passengers in the TNC vehicle, if the vehicle was being used for "livery services" the personal auto policy typically does not provide coverage.

The number of insurance companies willing to issue a "rideshare" endorsement has been increasing monthly. Many insurance companies have already indicated their willingness to issue an optional endorsement to the personal auto policy to modify the livery exclusion to provide coverage while a vehicle is being utilized for TNC services but NOT while the vehicle is occupied by a passenger (Period One).

In some instances the TNCs are negotiating commercial taxi policies that will provide coverage for their drivers' vehicles in their "master umbrella policy," but most negotiations end with the TNC only willing to provide coverage when the driver of the vehicle is "logged on." TNC insurance companies have primary coverage during Periods Two and Three, or when there is a passenger in the vehicle, or once the driver has accepted a trip and is in route to pick up the passenger.

Keep in mind, no two TNCs operate under the same contract, so it is up to the vehicle driver to understand when the TNC master umbrella policy does and does not cover their TNC activity. (EXAMPLE – Does the TNC policy cover liability only or does it also include physical damage?) Under HB 2135, the TNC must provide this specific coverage information to all drivers before allowing them to operate as a TNC driver.

This statutory change was necessary because some stakeholders contended that the mere usage of a vehicle for TNC services could be used as adequate cause for the insurer to cancel the driver's personal auto policy. For this reason, one of the provisions within HB 2135 clarifies that an insurer cannot cancel a personal auto policy if the vehicle is utilized as a TNC vehicle and coverage for such activity is provided by another policy.

Prior to this legislation, the required limits of liability for taxis and other livery vehicles were the same if the vehicle did or did not house a passenger. The legislation lowers those limits for all driver-for-hire services when there are no passengers in the vehicle and raises limits when the TNC is in route or when there is a passenger in the vehicle.

Once an agreement was reached by all stakeholders on the bill, the technical aspect of the language became a time-consuming difficulty that resulted in daily changes all the way up until the last day of Session.

As passed by the legislature on Sine Die, the majority of HB 2135 becomes effective on July 3, 2015, with the new insurance provisions going into effect on March 1, 2016. From July 3, 2015 to February 29, 2016, an insurer may not cancel or non-renew a personal auto policy that has been in effect for 60 days or more solely because the named insured uses a vehicle for TNC purposes. Effective March 1, 2016, a personal auto policy that has been in effect for 60 days or more may be subject to cancellation or non-renewal if the named insured does not maintain coverage for TNC use.

H2308: DEFENSIVE DRIVING SCHOOL; ELIGIBILITY
Currently an individual can attend driving school every 24 months to prevent a traffic violation from appearing on their MVR. This bill now allows everyone to attend driving school EVERY 12 months to eliminate their citations from appearing on their driving record. We opposed this bill because it would allow someone with several speeding (or other minor moving violations) to attend traffic school every year and have the same MVR as someone who has not received ANY traffic violations, and thus the individual with five speeding tickets would pay the same premium as someone who has a clean driving record. We feel that those most likely to have a loss should pay more in premium than a safe driver who does not have traffic violations.

H2331: WORKERS' COMPENSATION; FRAUDULENT CLAIMS; FORFEITURE
This bill is an effort to help reduce the amount and number of fraudulent workers compensation claims. It states that if someone makes a false statement (Class 6 Felony) in connection to a claim and is denied benefits because of that fraudulent act and later the courts reduce the felony act to a misdemeanor because of a plea agreement, that does not suddenly reinstate coverage because the felony has been reduced to a misdemeanor.

H2335: INSURANCE COMPLIANCE AUDIT PRIVILEGE
Insurance Companies find it helpful to "audit" their own operations to make certain their operations are in compliance with the statutory requirements. Two years ago, the Arizona Legislature passed legislation that would allow the company to "correct" their problems without having to inform the Department that they discovered violations (turn themselves in). There was language that required the insurance company to notify the State immediately if the company was going to start their own self-audit. This legislation will now no longer require insurance companies to notify the Department of Insurance prior to the initiation of an insurance compliance audit and again at the conclusion of the audit. A person who conducts or participates in the preparation of an audit and who has observed physical events is permitted to testify regarding those events, but cannot be compelled to testify or produce documents related to any privileged part of the audit or an audit document. This is truly a common sense issue that should have been addressed in the original "self-audit" legislation.

H2342: INSURANCE; SURPLUS LINES; HOME STATE
This legislation was at the request of the Surplus Line Association of Arizona. The Arizona Legislature made changes in the requirements of the "owners" of not-for-profit corporations to be present at meetings when making changes in bylaws and conditions to the Association. The changes required a majority of the owners to be present at the meeting for a vote. The reason for the original legislation that made those changes seems to be because of condominium associations which were owned by a majority of out-of-state owners. The "resident" owners of the Association would allegedly make changes knowing that the out-of-state owners could not be at the meeting in person. The Surplus Line Association of Arizona is a not-for-profit association (similar to a condominium) and the "ownership" of the SLA is each Arizona surplus lines licensee – even licensees who are non-residents are members. This made it impossible to gather a majority of "members" in person at annual or any meetings. This legislation corrected that unintended consequence of legislation from prior years that had nothing to do with the Surplus Lines Association.

