



LEGISLATIVE POSITION PAPER 2010 SESSION

The Independent Insurance Agents & Brokers of New York is the oldest and largest producer association in New York State. We represent approximately 3,600 independent business owners and principals of 1,800 independent insurance agency locations in the State of New York, comprising more than 12,500 individuals who sell and service the personal and business insurance needs of consumers. Independent agents and brokers are very sensitive and alert to the problems of the consumer because their entire business is based on dealing with the public daily in a personal client-professional relationship.

Insurance is a crucial component for the economic health of our state and therefore it is imperative that New York maintains a stable insurance climate. Our members are uniquely positioned as an integral part of their communities to assist on a broad range of economic development, tax, insurance, and other business issues that impact the consumers in New York. As we face new challenges our members have pledged themselves to work even more aggressively with government and other industries to address the many crucial issues which confront us. We look forward to a cooperative effort with our legislators and regulators during the coming year.

Michael V. Barrett
Legislative Representative

Lane S. Rubin
Chair of the Board



Independent Insurance Agents & Brokers of New York, Inc.
Legislative Position Paper
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PRODUCER COMPENSATION DISCLOSURE

- **IIABNY opposes the Insurance Department's proposed compensation disclosure regulation**

On December 2, 2009, the New York State Insurance Department posted a new regulation that if adopted will require all insurance producers in the state to adhere to new, costly and burdensome administrative requirements. Insurance producers will be required to provide to all insurance applicants a disclosure notice regarding how they are compensated for the insurance transaction. Upon request, customers can obtain further details regarding how much producers receive in compensation, as well as information about alternative quotes that were presented. Producers must maintain documentation of compliance with these new rules for three years.

The insurance department developed these regulations in response to investigations by the State Attorney General in 2004 which uncovered illegal activities, including bid-rigging and steering, by a handful of very large, publicly-held insurance brokers. These brokers entered into settlement agreements as a result of these activities that required them to disclose compensation arrangements to their clients.

The Insurance department has erroneously assumed that because a handful of large brokers who committed illegal acts agreed to disclose compensation arrangements, that a compensation disclosure regulation was necessary for all of the other law-abiding insurance producers in the state.

IIABNY does not believe the proposed regulation protects consumers against unscrupulous acts like bid-rigging and steering, and only serves to unduly burden insurance producers across the state. IIABNY supports voluntary compensation disclosure regarding the existence and nature of compensation a producer receives when the customer requests this information. This disclosure should be done in the broader context of communicating with the client or applicant which outlines the entire relationship and services the producer will provide.

Action needed:

IIABNY will continue to oppose the proposed compensation disclosure proposal and urge adoption of a voluntary disclosure standard.

Implementation of June 2008 Property Package Initiatives (Chapter 136 of the Laws of 2008)

- **IIABNY believes that aggressive implementation of these legislative initiatives is necessary to realize the benefits intended for coastal property owners.**

IIABNY worked hard for the passage of S.8624 in June 2008 that was enacted as Chapter 136 of the Laws of 2008. The legislation included important changes to the operation of the New York Property Insurance Underwriting Association (NYPIUA) and the products it offers, intended to offer relief to coastal property owners having difficulty obtaining adequate coverage in the voluntary market. IIABNY believes that NYPIUA and the New York State Insurance Department (NYSID) must aggressively implement the provisions of Chapter 136 to encourage participation by voluntary market companies and realize the benefits intended for coastal property owners.

Action needed:

IIABNY has been working diligently with NYPIUA and NYSID to implement the provisions of the law but to date company participation has not increased dramatically. Without an aggressive approach, including establishment of an attractive incentive program, there is lack of incentive for voluntary market companies to expand their presence in C-MAP areas.

