



LEGISLATIVE POSITION

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STATEMENT TO THE ASSEMBLY FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE IN SUPPORT OF A-5198

The Professional Insurance Agents of New Jersey, or PIANJ, is pleased to support A-5198, sponsored by Chairperson Craig J. Coughlin, D-19, (“Prohibits application of fiduciary standard to insurance producers; specifies qualifications of persons providing affidavit of merit in lawsuits against insurance producers”).

PIANJ is a voluntary, membership-based trade association representing professional, independent property/casualty insurance agents. Our approximately 3,300 members and employees doing business in New Jersey provide property and casualty insurance to tens of thousands of businesses and individual clients.

Unlike many other states, New Jersey statute is unclear about the duty-of-care required of insurance producers and has left the question to be resolved by case law. The result is that New Jersey is an outlier in this arena. PIANJ supports legislation to clarify that insurance producers are expected to exercise ordinary care and skill in renewing, procuring, binding or placing property and casualty insurance, and are fully liable for negligent actions, but that they are not subject to civil liability under standards governing the conduct of a fiduciary or a fiduciary relationship. The legislation also will strengthen the existing “affidavit of merit” statute that in theory makes sure that lawsuits must have some merit before proceeding, but which in practice often falls short of that goal.

Here’s why PIANJ supports this important initiative:

- The legislation will bring New Jersey in line with most other states. Only Alabama, Arizona, Idaho and Pennsylvania impose a level of producer liability on par with New Jersey’s. New York, Delaware and Connecticut, and dozens of states like them, hold agents to the same level of liability only if they find a “special relationship” between the insured and the agent. Another group of states require essentially no such liability.
- New Jersey’s insurance producers, many of which are small businesses and all providing good jobs to New Jerseyans, provide personal attention and expertise tailored to each individual or company, guiding them toward the type and amount of insurance that is most appropriate to their individual or business needs.
- New Jersey’s insurance agents, like other professionals, purchase costly errors and omissions insurance. This E&O coverage protects agencies and their clients in the event of, or allegation of, professional errors. But the extension of New Jersey liability beyond the normal duty-of-care has made E&O coverage in New Jersey costlier than in our peer states, and even conceivably unavailable if the trend continues. The increasing cost of E&O policies constrains many businesses’

ability to invest elsewhere, such as in hiring new staff or in retaining current staff during a business downturn.

This legislation protects consumers—both individuals and the many small businesses that turn to insurance agents for their business coverage. It does so because it ensures that they will continue to have the access to the expertise and personal attention of an insurance agent whom they know and who, in turn, is familiar with their individual needs. Thank you for your consideration of our views.