

# 2008 ANNUAL REPORT

NEW YORK STATE ASSEMBLY

COMMITTEE ON  
INSURANCE



Sheldon Silver, Speaker

Joseph D. Morelle, Chairman



JOSEPH D. MORELLE  
Assemblyman 132<sup>nd</sup> District  
Monroe County

**THE ASSEMBLY  
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Commerce & Industry  
Higher Education  
Rules  
Ways & Means

December 15, 2008

The Honorable Sheldon Silver  
Speaker of the Assembly  
Room 932 – Legislative Office Building  
Albany, New York 12248

Dear Speaker Silver:

I am pleased to submit the Annual Report of the Assembly Standing Committee on Insurance. 2008, my first full year as Chairman, proved challenging, offering a wide range of issues and legislation to consider.

This session was noteworthy for the Committee because of our successful efforts to make permanent the New York Property Insurance Underwriting Association (NYPIUA), an important provider of insurance to many consumers in this State who have found homeowner's insurance unobtainable in the private market. In addition, two new programs and policies were established allowing NYPIUA to combine their policies with those from the private market to offer additional coverage in coastal and other high risk areas of the state.

In addition, the Committee was successful in expanding health insurance coverage for volunteer ambulance and firefighter personnel; providing consumer protections in the form of extended grace periods for certain insurance policies; and providing insurers with greater flexibility in their accounting practices, investment authority, and rate making process which allows them to remain competitive in the marketplace and better serve policyholders.

In 2009, the Committee will continue to focus on legislation that will address several areas of concern in the insurance marketplace today, including providing a regulatory framework for life settlement transactions, reform of the medical malpractice insurance market, protecting the stability of financial guarantee insurers, considering the State's role in regulating credit default swaps, and expanding access and affordability of high quality health care.

Finally, I want to thank you for your leadership and want to thank Insurance Committee members and staff. Their experience and passion played a major part in making this a productive and exceptional year.

Warmest Personal Regards,

A handwritten signature in black ink that reads "Joe Morelle". The signature is written in a cursive style with a large, looping initial "J" and a long, sweeping underline.

Joseph D. Morelle  
Chairman  
Assembly Insurance Committee

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**STANDING COMMITTEE ON INSURANCE**

**Joseph D. Morelle, Chair**

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## **I. HEALTH INSURANCE**

**A. Licensing Requirements**  
**Chapter 301 of the Laws of 2008**  
**A.7245A (Canestrari) / S.2645-B (Seward)**

This chapter exempts from the licensing requirements any employees of health insurance companies within a holding company who already adjust insurance claims arising from existing contracts. This bill simplifies a duplicative licensing law by expanding the exemption, which currently exists for employees of health insurance adjusters or administrators, by not requiring all employees within the holding company structure to obtain individual licenses.

**B. Health Insurance for Volunteer Firefighters/Ambulance Workers**  
**Chapter 331 of the Laws of 2008**  
**A.7699A (Destito) / S.4617-A (Seward)**

This chapter allows volunteer firefighters and ambulance workers to purchase health insurance from municipalities that currently offer it to their employees. This law requires that the volunteer firefighters and ambulance workers be considered “active” under the Volunteer Firefighters’ Benefit Laws and Volunteer Ambulance Workers’ Benefit Laws in order to be eligible. All costs associated with participation in the health insurance plans are paid by the volunteers. Volunteer emergency service units play an important role in their communities, but they struggle at times to recruit new members and maintain their current ones. This legislation will serve as an incentive for more people to volunteer, and because the costs are paid for by the individual members there will be no additional costs to the municipalities to offer this coverage.

**C. Expands and Defines the Term “Employees” for Blanket and Health Insurance**  
**Chapter 504 of the Laws of 2008**  
**A.7120B (Gianaris) / S.3964-C (Seward)**

This chapter extends coverage under group health insurance policies to retired employees and corporate directors of companies. This legislation uses a well established definition of what an “employee” is that is consistent with other provisions of the law and broadens who would be covered resulting in greater flexibility for employers to insure more of their workers.