Homeowners Insurance Windstorm Deductibles

- **IIABNY supports standardization of windstorm triggers in homeowners' policies**

IIABNY is concerned with the lack of standardization among homeowner's insurance policy with respect to the event that triggers a policyholder's windstorm deductible. Windstorm deductibles are commonly used by insurance companies on homeowners' policies in coastal regions. These deductibles can be "flat" (specific dollar amounts) or percentage deductibles (a percentage of the building value). The trigger point for these deductibles varies among companies and can be based on wind speed, category of storm and other factors.

IIABNY believes that the lack of standardization in windstorm triggers will cause consumer confusion in the event there is a windstorm that affects the state's coastal region. Neighboring homeowners equally affected by a coastal storm that have homeowner's policies with different windstorm coverage triggers may become quite frustrated to find that one homeowner has coverage for the damage and the other does not. Standardizing the trigger point at which an insurer's windstorm deductible will apply will protect consumers against this type of scenario.

Action needed:

It is critical that the New York State Insurance Department (NYSID) develop a standard for wind deductible triggers to protect consumers and prevent confusion in the event of a catastrophic storm affecting New York's

coastal region. Since voluntary standardization has not occurred, it is necessary for NYSID to create the standards for the industry.

Catastrophe Funds

- **IIABNY supports a federal catastrophe fund**

The catastrophic hurricanes during the 2005 season had a severe negative impact on the property insurance market in coastal regions. They also focused attention on the cumulative property exposures of insurance companies along the coastline and created coverage issues for consumers. IIABNY is extremely concerned about consumer impact but also with the ability of insurance companies to manage their exposure to catastrophes.

There have been discussions in New York and countrywide about legislative initiatives to develop catastrophe funds to reduce industry exposure in various catastrophe situations, not just hurricanes. IIABNY supports a federal catastrophe fund and will be an active participant in discussions about development of this type of mechanism in New York if required as part of a federal mechanism.

Action needed:

IIABNY will continue to participate in catastrophe fund discussions in New York to ensure that any state mechanism is part of a federal catastrophe plan.

WORKERS COMPENSATION

IIABNY has continued to be an aggressive advocate for workers compensation reform and we supported the workers compensation reform the Legislature enacted in 2007. We believe that the state agencies charged with implementation, led by the New York Insurance Department, have done an excellent job so far and we look forward to continued cooperative efforts with them. There still remain a few areas where additional reform is needed.

State Insurance Fund

- **IIABNY supports an even playing field for SIF and other workers' compensation insurers.**

A number of problems affecting both policyholders and private workers' compensation insurers have been encountered due to the lack of regulatory oversight of the State Insurance Fund (SIF). SIF is the largest single carrier of workers' compensation insurance in the State, with approximately 37 percent of the market.

Although a quasi-public agency, it was intended by the Legislature that SIF be treated the same as a private insurance company. Despite this, SIF is not licensed by the New York State Insurance Department, nor is it subject to the Department's oversight and regulation. As a result, SIF policyholders are put at a disadvantage when compared to policyholders of private workers' compensation insurers. If a SIF policyholder has a dispute with SIF regarding an unfair insurance practice, they have no recourse other than to bring the matter up with SIF. In contrast, policyholders of private carriers may appeal to the Insurance Department if they have a dispute with their insurer. SIF policyholders have reported various unfair practices which have gone unchecked. One common complaint is that SIF takes retaliatory actions against policyholders who seek to move their business from SIF to another coverage provider. Policyholders have reported aggressive and unfair tactics, such as SIF suddenly revising audits and questioning classifications in an effort to charge a departing customer a higher premium.

Additionally, private insurance carriers who must be licensed by the Insurance Department and subject to insurance law are also placed at a competitive disadvantage compared to SIF which is not subject to the same rules and regulation. To illustrate the competitive advantage, SIF recently announced that it would not charge the same assessment announced by the Compensation Insurance Rating Board applicable to all workers' compensation policies. SIF determined it would not charge the 8.9% portion of the assessment applicable to the Special Disability Fund, although required by law to do so. The fact that SIF is allowed to charge a lesser amount creates an unfair marketplace advantage for SIF and results in an overcharge to consumers who buy their insurance from private insurers.

