



LEGISLATIVE POSITION

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Remove the NYSIF licensing exemption

Memorandum in Support of: S.7673-by Sen. LaValle
A.10844-by M. of. A. Schimminger

An act to amend the Insurance Law, in relation to removing the New York State Insurance Fund's exemption from licensing and other requirements of the Insurance Law.

PIANY supports this proposal to amend the Insurance Law to remove the exemption of the State Insurance Fund from licensing and other requirements; requiring the superintendent of insurance to approve the rules adopted by the New York State Insurance Fund for the conduct of its business; and repealing the requirement for policyholders to provide 30 days' notice to withdraw from the New York State Insurance Fund.

The bill would require that the New York State Insurance Fund (NYSIF) be licensed by the Insurance Department and subject to the same requirements as other insurance companies providing workers' compensation insurance. New York's commercial insurance market faces unique problems stemming from NYSIF's structural advantages and operating methods. Besides its effective subsidy by the unpaid work of insurance brokers, the NYSIF operates at a significant cost advantage to private carriers. It is exempted from certain taxes and is permitted to maintain control of its reserves. NYSIF's only tax liability is for New York state franchise tax and the MTA surcharge. It is exempt from federal taxation, so NYSIF pays no taxes on income from its investments. While NYSIF retains control over its reserves (including investment income), commercial carriers are required to transfer control of reserves to support longer-payout claims to the state's Aggregate Trust Fund, thus losing the benefit of the investment income.

Moreover, NYSIF maintains an active marketing operation and takes steps, such as its advance-notice cancellation requirements, easy payment plans and an accommodative rating structure, to ensure that it gets and keeps business. Contrary to its actions, some strongly believe that NYSIF should truly be a "residual" market, and arguably, like its counterparts the NYAIP and the NYPIUA, NYSIF should play the part of a "last resort" market instead of an avid competitor against the private sector. In fact, NYSIF was established in 1914 to provide a guaranteed source of workers' compensation insurance coverage for employers in New York state.

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PIANY repeatedly has made the case to NYSIF for including in its rates a factor that would compensate producers for these services—which are essentially the same services they perform in connection with workers’ compensation policies they place with their regular commercial carriers. Commercial carriers provide for the cost of such services as part of their rates. However, NYSIF has told PIANY that producer compensation would be incompatible with NYSIF’s statutory mandate regarding its rate-setting calculations. PIANY would like to see these provisions incorporated into this proposal as well.

At a time where the rating and competitive structure of NYSIF, relative to the commercial market, is open for discussion, PIANY believes NYSIF’s continued reliance on the uncompensated services of licensed insurance producers is an issue of equity. It should be resolved by amending NYSIF’s statutory rating provisions to provide compensation to the insured’s broker of record.

This bill would take an important first step toward placing NYSIF on an even footing with other insurers providing workers' compensation insurance by removing NYSIF's exemption from licensing and other insurance requirements. For all of these reasons, PIANY supports this bill and urges its favorable consideration.