**D. Premium Rates for Sole Proprietors Extended**  
**Chapter 517 of the Laws of 2008**  
**A.10656 (Morelle) / S.7550 (Seward)**

This chapter extends for an additional three years the provisions that set the maximum premium rate differential for health insurance issued to sole proprietors to 115 percent of the rate established for group coverage. Insurers that issue coverage to an association or group must issue the same coverage to small businesses and individual proprietors that purchase coverage through the association group. This Chapter insures that sole proprietors are offered coverage at a reasonable rate.

**E. Wellness Programs**  
**Chapter 592 of the Laws of 2008**  
**A.10884A (Morelle) / S.4675-A (Hannon)**

This chapter allows health insurers to establish wellness plans in conjunction with their issuance of a group accident and health policy. “Wellness programs” are designed to promote good health and prevent disease. The programs may include health assessment tools, smoking cessation programs, weight management programs, stress management programs, worker injury prevention programs, nutrition education programs, and health or fitness programs. Insurers can issue rewards and incentives which include full or partial reimbursement for the cost of participating in the programs, waivers or reductions of co-payments and deductibles, or monetary gift cards and certificates that can be used for products or services promoting good health. This legislation can improve the overall health of the participants, increase their well being and quality of life, and help prevent future and more severe health problems.

**F. Out-of-Network Dialysis Treatments**  
**A.143 (Lafayette) / S.2331 (Rath)**

This bill would require health insurance policies covering in-network dialysis treatments to also cover out-of-network treatments when the insured is away on travel. In order to qualify for such coverage the treating physician would be required to issue written orders stating that the treatment is medically necessary and the insured individual would have to advise their insurer at least 30 days in advance of the intention to travel outside the network, with exceptions for family emergencies. The coverage would be limited yearly to four out-of-network requests, and the total number of in-network and out-of-network treatments could not exceed fifteen during a calendar year. Insurers would not be responsible for paying more than the in-network rate for the treatments, and any additional costs would be paid by the insured party. This bill would provide freedom to travel for people who require dialysis but are forced to remain near their local hospital because their insurance plans do not cover treatment in other areas.

This bill passed the Assembly, but died in the Senate Insurance Committee.

**G. Online Lists of Participating Physicians**  
**A.3094 (Bradley) / S.5413 (Leibell)**

This bill would require licensed insurance providers to provide and update on their website a list of participating physicians, and to remove from their lists within 30 days any physicians who are no longer participating with the provider’s insurance plan. Failure to update the list within 30 days would result in the insurance provider being liable for any out-of-network costs for services provided by the non-participating physician. Because patients frequently use their insurance provider’s website to find participating physicians, the websites must be accurate and periodically updated or patients may unknowingly obtain medical services from non-participating doctors and later be denied reimbursement.

This bill passed the Assembly, but died in the Senate Insurance Committee.

**H. Reimbursement for Certified Nurse Practitioners**  
**A.5477 (Gottfried) / S.3094 (Volker)**

This bill would provide reimbursement to certified nurse practitioners for their performed services which are within their lawful scope of practice and under the applicable practice agreements between the nurse practitioners and the insurance providers. Because nurse practitioners are often primary care providers, it is important that they receive direct reimbursement from the health insurers so that they can continue to provide necessary treatment.

This bill passed the Assembly, but died in the Senate Insurance Committee.

**I. Notice for Termination of Group Health Insurance**  
**A.7780 (Carrozza)**

This bill would require group health insurance policyholders to provide the names and addresses of all insured individuals to the insurer and to update this information annually. Insurers must notify by mail each covered person 30 days in advance of the termination of their benefits. Insurers would not be required to provide notice if the group policyholder has already provided the covered individuals or its union representative 30 days notice in advance of termination, or when the group policyholder has contracted with another insurer to provide similar coverage for the same group. This bill would protect insured individuals from having their insurance policies lapse unknowingly.

