



2008 New York legislative session: a look back

2008 was a year of unprecedented success with numerous consumer-friendly legislative victories achieved last session. Main Street independent insurance agents and their clients were well-served by the leadership of their representatives by supporting insurance reform proposals that will benefit policyholders.

New Yorkers now have the security of permanent New York Property Insurance Underwriting Association coverage. Automobile carriers are better positioned to respond to the market by lowering premiums and homeowners will benefit from significant improvements in the property market and annual flood notice reminders. Finally, all New Yorkers will benefit from the new late-notice law that will reduce the ability of carriers to deny claims.

PIANY, as the leading association of professional insurance agents, will continue to keep a watchful eye on developments related to producer compensation and other insurance-related issues and will continue to oppose proposals that would outlaw the payment of performance-based compensation or impose additional disclosure mandates. And we will continue to fight for our policyholders by trying to reduce surcharges on automobile policies by doubling the amount of property damage that would allow an insurer to impose a policy premium surcharge.

Many of the proposals that were considered and passed will impact PIANY members as both insurance producers and small businesses. Accordingly, PIANY 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.

The following are updates of the primary bills PIANY tracked this past legislative session which have become law.

Homeowners

New York Property Insurance Underwriting Association/flex rating

(Chapter 136). This new law, (A.11693 by the Assembly Rules Committee at the request of Assemblyman Morelle/S.8624 by Sen. Seward) amends provisions of law relating to the New York Property Insurance Underwriting Association (NYPIUA) to make them permanent and extends provisions (until June 30, 2011), which allow NYPIUA to write certain coverage upon a determination by the superintendent of insurance that coverage is unavailable in a particular market. Further, the new law extends various consumer protection provisions of the Insurance Law for three years to June 30, 2011. The new law also enacts provisions authorizing limited modification to private passenger auto insurance rates under certain circumstances, by allowing 5 percent annual rate adjustments without approval of the superintendent of insurance. The law requires NYPIUA to develop incentives to encourage insurers to write homeowners insurance policies in coastal areas and authorizes NYPIUA to offer more expansive coverage than NYPIUA is currently authorized to offer in coastal areas and in other areas of the state

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and codifies provisions establishing the Coastal Market Assistance Program (C-MAP) to improve the availability of homeowners insurance in coastal areas. Finally, the law would reinstate the Special Advisory Panel on Homeowners Insurance/Catastrophe Coverage to examine and assess problems affecting the availability and affordability of homeowners insurance coverage in New York state.

Flood notices (Chapter 21). The new law (A.6344-b by Assemblywoman Aileen Gunther and Assemblywoman Donna Lupardo/S.4097-a by Sen. Thomas Libous) represented a major initiative of P1ANY this past session. The law requires that homeowners receive an annual notice from their insurance company reminding them that their policies don't cover damage from sources like flooding and mudslides. The law also makes sure homeowners receive information on how to obtain insurance coverage for these risks, provided by the National Flood Insurance Program.

Property/casualty group insurance (Chapter 318). This new law (S.7561-A by Sen. Seward/A.10403-A by Assemblyman Morelle), expands permissible types of property/casualty group insurance, permits new types of insurance to be written in New York state and makes Section 3442 permanent. This law amends the Insurance Law to expand the types of insurance that an insurer may write in New York; expands the ways in which an insurer may write certain types of insurance; and eliminates the sunset provision in Insurance Law Section 3442, which applies to credit card, debit card and checking account group policies.

Producer issues

ELANY Extension (Chapter 130). This new law (A.11428-A by the Assembly Rules Committee at the request of Assemblyman Morelle/S.8385 by Sen. Seward) extends the statutory authority of the Excess Line Association of New York (ELANY) to July 1, 2014.

Late notice (Chapter 388). This new law (A.11541 by the Assembly Rules Committee at the request of Assembly member Weinstein/S.8610 by Sen. DeFrancisco) represents a major victory, years in the making, for insurance producers in New York state. The law does away with New York's traditional rule that the breach of a condition to coverage waves a policyholder's right to recovery even if the insured's untimely notice has not materially prejudiced the insurer. The law also provides for a declaratory judgment action against an insurer directly where a claim is brought for personal injury or wrongful death against another. Specific provisions in the law permit a party suing an insured in a personal injury or wrongful death case to commence a simultaneous declaratory judgment action against the defendant's insurer, in limited circumstances, to challenge the insurer's denial of coverage based on the failure to provide timely notice; and prohibits certain liability insurers from denying coverage for a claim based on the failure to provide timely notice, unless the insurer suffers prejudice as a result of the delayed notice.

Workers' compensation

Workers' compensation notification (Chapter 322). This new law (A.11700 by the Assembly Rules Committee at the request of Assemblyman Benedetto/S.8400 by Sen. Robach), requires notification of the issuance, amendment or reinstatement of insurance contracts and imposes penalties for failure to notify. This law requires insurance carriers and the State Insurance Fund to file notification with the chair of the Workers' Compensation Board, within 30 days of their issuance, reinstatement, amendment or endorsement of any contract for workers' compensation or disability insurance and provides penalties for noncompliance with such requirements and such notification by group self-insured trusts as is provided by regulation of the chair. The proposal was introduced at the request of the New York State Workers' Compensation Board as Departmental Bill #326, Workers' Compensation Board (Internal #10—2008).

Group self-insurer defaults (Chapter 139). This new law (A.11756 by the Assembly Rules Committee at the request of Assemblywoman John/S.8708 by the Senate Rules Committee), introduced as Governor's Program Bill #70, addresses the problems resulting from recent group self-insurer defaults. The law strengthens regulation of group self-insurers; and provides short-term funding to pay the immediate costs resulting from the defaults. The law also creates a task force to identify potential changes to the group self-insurance program.

Independent Livery Driver Benefit Fund (Chapter 392). A last-minute addition to this year's legislative mix, this new law (S.8715) provides additional protection to certain livery drivers in the form of workers' compensation benefits for certain injuries. It sets up an independent livery drivers' benefit fund, funded by assessments on independent livery bases, to procure workers' compensation coverage for deaths or injuries arising out of a crime against the driver or involving certain serious injuries.