



July 8, 2011

The Honorable Andrew M. Cuomo
Governor of New York State
New York State Capitol Building
Albany, NY 12224

RE: A.8464/S.5811—Commercial Lines Deregulation final bill summary

The Professional Insurance Agents of New York State Inc. is opposed to this legislation that would deregulate rates and forms for certain commercial risks because it means insurance producers and some of their main-street clients would be exposed to insurance contracts that have not been vetted by the New York State Insurance Department.

PIANY does not oppose deregulation rates for these types of policies; and does not oppose deregulation of contract forms for truly sophisticated risks. However, PIANY believes this particular bill does not provide adequate safeguards:

- It could expose garden-variety, main-street type risks to coverage terms that are unfair or prejudicial to the interests of the policyholder.
- Moreover, flaws in the coverage provisions might not come to light until long after the policy has gone into effect.
- Finally, other provisions (“size” tests for accounts and “special risk manager” qualification tests *applicable to producers*) raise practical, business-related issues that could affect a number of members’ accounts.

Provisions of the bill and PIANY’s concerns

A.8464/S.5811 creates a new category of risk which can be written by New York-licensed carriers free of rate and form approval requirements. It does so by using the existing Free Trade Zone provisions, and adding a new, “Class 3” category within the Free Trade Zone. Because these new provisions are part of the existing Free Trade Zone structure, such risks could be written only by a specially-licensed Free Trade Zone insurer meeting certain minimum surplus-to-policyholders ratios or other financial standards.

Concern #1: the \$25,000 premium threshold is too low. Policyholders whose commercial-risk policies, in the aggregate, generate more than \$25,000 in annual premium—and who meet certain additional criteria—could be sold insurance contracts, the provisions of which are not subject to the New York State Insurance Department’s review and approval. The new “Class 3” risks are called “large commercial insureds.” It is the \$25,000 threshold that primarily concerns PIANY. This is not a per-policy figure; rather, it represents an annual aggregate amount for all commercial-risk policies purchased by the insured. The threshold, in PIANY’s view, is too low.

Concern #2: Additional “size”-related criteria don’t guarantee sophistication. In addition to the premium threshold test, the risk would need to meet certain other “size”-related criteria. While intended to ensure that naïve policyholders are not sold deregulated insurance products, these “size” standards don’t necessarily correlate

**PROFESSIONAL
INSURANCE
AGENTS**

25 CHAMBERLAIN ST.
P. O. BOX 997
GLENMONT, NY 12077-0997
(800) 424-4244
FAX: (888) 225-6935
WEB: www.pia.org
E-MAIL: pia@pia.org

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to sophistication on the part of the risk. Moreover, PIANY believes that documenting these “tests” (net worth, gross assets, gross revenues, annual budget, number of employees, etc.) would create additional exposures for insurance producers charged with verifying the risk’s status as a “large commercial insured.”

Concern #3: Risk manager requirement could exclude qualified incumbents.

Another provision would require the policyholder to employ or retain a special risk manager “to assist in negotiation and purchase” of a policy exempt from rate and form regulation.

Risk managers who perform this function cannot be insurance company employees. They must be licensed as insurance producers unless they are exempt from licensing (such as risk managers acting on behalf of their employer). The risk manager must be either an employee or a consultant retained by the insured.

Not every insurance producer will be able to qualify to perform this function on a consultant basis, however. As with the “size”-related criteria, the bill creates a complex matrix of possible combinations, by which a licensed producer is qualified to perform the “special risk manager” role. These combinations include factors such as a bachelor’s or graduate degree in certain fields (but not others), certain professional designations (but not others), and various amounts of required experience, with the number of years depending on other qualifications the individual holds. Fulfillment of some criteria (designations, degrees) may be easier to document than others (applicable experience).

Because of the various, confusing combinations by which producers can qualify, plus a heavy reliance on designations and degrees, it is likely that a certain number of incumbent producers who, in fact, have the requisite knowledge may find themselves unable to perform their usual role of negotiating and placing coverage on behalf of their clients without the assistance of a special risk manager.

This would, of necessity, introduce an additional producer into the transaction, if it becomes a question of considering placement as a “large commercial insured.” Nothing in the bill prohibits the risk-manager producer from also placing the coverage.

Concern #4: Getting “bad forms” withdrawn. The bill does state that, even though the Free Trade Zone Class 3 forms can be used without filing for approval—they do remain subject to existing standards for the type of form. Further, the bill states that “nothing [herein] shall exempt any insurer, or any policy issued ... from any applicable provision or standard in [Insurance Law], regulations promulgated thereunder or other requirements of state law.”

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Why does this statement not satisfy PIANY's concerns? Because policies can be sold that do not comply with all these provisions—and it can take a very long time to discover the fact; longer still to remedy the situation by getting the form withdrawn.

An earlier version of the bill required the Class 3 forms to be filed at the NYSID prior to use, on an informational basis (not subject to approval). However, the final bill deleted this requirement. Under the final bill's provisions, a copy of the form might not reach the NYSID until 60 days after the contract has taken effect. (While a "certificate of insurance evidencing the existence and terms of the policy" would be filed one day after binding—it's not clear how detailed this document would be. Certainly, the entirety of the contract language is not required to be available at this point.)

In order for the NYSID to tell the insurer to stop using a form, there must be notice and hearing—followed (if warranted) by an order to cease using the form. This order cannot take effect sooner than 90 days after it is issued. Counting (at a minimum) a month for notice and hearing, we are now six months out from the original sale. A lot of claims can happen in six months.

An earlier version of the bill would have amended the general regulatory standards for disapproval of insurance forms (currently, property/casualty forms can be disapproved if they are "misleading or violative of public policy"). The proposed additional standards already are in effect for life, annuity and accident and health contracts, where forms can be disapproved if deemed "prejudicial to the interests of policyholders, unjust, unfair or inequitable."

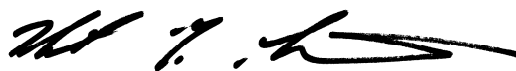
Because deregulated forms would remain subject to the general standards for insurance forms, these stronger standards could have served as valid grounds for getting egregious Free Trade Zone Class 3 forms withdrawn. The presence of these stronger standards for property/casualty in an earlier draft suggests that PIANY is not alone in its concerns about preventing the sale of coverage forms that are "unfair," etc. Unfortunately, the proposed expansion of standards did not survive in the final bill.

In conclusion, PIANY believes that:

- \$25,000 annual aggregate commercial premium is too low;
- additional "size" standards don't ensure sophistication;
- "special risk manager" requirement could displace qualified incumbents; and
- "bad forms" could be out there in the marketplace too long before the situation is corrected.

We, therefore, urge you to veto this problematic legislation.

Sincerely,



MATTHEW F. GUILBAULT, ESQ.

Director of Government and Industry Affairs