This bill passed the Assembly, but died in the Senate Insurance Committee.

**J. Recovery for Overpayment to Hospitals**  
**A.10260 (Bradley) / S.7872 (Leibell)**

This bill would allow health insurance companies to seek recovery from hospitals for overpayments for services up to 24 months from the date the original payment was received. Insurers must give 30 days notice to the hospitals stating the patient's name, service date, payment amount, proposed adjustment, and a reasonably specific explanation of the proposed adjustment. Reimbursements from hospitals due to over-payment of expenses provide insurers with the ability to keep expenses down and charge adequate rates to consumers.

This bill passed the Assembly, but died in the Senate Insurance Committee.

**K. Extended Free Look Period**  
**A.10369 (Carrozza) / S.7581 (Seward)**

This bill would create a new 90 day free-look period for health insurance plans sold to people who are 65 or older. Health insurance companies would be required to state in the policies that if claims or benefits occur during the free-look period, any premium amount refunded to the consumers will be reduced by the amount of benefit that the policy-holders have received. Health insurance plans for seniors are considered alternatives to Medicare supplement insurance or long-term care insurance policies, but because comparing different plans with varying benefits is

difficult and time consuming, extended look-back periods would allow seniors to choose the most appropriate coverage for their needs.

This bill passed the Assembly, but died in the Senate Insurance Committee.

**L. Health Insurance for Students**  
**Veto 171 of 2008**  
**A.11485 (Morelle) / S.8357 (Seward)**

This bill would create short-term health insurance policies up to twenty-four months, for unmarried New York residents between 19 and 26 and who are either college graduates who have recently lost dependent eligibility under their parent's policy or who are not eligible for coverage under an employer's plan. The Superintendent of Insurance would be required to report to the Governor, the Speaker of the Assembly, and the Temporary President of the Senate on the effectiveness of these policies. This bill would address the fastest growing segment of uninsured Americans- nineteen to twenty-six year olds- who typically cannot afford to purchase health care insurance plans on their own.

**M. Expand Healthy New York for Small Businesses**  
**Veto 137 of 2008**  
**A.395A (Morelle) / S.6385A (Alesi)**

This bill would enable more small businesses to qualify for the Healthy New York insurance program by removing the provision that prohibits a business from qualifying if it has offered another form of health insurance to its employees within the previous 12 months. Although the original purpose of the Healthy New York program is to reduce the number of working uninsured individuals in New York State, those employers that have been "doing the right thing" by offering their employees health insurance, and who would otherwise qualify for the program, are not able to benefit from the Healthy New York state subsidy.

## II. PROPERTY / CASUALTY INSURANCE

### A. **Property and Casualty Insurance Reform** **Chapter 136 of the Laws of 2008** **A.11693 (Morelle) / S.8624 (Seward)**

This chapter extends provisions relating to the expiration of commercial motor vehicle insurance rates, non-renewal requirements for automobile insurance, prior approval of certain insurance rates, and other provisions relating to auto rates until June 30, 2011. It also establishes a flex-rating system for auto insurers allowing them to increase or decrease their premium rates for non-business automobile policies by 5% without prior approval by the Superintendent, and authorizes no more than two “flex-rated” rate increases per twelve month period, the total of which shall not exceed 5%. By limiting insurance companies to 5% rate increases without prior authorization, insurers could adjust rates quicker to respond to market trends and remain competitive.

This chapter also makes permanent the New York Property Insurance Underwriting Association (NYPIUA), which is a joint underwriting association created in 1968 to offer homeowners’ insurance coverage for people denied coverage in the private market. Until this year, NYPIUA was extended on a year to year basis causing risk and concern of market disruption. NYPIUA is the insurer of last resort for consumers living in areas of the state considered to be high risk.