Action needed:

IIABNY supports legislation that would place the State Insurance Fund on an even footing with other insurers providing workers' compensation. IIABNY has developed legislation that would accomplish this goal by requiring SIF to be licensed by the Insurance Department and subject to the same requirements as other insurance companies providing workers' compensation insurance. It would also require that the Superintendent of Insurance approve the rules adopted by SIF for the conduct of its business. The legislation would also delete the requirement for SIF policyholders to provide 30 days notice to withdraw from the Fund.

Aggregate Trust Fund

- **IIABNY supports changing the pre-funding requirements of the aggregate trust fund.**

In 2007 a change was made in the aggregate trust fund (ATF) law so that insurance companies are now required to estimate the amount of a permanent partial claim, pre-fund the claim, and pay the benefit into the State Insurance Fund. If the insurance company underestimates the amount of the claim it has to pay the difference. If it overestimates the amount, the money is not returned.

This system, in addition to being unfair and costly to the insurance industry, creates an unfair competitive advantage for the State Insurance Fund which has no such requirement to pre-fund claims.

The problem is also harmful to large businesses, hospitals, and municipalities that often have large deductible plans that may cover portions of a loss during the year. The new law will force these organizations to pay the full amount of the deductible up front, causing financial problems for these types of entities.

Action needed:

The legislature must enact legislation to correct the Aggregate Trust Fund situation which creates a serious problem for the industry and policyholders. The current ATF law adds costs to the system and is at odds with the cost reduction goal of the 2007 reform law. Without change we believe insurance companies will rethink their commitment to write workers compensation in New York leading to less choice for businesses and their workers.

- **IIABNY supports repealing the absolute liability standard in Labor Law 240 and 241**

Sections 240 and 241 of the New York State Labor Law are commonly referred to as the "Safe Place to Work Law" or the "Scaffolding Law." These sections of law establish an "absolute liability" standard on any contractor or property owner for a fall from any height by an employee. Under an absolute liability standard there is no consideration of fault or negligence and the contractor or building owner is held completely responsible, regardless of fault. This statute is the only such law remaining in the United States, pre-dates our Workers Compensation Laws and circumvents the sole remedy doctrine of workers compensation.

Because of these antiquated laws, insurance on construction projects for both owners and contractors has become increasingly expensive and the market for this coverage severely restricted. Lack of coverage is preventing construction projects from proceeding, costing New York State jobs. When coverage can be obtained, the cost of construction is needlessly driven up. In these difficult economic times, any law driving up business costs and preventing job growth needs to be carefully examined.

IIABNY supports and is an active participant in Businesses for a Better New York (BBNY), a partnership of Western NY construction companies and insurance brokers, that has commenced an action in the U.S. District Court seeking to have New York Labor Law §240 (1) declared unconstitutional. The case is now pending in the appeals court.

Action needed:

If the BBNY lawsuit is not successful in repealing §240 (1) the absolute liability language of the Labor Law should be replaced with a more reasonable standard similar to that found in §241(6) of the Labor Law which imposes liability on contractors and owners for failing to provide a safe place to work. It is imperative that a reasonable negligence standard be established and that a realistic definition of a "fall from a height" is established.

- **IIABNY supports changes to the Excess Lines law to facilitate the ease of doing business**

IIABNY was successful in 2009 in helping bring about necessary changes to the state's Export List. These changes will make it much easier for producers to place various hard-to-place risks with the excess and surplus lines market.

While the changes to the Export List were a significant step forward towards streamlining excess lines placements, IIABNY will continue to work with other producer groups to obtain additional changes. These include:

- Waiving the diligent search requirement for policy renewals for the first and second year and for certain sophisticated commercial entities.
- Allowing an admitted quote to be considered as a declination when the premium exceeds an excess line quote by 25% or more for comparable coverage

Action needed:

IIABNY will support legislation to amend the Excess Lines law to allow waivers of diligent searches for renewals and sophisticated commercial policyholders and allowing a substantially higher admitted quote to be treated as a declination.

