



## 2008 New Hampshire legislative session: a look back

2008 was arguably a productive session for Granite State legislators, as many proposals considered and passed will impact PIANH members as both insurance producers and small businesses. Accordingly, PIANH offers this summary to make its members aware of some of the new laws taking effect that may affect our members. This is not meant to be a comprehensive list of every new statute, but more a flavor of some of the changes that we believe you should be aware of. As always, if you have any questions, please do not hesitate to contact us directly.

Comments made by Senate President Sylvia Larsen reflected this conclusion: "We've made progress on important issues like kindergarten aid, workforce housing, investing in our infrastructure and stabilizing our state retirement fund." Moreover, in a special session, the House and Senate agreed to a package of legislation that has been characterized by sponsors as helping "protect the state budget from decreasing revenues in 2008 and sets the stage for a balanced budget at the end of the biennium in 2009." The package requires the Pease Development Authority to repay the approximately \$10.5 million it owes the state, allows the bonding of school building aid in 2008, if necessary, to ensure a balanced budget and allows the bonding of up to \$40 million of school building aid in 2009. It also allows the New Hampshire community college system to move forward with the sale of its Stratham campus and its relocation to the Pease International Tradeport. Additionally, S.B. 321 reduces budgets for the judicial and legislative branches. If certain revenue targets are not met, it allows for an increase in the tobacco tax and it allows the state Liquor Commission to optimize profits by adjusting the discount large retailers receive on wine purchases.

### **Workers' compensation exclusions**

On the insurance side of issues, the New Hampshire Legislature responded early in the session to the call of producers and addressed the inequities created by H.B. 471 which changed provisions in the Workers' Compensation Law and amended the limited exclusion found in the law for corporations and limited liability companies. Under H.B. 471, the election to exclude these individuals would not apply to any individual, regardless of status or title, who is engaged actively in on-site work on any construction site within the state of New Hampshire. The governor signed a fix (H.B. 692) in January which eliminated the troublesome language included in the original law.

### **Insurance for small businesses**

Small businesses in New Hampshire were the beneficiaries of a new law signed by Gov. Lynch called the HealthFirst initiative (Chapter 56, S.B. 540). The law will require major insurance carriers to offer a standard wellness plan for businesses with up to 50 employees and premium costs will be controlled by focusing on prevention, managing chronic conditions and promoting best practices. The Insurance Department also will create a committee whose members include small business owners to design the wellness plan with a target premium of 10 percent of the prior year's median wage, currently about \$262 a month. That compares with \$325 per month—the current average cost for an HMO plan for a small business.

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### **Insurance Department records, investigations**

The governor also signed a proposal into law (Chapter 67, H.B. 1245) to clarify the documents and records required to be produced and the use of such documents and records during an insurance investigation. This new law was a request of the Insurance Department. According to the law's provisions, any individual or entity that transacts insurance in this state or is otherwise subject to the authority of the commissioner shall, upon request of the commissioner, provide all documents and information relevant to any investigation under this section. Moreover, any of these documents shall be confidential by law and privileged, and not subject to subpoena, discovery or admissible in evidence in any private civil action. However, the commissioner may use the documents in furtherance of any regulatory or legal action brought as part of the commissioner's duties and may share the documents with other state, federal and international regulatory and international law enforcement authorities; provided, that the recipient agrees to maintain the confidentiality and privileged status of the information. The new law will become effective on July 20, 2008.

### **Licensing and insurance fees**

This new law (Chapter 18, H.B. 385) makes a variety of changes in the Insurance Law, including: changing certain insurance fees under RSA 400-A:29, VII and VIII; adding certain prohibitions against ownership and incompetence of insurance companies; and clarifying applicant information for insurance claims adjusters. This bill was introduced at the request of the Insurance Department.

### **Inspection of school buildings**

This new law (Chapter 91, S.B. 376) requires local fire chiefs to annually inspect all school buildings within his or her jurisdiction and submit a report to the state fire marshal on the fire safety condition of such school buildings.

### **Penalties for Insurance Law violations**

This new law (Chapter 153, H.B. 1376) clarifies the penalties for violations of certain insurance laws. The law clarifies that any person who knowingly violates any statute, rule, regulation or order of the commissioner may, upon hearing, except where other penalty is expressly provided, be subject to suspension or revocation of certificate of authority or license, or administrative fine not to exceed \$2,500 per violation.