This chapter also authorizes NYPIUA to develop two new types of insurance coverage for the high risk areas in New York: a “wraparound” policy and a “broad form coverage.” The “wraparound” essentially adds or wraps extra protection around the basic NYPIUA insurance plan. These wraparound policies will be offered by a private insurance carrier, but both policies will integrate together. The coverage is for windstorm damage, and is only available in the coastal areas of the State. “Broad form coverage” insures against direct loss to property by volcanic eruption, burglary damage, weight of ice, snow or sleet, glass breakage, accidental discharge or overflow of water or stream, falling objects, freezing, artificially generated electrical current, collapse, tearing apart, cracking, burning, or bulging. This coverage will benefit both those in coastal areas as well as other his risk areas of the State.

In addition this chapter also codifies into law the Coastal Market Assistance Program (C-MAP) established by the State Insurance Department (SID) and administered by NYPIUA. C-MAP is a mechanism that brings together insurers and insurance agents and brokers together to discuss and facilitate access to homeowners’ insurance in the voluntary market for people living in the coastal areas.

Finally this chapter requires the Special Advisory Panel on Homeowners’ Insurance/Catastrophe Coverage to conduct an annual study of the potential effects created by any major weather catastrophe and report on or before November 30 of each year. The panel will conduct an evaluation of: (1) existing state and local building codes and the feasibility for implementing new practices to mitigate damage from a weather catastrophe; (2) insurer capacity, effectiveness, and preparedness as related to recovery, rebuilding, and renewal in the event of a catastrophic weather occurrence; and (3) public awareness of storm risks and programs to educate the public of storm risks and mitigation techniques.

**B. Annual Notice Required regarding Flood Insurance**  
**Chapter 21 of the Laws of 2008**  
**A.6344B (Gunther) / S.4097-A (Libous)**

This chapter protects consumers by requiring property insurers to clearly notify homeowners that any losses caused by flood and mudslides are not covered by their standard policies, but that insurance providing coverage for these losses is available to be purchased separately. It requires insurers to give this notice both upon issuance and renewal of their policies. This notice provides homeowners with valuable information about their coverage and provides a better opportunity for them to purchase appropriate insurance to cover potential losses.

**C. Identity Theft, Travel, Educational, and Event Insurance**  
**Chapter 318 of the Laws of 2008**  
**A.10403A (Morelle) / S.7561-A (Seward)**

This chapter expands the definition of “burglary and theft insurance” to include “stolen identity events,” which include the theft, accidental release, or publication or misappropriation of information related to an individual’s personal identifying information. Insurance coverage may also be offered for educational expenses and tuition; event tickets; credit/debit/checking card issuers such as banks to provide group coverage for their customers for specified purchases; identity theft group policies; and group property travel insurance policies. This legislation is intended to address the increase in identity theft events by helping consumers mitigate the severe financial impact of this crime.

**D. Medical Malpractice Insurers Protected From Insolvency**  
**Chapter 385 of the Laws of 2008**  
**A.11566 (Morelle) / S.8516 (Rules)**

This chapter requires the Superintendent to exempt medical malpractice insurance companies from certain risk-based capital provisions related to determining a company’s solvency. Current insurance law imposes an obligation on New York insurers to meet certain levels of risk-based capital, and carriers that fail to maintain specified levels of capital are subject to regulatory action. This legislation fixes a conflict in the current law and clarifies which law the Insurance Department must abide by.

**E. Excess Medical Malpractice Insurance Coverage**  
**Chapter 132 of the Laws of 2008**  
**A.11445 (Morelle) / S.8466 (Seward)**

This chapter extends the provisions of Chapter 673 of 2005, which exclude the Medical Malpractice Insurance Plan (MMIP) from being required to offer secondary excess medical malpractice insurance policies, from July 1, 2008 until July 1, 2013. MMIP was created in 2000 by the Legislature to offer medical malpractice insurance for health care providers who were unable to purchase such insurance in the voluntary market. At that time, MMIP was replacing a previous program that had offered secondary excess layer coverage (primary excess coverage is

the first layer of additional coverage above the regular insurance coverage; secondary excess coverage is essentially a third layer of coverage). In the past seven years, no authorized medical malpractice insurer has offered a second excess layer of coverage to physicians, dentists or podiatrists. This bill provides a five year extension of the provisions in the law which allows MMIP to avoid offering this additional and unnecessary insurance coverage.