▪ **IIABNY supports legislation to tackle No-Fault Reform**

IIABNY has been a constant voice in the industry supporting measures that tackle the problem of fraud in the New York automobile market. While there has been some improvement because of strong regulatory initiatives, New York still has some of the weakest laws in the country to address fraud.

IIABNY continues to work with an industry coalition, the NY First Auto coalition, which IIABNY initiated, to obtain legislation to address the problem of automobile fraud.

Action needed:

The Legislature must pass meaningful fraud legislation that will help fight no-fault insurance fraud, including:

- Implementing medical protocols/utilization review for no-fault injuries
- Streamlining the process for adjudicating no-fault claims (under \$5,000)
- Mandatory arbitration for no-fault claims
- Implementing fair burden of proof requirements for no-fault claims
- Repealing the law established by the Presbyterian Hospital case
- Increasing penalties for acting as a runner
- Increasing penalties for application fraud
- Decertification of no-fault providers that engage in fraudulent practices

▪ **IIABNY supports an increase to the property damage accident reporting threshold.**

Currently, motorists must report property damage accidents that involve damage to property of \$1,000 or more. The threshold has been in place since 1989, while the consumer price index has increased of 50% since that time.

Action needed:

IIABNY will work with others in the industry to determine the property threshold level based on current accident and repair cost data.

- **IIABNY supports adoption of a single insurance producer license**

Currently, New York is one of the few states that have a separate “agents” and “brokers” license. The majority of other states have adopted the Producer Licensing Model Act (PLMA) recommended by the National Association of Insurance Commissioners (NAIC) as a way for states to achieve licensing reciprocity and uniformity requirements required by the federal Gramm Leach Bliley Act (GLBA) of 1999.

Keeping track of multiple agent and broker licenses is a real and unnecessary burden for insurance producers in New York. This burden would be eliminated if New York were to adopt a single insurance producer license. New York needs to adopt the single producer licensing provisions of the PLMA to bring it into conformity with the majority of states that have already adopted this uniform licensing standard.

Action needed:

IIABNY supports the replacement of separate "agents" and "brokers" licenses with a single "producers" license. This change will facilitate multi-state licensing uniformity.

- **IIABNY opposes news taxes on health insurance**

Lawmakers imposed \$800 million in new taxes on the health insurance industry in the 2009-10 budget. These new taxes, which are passed through to policyholders as higher premiums, drive up the cost of health insurance for all New Yorkers. Consumers already pay more than \$4 billion in taxes as part of their health insurance premium. The ever-increasing cost of health insurance is not just a state problem, but a national one as well.

Action needed:

IIABNY will continue to oppose any legislation that imposes higher taxes on the health insurance industry.

- **IIABNY opposes prior approval for health insurance rates**

In 2009, the Legislature considered whether health insurance rates should be prior approved by the Insurance Department. IIABNY testified against such an approach before the Assembly Insurance Committee. While requiring prior approval of health insurance rates seems at first glance like a logical way to keep skyrocketing premiums in check, such an approach would actually jeopardize the solvency of health insurance carriers and risk leaving New York residents with few health coverage options or with no coverage at all. We need only look to the not-too-distant past for proof that prior approval of health insurance premiums does not work. Prior to 1996, New York required prior approval of health insurance rates. Although well intended, this discredited practice led to a rate approval process that was highly politicized. Yielding to the pressure to keep rates low, the Insurance Department failed to approve justified rate increases and created a system of artificially suppressed rates. When health insurers are denied the ability to collect actuarially appropriate premiums, it places them at risk of insolvency. This is what contributed to the near insolvency of one of the state's largest health insurers at the time, Empire Blue Cross Blue Shield.

Action needed:

IIABNY will continue to speak out against any legislation that would require prior approval of health insurance rates.

