

2009 Legislative Positions



Who we are

The Council of Insurance Brokers of Greater New York originated as an association of various local New York City broker associations and subsequently became the successor organization. Since its inception in 1967, CIBGN has been the leading professional independent insurance brokers association in the New York City metropolitan area. CIBGN members come from all NYC boroughs, Long Island, Westchester and Rockland Counties. The CIBGN continues today to provide a powerful advocacy for the interests of its members and their clients and a forum for the exchange of professional education, information and camaraderie.



COUNCIL OF INSURANCE BROKERS OF GREATER NEW YORK (CIB) 2009 LEGISLATIVE/REGULATORY ISSUES

(1) Broker Compensation Disclosure

The New York State Insurance Department (NYSID) released a Draft Regulation entitled "Producer Compensation Transparency" to require disclosure by brokers and agents of any and all compensation arrangements, including fixed commissions and contingent or performance-based compensation, such as placement fees or profit sharing arrangements with insurance carriers, and greater transparency and disclosure of the actual dollar amounts or percentages of any and all commissions earned on premiums.

http://www.ins.state.ny.us/r_emergy/pdf/prodtrans090129.pdf

CIB has filed a letter with the Department outlining its concerns with the Draft Reg., has committed to take part in Departmental work groups to discuss the same, and is working with a broad "all-industry" coalition, across all major lines of insurance (e.g., property/casualty, life and accident & health) to express valid concerns therewith.

Current state law pursuant to New York Insurance Law (NYIL) §2119 and the regulations promulgated thereunder, dictate that written disclosures must be made whenever a client agrees to pay a consulting fee to a broker, including disclosing that commissions may be earned in addition to such fee. Furthermore, regulatory guidance contained in NYSID Circular Letter 22 (1998) already requires disclosure of broker compensation agreements in certain enumerated circumstances.

It is standard industry practice that insurance producers will seek the best coverage and most competitive offers for their clients. In addition to this being an ethical approach, it is absolutely necessary to remain professionally viable in the highly competitive insurance marketplace.

Disclosing commission rates earned by a specific broker or agent would not provide an insurance consumer with any valuable information, since the premium

amounts quoted do not change. Moreover, disclosure of actual commission rates to consumers may invite negotiation of such commissions between insurance producers and consumers, which would violate the prohibition against "any rebate from the premium" as an inducement to purchase an insurance policy, annuity or health plan as proscribed in NYIL §2324. As such, CIB believes that there are already adequate statutory, regulatory and administrative safeguards in place requiring transparency and disclosure of commissions and other compensation arrangements to insurance consumers, and that additional mandates are not necessary.

(2) Coastal Insurance

While certain welcomed insurance reforms were enacted with CIB's support in 2008 (e.g., NYPIUA made permanent, codification of CMAP, HO wrap-around policies, permanent advisory panel on HO insurance), relating to coverage in the coastal areas of the State, additional measures are necessary to continue make such coverage more available and affordable on Long Island, New York City & Westchester County. Cancellations and non-renewals of policies on homes and businesses within a certain distance from the water continue to occur.

CIB believes that the Legislature or the New York State Insurance Department (NYSID) should take the following actions:

1. Create standardized, uniform windstorm triggers, rather than uniform percentage windstorm deductibles, within homeowners policy forms;
2. Provide financial incentives to policyholders, such as premium discounts, to invest in loss mitigation techniques (e.g., installing hurricane shutters or otherwise retrofitting their properties against high wind damage);
3. Mandate better enforcement of state and local building codes in coastal zones to foster more storm-resistant structures;

(3) Automobile Fraud

Auto fraud still costs insurance consumers billions of dollars a year in higher premiums, even in the face of crackdowns on organized insurance fraud rings by the New York State Insurance Department (NYSID), the state Attorney General and local District Attorneys. Additional fraud-fighting legislation to aid law enforcement efforts is necessary, such as making it a felony to hire a "runner," and to provide additional funds to law enforcement agencies and prosecutors for the investigation and pursuit of no-fault fraud.

Other auto fraud issues of concern to CIB include:

1. Requiring mandatory arbitration as the initial remedy for dispute resolution for assignees.
2. Permitting retroactive cancellation of auto policies procured for fraudulent purposes (e.g., adding no-fault benefits to motor vehicle accident indemnification coverage).
3. Denying coverage where an auto policy is procured with a bad check (but with an opportunity to cure).

CIB continues to strongly oppose any legislative attempts to roll back or weaken the current fraud-fighting provisions of no-fault insurance Regulation 68 (11 NYCRR 65).

(4) Regulation of SIF

CIB believes that certain practices of the State Insurance Fund (SIF) are anti-competitive and detrimental to consumers, such as the requirement of 30 days' prior notice to cancel a policy. There is no such mandate in the private workers' compensation insurance market.

SIF also requires that policies cancelled at the insured's request or for nonpayment of premium, be cancelled on a short-rate basis, essentially assessing a penalty charge. Private carriers canceling for nonpayment of premium do so on a pro rata basis (charging only for the time the policy was in force).

Moreover, SIF charges a \$10 per installment payment fee. Such fees are excessive and harm small businesses with the least ability to pay for their workers' comp coverage. In view of its huge market share, SIF should be fully regulated by the New York State Insurance Department (NYSID).

(5) Scaffolding Law

Changes to New York Labor Law §240 & §241, the so-called "scaffolding law," to substitute a negligence standard for the existing absolute liability standard, are long overdue. Strict liability damage awards against property owners and general contractors regardless of fault, without considering the negligent culpability of the injured worker, continue to plague the construction industry.

Such an absolute liability standard for on-site job injuries to workers is antiquated and obsolete and predates the workers' compensation law, which was designed as the sole remedy for job-related injuries by virtue of guaranteed recoveries to injured workers in forbearance of tort litigation. Unfortunately, Section 240 & 241 litigation continues to expand, marking New York as a litigious, business-unfriendly state and resulting in unaffordable, unavailable or severely restricted liability coverage for property owners and general contractors.

Without changes to the draconian scaffolding law contained in §240 & §241, true reform relating to worker injuries on construction sites will not be realized.

(6) Consumer Protections

Because CIB member brokers are independent businesses, they have no corporate-line conflicts to divert them from their #1 priority: consumer protection and satisfaction.

CIB supports the following consumer protection initiatives:

1. Raising the 3-year policy premium surcharge limit for minor property damage from \$1,000 to \$2,000. On today's high priced automobiles, even the most minor fender bender routinely exceeds the \$1,000 figure, particularly if the air bag deploys.
2. Preventing carriers from issuing arbitrary cancellation/non-renewals of workers' compensation coverage, akin to the protections afforded to insureds for commercial lines coverage under NYIL §3426.



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