**F. Discrimination Based on Occupation of the Insured**  
**A.144 (Lafayette) / S.262 (Alesi)**

This bill would prohibit insurance companies from denying personal umbrella liability insurance coverage solely based on an applicant's occupation. Currently, certain individuals are not able to apply for or even renew an existing personal umbrella liability insurance policy because of their occupations. Examples of individuals that might be excluded include public officers, professional entertainers and athletes, radio and television broadcasters, newspaper publishers, editors and reporters, and sheriffs and police officers. Insurance companies would be required to decide whether to insure an applicant on a case by case basis after weighing various risk factors and not solely on a large scale basis related to their occupation.

This bill passed the Assembly, but died in the Senate Rules Committee.

**G. Premium Reductions for Completion of a Boating Safety Course**  
**A.2160 (Galef) / S.2381 (Leibell)**

This bill would provide an actuarially appropriate reduction in premium charges for any insured party who has successfully completed a boating safety course which has been approved by the Commissioner of Parks, Recreation and Historic Preservation. It would also define "boat" to mean yacht or any sailing or motor-driven vessel. This bill would benefit boat owners by providing an economic incentive for them to learn how to operate their watercraft vessels safely, and would benefit others by creating safer boating and swimming conditions.

This bill passed the Assembly, but died in the Senate Insurance Committee.

**H. Retrofitted Daytime Running Lamps**  
**A.2161 (Galef)**

This bill would require insurers to provide an actuarially appropriate reduction in premiums for automobiles retrofitted with daytime running lamps for bodily injury liability, property damage liability, personal injury liability, medical payments and collision coverage. The lamps must be designed to reduce accidents by increasing vehicle visibility and be approved by the Superintendent. The Superintendent would be required, after consultation with the Commissioner of the Department of Motor Vehicles, to establish standards for the installation of these lamps. Currently, car owners obtain discounts if their vehicles have factory installed daytime running lamps, and this bill allows those who retrofit their cars to also be eligible.

This bill passed the Assembly, but was not introduced in the Senate.

**I. Anti-Redlining  
A.2859 (Gantt)**

This bill would prevent home and automobile insurance carriers from denying coverage based only on the geographical location, age, or market value of the property. This discrimination forces people to purchase insurance from other companies at much higher rates for lower levels of coverage, even though the risk in question is substantially the same. However, insurance companies are still permitted to deny coverage or adjust rates based on actuarially sound statistical data reasonably related to actual or anticipated loss experiences. The Superintendent of Insurance would be authorized to take actions necessary to ensure compliance.

This bill passed the Assembly, but was not introduced in the Senate.

**J. Retrofitted Daytime Running Lamps  
(A.5512, Magnarelli) / (S.1272, DeFrancisco)**

This bill would give insurers the option to provide an actuarially appropriate reduction in premiums for automobiles retrofitted with daytime running lamps for bodily injury liability, property damage liability, personal injury liability, medical payments and collision coverage. The lamps must be designed to reduce accidents by increasing vehicle visibility and be approved by the Superintendent. The Superintendent would be required, after consultation with the Commissioner of the Department of Motor Vehicles, to establish standards for the installation of these lamps. Currently, car owners may obtain discounts if their vehicles have factory installed daytime running lamps, and this bill allows those who retrofit their cars to also be eligible.

This bill passed the Assembly, but died in the Senate Rules Committee.