H2346: MEDICAL MARIJUANA; REIMBURSEMENT; NO REQUIREMENT
Workers' compensation carriers and self-insured employers providing workers' compensation benefits are added to the list of entities that **are not required** to reimburse a person for costs associated with the cost of purchasing the marijuana for medical use. Because the original medical marijuana law was passed by the voters, this bill required the affirmative vote of at least 3/4 of each house of the Legislature for passage. Most agree that it was not the intent of the Marijuana initiative that the workers compensation carriers provide injured workers with marijuana, however, the wording of that initiative did not address this issue, and is the reason for this legislation.

H2578: REAL PROPERTY; PURCHASER DWELLING ACTIONS (CONSTRUCTION DEFECT)
This is a bill aimed at construction defect litigation and lobbied by the Home Builders Association as well as various contractor associations. The insurance industry did not get involved as the bill sponsor wanted the battle to be between the actual contractors and the plaintiff attorneys. The attorneys that defend these types of cases feel that this bill will accomplish a great deal in the way of eliminating unnecessary litigation and avoid a lot of legal expenses. There are three parts to this legislation.

Part One — Changes the current law to provide the Builder the "Right to Repair". It appears that the plaintiff community has started encouraging owners to not allow the Builder to attempt to make repairs and the current law only provided the Builder the opportunity to make repairs. This legislation provides the Builder the right to make repairs or also allows the Builder to offer a "cash settlement" and if a cash settlement is accepted by the owner the "release" signed by the owner will be enforceable. The "release" will only apply to work that was in the original "notice".

Part Two — Definition of Construction Defect. Apparently the Devil is in the details and this "detail" was difficult. Without a definition of what a "defect" was the lawsuits had become really creative. This legislation defines "defect" as anything that actually impairs the structural integrity, function, or appearance. Yep… "Appearance" is still problematic but was a deal breaker. The interesting point is that "appearance" is not included in the DEFINITION of "CONSTRUCTION DEFECT", but it does appear in the DEFINITION of "MATERIAL DEFICIENCY". Supporters of this bill feel that the "appearance" issue is not problematic because that will be determined on industry standards and that as long as the work and appearance meet those standards there is no grounds for an award.

Part Three — Attorney Fees. This was the portion of the bill that will have the most economic impact and a significant impact on liability premiums. The current law says that each side SHALL be awarded attorney fees. This legislation changes the SHALL to MAY. Arizona Statute 12-341.01 applies ONLY to the original purchaser as that is the only person with the contract with the builder. Once the purchaser sells the property there is no longer a "contract" controlling the way in which fees are addressed by this bill because the new owner was not a party to the original contract. Instead the "claim" will be litigated on the basis as an "IMPLIED WARRANTY" from subsequent owners. The current law established an eight year statute of repose – under the implied warranty claims there is NO attorney fees awarded based on prior case law.

H2603: PERSONAL INJURY ACTION; ASBESTOS; REQS
Establishes various requirements and processes for asbestos exposure related personal injury claims. Within 45 days after the filing of the defendant's answer in a lawsuit involving "personal injury claims" (defined), the plaintiff is required to provide to all parties a sworn statement identifying each personal injury claim that the plaintiff has filed or reasonably anticipates filing against an "asbestos trust" (defined). The statement must include specified information. Within 60 days after the filing of the defendant's answer, the plaintiff is required to provide to all parties a copy of the final executed proof of claim and a list of related trust documents. A court cannot schedule a trial in a personal injury claim action until at least 180 days after the plaintiff makes these required disclosures. Trust claims materials and trust governance documents are admissible in evidence to the extent permitted by court rule. A defendant in a personal injury claim is permitted to seek discovery against an asbestos trust. Establishes penalties for failure to timely provide the required information. Severability clause. Applies retroactively to actions involving personal injury claims that are pending or filed on or after the effective date of this legislation.

H2636: UNDERGROUND STORAGE TANK PROGRAM
Coverage for corrective action through the Underground Storage Tank Assurance Account is limited to regulated substances reported before July 1, 2016, instead of July 1, 2006. Applications for reimbursement or direct payment of eligible costs from the Account must be filed by December 31, 2016, instead of December 31,

2015. If the Account does not have sufficient monies to pay all eligible claims submitted, the Department of Environmental Quality is authorized to defer payment on otherwise eligible claims until there are sufficient monies in the Account. The Dept. and the Account are not liable for and may not pay any claims from third parties alleging personal injury or property damage caused by releases from underground storage tanks.

S1048: VEXATIOUS LITIGANTS; FEES; COSTS; DESIGNATION
The objective of this bill is to address those parties that are constantly using the legal system to settle and intimidate others. Someone who frequently sues others and does not win can be labeled as a "VEXATIOUS LITIGANT" by the Courts. A party is permitted to make an amended request for the superior court to designate a pro se litigant a vexatious litigant if specified conditions are met. (A pro se litigant is someone who is acting as their own lawyer.) The reason that the legislation limits the application to only those individuals who are acting as their own lawyer is because there is already "rules" in place that will enable the court to take action against an attorney who abuses the legal system. The court is prohibited from granting a waiver of court fees or costs for civil actions filed by a pro se litigant who has previously been declared a vexatious litigant by any court, except for cases of dissolution of marriage, legal separation, annulment or establishment, enforcement or modification of child support. Effective January 1, 2016.