### **Insurance taxes and fees**

This new law (Chapter 154, H.B. 1378) establishes penalties for certain insureds who fail to file reports or remit the proper tax within the specified time period. The bill was introduced at the request of the Insurance Department and provides that any producer failing to file the report or failing to remit the proper tax within the time period for filing shall pay a penalty equal to 10 percent of the amount of tax due.

### **Time frame for audits**

This new law (Chapter 211, H.B. 1244) clarifies when audits shall be conducted on those policies issued on an auditable basis and requires that audits shall be completed promptly, no more than 120 days after

the expiration or cancellation of the policy, provided that there is no bona fide dispute. In cases where there is a bona fide dispute, the insurer is required to notify the insured in writing that there is a bona fide dispute and this notice shall toll the 120-day time period until the dispute is resolved. Upon resolution of the dispute, the insurer shall proceed to complete the audit within the time remaining in the 120-day time period.

### **Insurance claims adjuster regulation**

This new law (Chapter 212, H.B. 1246) adds a definition of “insurance claims adjuster” and clarifies the exemptions from the law governing them. According to the new law, “insurance claims adjuster” means a person who investigates, negotiates or settles property, casualty or workers’ compensation claims whether employed by or contracted by or with an insurer, a claims adjusting company, or a third-party administrator.

### **Regulation of foreign unlicensed companies**

This new law (Chapter 255, H.B. 1279) clarifies the scope of certain insurance laws and makes them applicable to foreign unlicensed companies. The law also expands prohibited acts and terms under RSA 415-C:7.

### **Workers’ compensation for state projects**

This new law (Chapter 270, S.B. 501-FN) clarifies certain workers’ compensation procedures relating to state projects; provides the Department of Labor with the same penalty collection powers as the Department of Revenue Administration; changes the edition of “Guides to the Evaluation of Permanent Impairment” which is used to determine permanent impairment awards under workers’ compensation; and establishes a committee to evaluate issues related to which edition of “Guides to the Evaluation of Permanent Impairment” should be used for purposes of workers’ compensation.

### **Certificates of insurance**

This new law (Chapter 378, S.B. 500) implements various provisions relating to insurance fraud and establishes a task force on employee misclassification. The law also increases the penalty for employers who fail to secure workers’ compensation. One provision included in the new law is of particular concern to producers and amends RSA 412:37-a, which governs certificates of insurance, to require that every certificate of insurance issued or presented in this state pursuant to workers’ compensation insurance policy shall contain the following information: all states for which such statutory coverage is provided; names of all executive officers or members who are excluded, if any, pursuant to RSA 281-A:18-a, or a notation that no executive officers or members are excluded; and names of all sole proprietors or partners who have elected to be covered under the policy or a notation that no sole proprietors or partners are covered.

On the small-business side of issues, a number of changes will take effect that may affect PIANH producers in their role as small business owners. These include:

### **Unemployment compensation**

This new law (Chapter 275, H.B. 690) authorizes the commissioner of the Department of Employment Security to adjust the discount rate and relative to auditable-basis policies. The law defines “discount

rate” and authorizes the commissioner of the Department of Employment Security to adjust the discount rate. The law also makes a technical correction to H.B. 1244 of the 2008 legislative session by inserting inadvertently omitted text. The law also provides that audits shall be conducted promptly, no more than 120 days after the expiration or cancellation of the policy, provided that there is no bona fide dispute.

### **Unemployment compensation**

This new law (Chapter 297, S.B. 502) defines “part-time work,” defines “full-time work” and allows refusal of acceptance of full-time and part-time work to be considered in unemployment compensation benefit eligibility considerations. The law amends 297:2 Benefit Eligibility Conditions to specify instances in which he or she is ready, willing and able to accept and perform suitable full-time or part-time work on all the shifts and during all the hours for which there is a market for the services he or she offers and that he or she has exposed himself or herself to employment to the extent commensurate with the economic conditions and the efforts of a reasonably prudent person seeking work.

### **Reinsurance pool**

This new law (Chapter 375, S.B. 468) terminates reinsurance coverage through the New Hampshire Small Employer Reinsurance Pool. The bill includes government plans and nondomestic insurers writing health insurance in New Hampshire in the assessment base that funds part of the costs of the New Hampshire Vaccine Association and the New Hampshire Health Plan. The bill also gives the insurance commissioner authority to annually review assessment activity related to the New Hampshire Vaccine Association, the New Hampshire Small Employer Reinsurance Pool and the New Hampshire Health Plan to ensure that all members that should be assessed have reported and paid the proper assessment.

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