- **IIABNY opposes a government-run health insurance option**

Health care reform has been a topic of much debate, in both Congress and in the New York State Legislature. During these debates, the prospect of a government-run health insurance option has been considered. IIABNY believes that a government-run health option would create an inherently unlevel playing field that would drive private insurers out of the market and dismantle the employer-based health care system. It would also limit consumer choice and increase the taxpayer burden. IIABNY also believes that any health care reform initiative must keep agents involved in the process since customers need guidance from an insurance professional when making choices about which health insurance coverage is best for them.

Action needed:

IIABNY will oppose any legislative initiatives that provide for a government-run health care option or that eliminate the role of the insurance producer in the health insurance transaction.

Fiduciary Accounts

- **IIABNY supports changes to insurance regulations to allow producers to maintain premium trust accounts in out-of-state banks.**
- **IIABNY supports changes to the rules requiring specific approval from insurance companies for agents and brokers to hold fiduciary funds in an interest-bearing account**

Currently, the insurance regulations that govern producers' premium trust accounts require that producers maintain their fiduciary accounts in a bank that is physically located within the state. This requirement is outdated in light of the current banking system which includes many international and federal banks that do not maintain branches in every state as well as on-line banking options.

There is also an outdated and unnecessary requirement that agents and brokers receive specific permission from their insurance companies to hold fiduciary funds in interest-bearing accounts. This requirement is merely a time-consuming formality as all insurance companies routinely give their permission to agents and brokers.

Action needed:

IIABNY will continue to work with the Insurance Department to amend the fiduciary account regulations to allow producers to maintain premium accounts in out of state banks and to hold funds in interest-bearing accounts without the specific permission of their insurance companies.

Dishonored Checks

- **IIABNY supports legislation to allow producers to request cancellation of an insurance policy when the policy holder has paid with a bad check.**

Currently, the position of the Insurance Department is that when an insurance producer accepts an insured's premium payment check, deposits the check into his own account and then remits his own agency check to the insurer, the insurer has received payment of premium even when the insured's check is later dishonored. The Department's view is that while the payment of a premium with a dishonored check is not a valid premium payment to the insurer, the insurer is deemed to have received a valid payment by way of the producer's check. By substituting his check for that of the insured, the insurance producer in effect makes a loan to the insured. The producer's only recourse to recover the money is to proceed against the insured who wrote the bad check. The Department's opinion is particularly problematic for producers that deposit policyholder premiums into sweep accounts. Sweep accounts are commonly used in the industry to allow an insurance company to quickly and easily electronically transfer funds from the agent's account to the insurer's account. It had been common practice for insurers to reimburse agents if a customer's check bounced after funds were swept. The insurer would then bill the policyholder directly and if the policyholder failed to pay, the company would issue a notice of cancellation for non-payment of premium. However, the Insurance Department has issued opinions in recent years that this practice violates the Insurance Law and insurers ceased reimbursing their agents.

Action needed:

The law needs to be changed so that a producer who deposits a customer's premium check into his own account and remits the payment to the insurer either manually or electronically, will be able to request that the insurer cancel the policy for non-payment of premium when the insured's check is later dishonored.

Outdated Advertising Requirements

- **IIABNY supports repeal of antiquated advertising laws**

The current insurance law requires insurance producers that use advertisements which refer to an insurer, must display the insurer's full name and the name of the city, town or village of its principal office. This outdated law serves no public policy purpose in today's modern society and is unnecessarily burdensome upon producers who must clutter phone book advertisements and web pages with meaningless text. The law may have been helpful to consumers in the days before widespread advertising on television and the internet. Today, the vast majority of consumers can identify insurers from company logos and other common names or abbreviations that may not necessarily be the insurer's full name. There is also no particular reason for advertisements to display the location of an insurer's principal office. Consumers are more concerned with the location of the company representative who will provide them with service.

Action needed:

Repeal the requirement that producer advertisements display an insurer's full name and principal office location. The law is outdated and serves no useful purpose.