S1051: AUTOCYCLES; CLASS M LICENSE; EXEMPTION
This bill is to address a new type of vehicle that is becoming more and more popular. Technically the drivers of these vehicles now need a motorcycle license when the vehicle is not really similar to a cycle. A class M driver license is not necessary for operating an "autocycle" (defined as a three-wheeled motorcycle with a completely enclosed seating area equipped with a roll cage, safety belts and antilock brakes and designed to be controlled with a steering wheel and pedals).

BILLS THAT DID NOT PASS

H2172: MOTOR VEHICLE LIABILITY INSURANCE REQS (INCREASE LIMITS OF AUTO LIABILITY)
Bill Failed. This bill would have increased the Financial Responsibility Limits form 15/30/10 to 25/50/25. Everyone agrees that the limits need to be increased. The last increase was in June of 1972 when $10,000 would actually purchase a new vehicle. The Devil, however, is both in the details and the unintended consequences. The last few times that this legislation has become an issue it has "morphed" from an increase in Financial Responsibility Limits to an argument that Mandatory Auto Insurance should be repealed completely. There are the Libertarians that argue that State Government should not be authorized to require a citizen to force anyone to purchase ANYTHING from another private party, and there are those who legislators who feel that their constituents that are unemployed because they cannot afford to own a car because of the cost of insurance. Interestingly the last three times that there were votes on "IF" there should or should not be mandatory auto insurance the "yes" votes were at the minimum required to maintain the existing laws. The Bill failed in the House Insurance Committee back in February. We expect this bill will reappear in 2016. By that time we hope to have a straw vote number on how each legislator would vote.

H2327: VEHICLE INSURANCE CARDS; BARCODE
Governor Vetoed. Motor vehicle insurers are authorized to place an encrypted barcode on insurance cards. Currently the State does not have any equipment to read bar codes on auto insurance ID cards to verify coverage, but this bill will allow insurance companies to print a bar code on the auto identification card to be used when the technology is in place. The Bill was vetoed by Governor Ducey on April 13, 2015. The Governor sited that current law does not prohibit auto insurance companies from voluntarily utilizing encrypted barcodes on insurance cards therefore statutory change is unnecessary.

H2341: INSURANCE; CANCELLATION; NONRENEWAL MAILING PROOF

Bill Failed. The purpose of this legislation was to enable those policyholders that have authorized notification of non-renewal and cancellation by email (option the insured can refuse) to allow "proof of mailing" to mean electronic delivery consistent with statute regulating electronic transactions, mailing by first class mail using intelligent barcode, or mailing by electronic means with an electronic postmark. Again…only applicable if policyholder agrees to electronic transaction of insurance. The Bill was referred to the House Insurance Committee in February but was never heard.

H2343: TEENAGE DRIVERS; COMMUNICATION DEVICES PROHIBITED

Bill Failed. Our Association supported this bill but it did not have enough support to make it through the process. For the first six months that a class G driver (new underage driver) licensee holds the license, the licensee is prohibited from driving a motor vehicle while using a wireless communication device for any reason, except during an emergency in which stopping the vehicle is impossible or will create an additional hazard. Does not apply beginning on the licensee's 18th birthday. Instruction permit holders for a class D or G driver license are prohibited from driving a motor vehicle while using a wireless communication device for any reason, except during an emergency in which stopping the vehicle is impossible or will create an additional hazard. The Bill was referred to House Rules on March 31st but was not included on the agenda.

H2370: TEXTING WHILE DRIVING; PROHIBITION

Bill Failed. But if it had passed, it would have made it a nonmoving civil traffic violation to use a handheld wireless communication device to manually write, send or read a written message while operating a motor vehicle. Some exceptions. Violations are subject to a civil penalty of $50 or $200 if the person is involved in a motor vehicle accident.

S1102: TEXT MESSAGING WHILE DRIVING; PROHIBITION

Bill Failed. But had it passed, it would have made it a **nonmoving** civil traffic violation to use a wireless communication device to send or receive a written message while operating a motor vehicle. Some exceptions. Violations are subject to a civil penalty of $100 for a first violation and $300 for a second or subsequent violation. If a person in violation is involved in a motor vehicle accident, the person is subject to a civil penalty of $500, except that if the accident results in the death of another person, the civil penalty is $10,000.

S1180: TRAFFIC ACCIDENTS; REPORTS; DAMAGE AMOUNT

Bill Failed. But had it passed, the threshold necessary for law enforcement to make a written traffic accident report would increase from $1,000 damage to $5,000 damage. The insurance industry feels it is very important to get an objective third party opinion of what happened in an accident rather than have to rely upon the drivers only. We felt it was unfair to the law enforcement officer to try to estimate what is $5,000 in damages, and at that threshold injuries are more commonplace. With injuries it becomes more important that there is a police report to help document what truly happened at an accident scene. We expect to see this bill again next year.