



2008 New Jersey legislative session: a look back

The New Jersey Legislature passed a number of bills of significant importance to insurance producers, the insurance industry and small business in 2008. As you probably know, New Jersey's legislative cycle goes year-round, thus a discussion of 2008's legislative action is framed by the calendar year, not a discrete session.

Harbor Shuttle

“On Wednesday, July 2, 2008, PIANJ and the agent and broker community celebrated the Appellate Division of the New Jersey Superior Court's act of overturning the Superior Court's prior decision in the *Harbor Commuter Services v. Frenkel (Harbor)* case. In doing so, the court found in favor of the appellant insurance brokers, an outcome argued for in an amicus curiae (friend-of-the-court) brief jointly submitted to the court by PIANJ and IIABNJ. A three-judge panel reversed the order denying summary judgment to the appellant brokers and vacated the \$9.1 million judgment in favor of Harbor Commuter Services Inc. Furthermore, the Appellate Court entirely dismissed Harbor Shuttle's complaint, an unequivocal victory for the agent and broker community. The decision was guided by the long-standing equitable principle that one should not be rewarded for his or her own improper actions, as well as the correct understanding of how breach-of-warranty insurance is to benefit the lender, not a debtor. Of importance to the broker and agent community, the court also declined to impose an expanded duty of care on insurance agents and brokers, as sought by Harbor.

Paid Family Leave Act

On May 2, 2008, Gov. Corzine signed Chapter 17 of 2008, instituting the New Jersey Paid Family Leave Act. While not an insurance-specific bill, this law will undoubtedly have a large impact on many business owners. The law underwent a number of amendments on its way to passage, many dealing with clarifying the protections offered to workers with regard to re-employment rights they may possess. At the end of the negotiation, however, the governor signed a bill which allows employees of nearly all private and public employers to take up to six weeks of leave, during which they receive up to two-thirds of their wages, capped at \$524/week for 2008. This leave may be taken to: 1) bond with a newborn or adopted child, or 2) care for the serious health condition of a family member.

Unemployment compensation

This law applies to all corporations subject to New Jersey's Unemployment Compensation Law, including state and municipal and private employers, such as partnerships, associations, joint stock companies and foreign and domestic corporations with a payroll of \$1,000 or greater. The funding for this program comes from an assessment on an employee's wages. An employer does not pay into or otherwise fund the paid leave. Starting July 2009, a .09 percent assessment will be added to the portion of a worker's 2008 wage that is subject to temporary disability insurance (the first \$27,700 in base wages) taxes. In 2010, the assessment grows to .12 percent. The total amount paid by a worker will be no greater than \$33 per year.

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Streamlining commercial lines coverages

In January 2008, Gov. Corzine signed S-2169, which exempts commercial lines insurance policies for risks that produce minimum annual premiums in excess of \$10,000 from the requirement that they include the language of the standard fire insurance policy, which provisions were developed in 1954. (Promoted under the banner of providing greater “flexibility” in insurance products, this bill means that affected fire coverage forms will need to be reviewed for possible exclusions and other nonstandard language. Beginning with the events of Sept. 11, 2001, insurers sought the ability to exempt from state standard fire policy laws throughout the country claims in which fires were caused by terrorist acts. Absent this ability, the insured may turn down the offer of terrorism coverage that companies must make under the Terrorism Risk Insurance Act; however, there is no way for them to exclude coverage for fire claims caused by terrorism.) PIANJ successfully secured an amendment to the original bill to provide that no person, including, but not limited to, an insurance producer, shall be liable in an action for damages on account of an applicant or insured purchasing a commercial-lines insurance policy that does not include the provisions of the standard fire insurance policy.

Workers’ compensation

The landscape of laws governing Workers’ Compensation was altered in 2008, too. A series of articles in the *Star-Ledger*, which were highly critical of New Jersey’s workers’ compensation system, led to the introduction and eventual adoption of a number of laws that seek to improve the system. Oct. 8 saw the passage of the following bills:

S-1917, which reorganized the governing board of the state's rating bureau. The membership of the Compensation Rating and Inspection Bureau (CRIB) is expanded to include representatives of labor, business and the general public.

S-1916 ensures that workers' compensation cases involving certain emergency medical issues are rapidly heard and that treatment and compensation is delivered expeditiously. Thus, claims involving a worker who is denied medical treatment will be prioritized when a doctor certifies that immediate care is needed.

S-1915 requires employers to submit proof of workers’ compensation insurance coverage on annual reports filed with the Department of Treasury—indeed, the bill provides that an annual report submitted without proof of filing is not complete for purposes of filing and requirements concerning the failure to submit the annual report apply.

S-1914 strengthens enforcement by deeming an employer who fails to provide workers’ compensation insurance to be guilty of a disorderly person offense and, in the case of a knowing violation, guilty of a fourth-degree crime.

S-1913 increases the power of judges to enforce the law against insurers, employers or attorneys who fail to comply with a judge's orders or deadlines.

Foreign travel

New Jersey joined a number of other states in passing a bill, A-1586, which prohibits a person from being unfairly discriminated against on the basis of that person's future lawful foreign travel plans with regard to the issuance, extension or renewal of any life insurance policy or the policy's corresponding rates, terms or conditions. This bill has been argued as being necessary by groups including the Anti-Defamation League, which reported that a person's prior travel to Israel, or stated intention to do so, has had deleterious effects on that person's insurance situation.

Health care coverage

On July 8, 2008, S-1557 was signed into law as Chapter 38 of 2008. This bill seeks to increase the degree of affordable health care coverage in the State of New Jersey by imposing a coverage mandate where all children under 18 years of age must, beginning one year after enactment, obtain and maintain health care coverage, either through employer-provided, individually purchased plans or the Medicaid or NJ FamilyCare programs, or the NJ FamilyCare Advantage buy-in program. The bill also extends eligibility for the NJ FamilyCare Program to parents whose income is up to 200 percent of the federal poverty level and directs the commissioner of human services to establish a hardship waiver program for the premium due for children seeking entry into the NJ FamilyCare program. Additionally, the law restricts the ability of hospitals to submit certain claims by people under 19 years of age to charity care without first ascertaining their eligibility for Medicaid or NJ FamilyCare, as well as other techniques to expand coverage. Additionally, and perhaps most importantly, the bill contains a troubling provision that imposes the requirement that producers notify purchasers in writing of any commission, service fee, brokerage or other valuable consideration that the producer will receive as a result of the sale, solicitation or negotiation of the health insurance policy or contract.

Insurance regulation

The Department of Banking and Insurance put out a number of regulations and bulletins directly affecting your business. One of particular note, was issued in August when the department released Bulletin 08-12, which announced a significant change in its policy regarding a producer's ability to charge fees in connection with commercial lines policies, a move long-sought by PIA. This change will allow producers to underwrite risks to more effectively provide responsive customer care to their clients. Previously, regulations have forbidden producers acting as agents from charging or receiving fees for any services rendered pursuant to the policy (except out-of-pocket expenses to obtain documents and other materials related to underwriting new auto policies). Although the changes have not yet been adopted as regulations, the DOBI will not enforce the current prohibition against charging fees in connection with commercial lines policies, starting immediately.