**K. Causes of Action for DWI-Related Claims  
Veto 170 of 2008  
A.10000 (Dinowitz) / S.8294-A (Bonacic)**

This bill would require auto insurers to reimburse health care providers for services otherwise covered by no-fault auto insurance even if those injuries were the result of an intoxicated driver. In the event that an insurer provides coverage under these circumstances, this would allow the insurer to recover payments made to the health care provider from the insured driver if he or she was found guilty of a driving while intoxicated (DWI) or driving under the influence (DUI) offense. Current law requires health care providers to provide emergency medical treatment to anyone regardless of the factors causing the injury. However, under the No-Fault law insurers are allowed to deny reimbursement when the injured driver is intoxicated. This practice results in health care institutions being denied compensation for services that they are legally required to perform. This bill would allow the hospitals to seek reimbursement and allows insurance companies to then seek recovery from the injured driver.

**L. Self-Storage Insurance**  
**A.10097 (Morelle) / S.6894 (Seward)**

This bill would add self-service storage companies to the list of limited licenses that can be issued by the Superintendent of Insurance. Self-service storage companies require renters of storage space to have insurance coverage to protect their stored personal property. While some consumers have homeowner's or renter's policies that provide coverage for their stored property, many others lack the required insurance coverage. The insurance permitted under this bill would only cover personal effects stored at the storage facility. Self-storage companies would be required to: (1) summarize the insurance coverage offered; (2) disclose that the policy may provide a duplication of coverage already provided by the homeowner's insurance policy or other source of coverage; (3) state that the purchase of insurance is not required to rent storage space; and (4) state that the customer may cancel the insurance at any time and any unearned premium will be refunded in accordance with applicable law. Storage companies would be required to conduct training programs for their employees and sales representatives offering insurance. By allowing this form of insurance, consumers will have another option to protect their belongings stored at a self-storage site.

This bill passed the Assembly, but died in the Senate Rules Committee.

### **III. LIFE INSURANCE**

**A. Study of Licensing Exam**  
**Chapter 77 of the Laws of 2008**  
**A.7249A (Espaillat) / S.4074-A (Seward)**

This chapter requires the written examinations for life insurance agent licenses to include a section which allows examinees the option to disclose the following information: their full name; residential, business, and mailing addresses; gender; native language; highest educational level obtained; race and ethnicity. This information will only be used in a study to determine the equity and fairness of the exam itself. The Superintendent must perform an annual study of the data collected containing: (1) the total number of examinees; (2) the passing rate of all examinees; and, (3) the mean examination scores. This data will be correlated to the applicant's native language, level of education, gender, race, and ethnicity. This statute will help the State Insurance Department determine if there are any correlations between an applicant's educational and ethnic background and their likelihood of success on the examination. Currently, many populations are under-represented and under-served by insurance agents, and this legislation will address some of the issues that prevent applicants from passing the test and then going on to serve those populations.

**B. Group "Key Person" Life Insurance**  
**Chapter 306 of the Laws of 2008**  
**A.7896 (Destito) / S.5138-A (Seward)**

This chapter allows employers to purchase group key person life insurance contracts for their employees and establishes disclosure requirements for this group coverage. Key person life insurance ensures compensation for the business in the event that a loss is suffered resulting from the death of a valuable employee. This legislation allows New York to join the 49 other states in allowing this type of coverage to be offered on a group basis and provides a cost savings for purchasers who were only able to purchase individual life policies.

**C. Index Annuity Accounts**  
**Chapter 170 of the Laws of 2008**  
**A.8343A (Sweeney) / S.2071-A (Seward)**

This chapter amends the laws regarding minimum values available under an equity index account; provides the formula to calculate minimum accumulation values for equity indexed accounts and the equity index value; and, establishes disclosure requirements required at the signing of the contract and annually thereafter. Indexed annuities are fixed annuities that utilize a crediting method that is linked to the performance of an external market index, and also offer a minimum guaranteed interest rate. This bill will open up new investment products to many people in this State, with safeguards and notification requirements built into the law to protect them.

**D. Fraternal Benefit Society Modernization Act of 2008**  
**Chapter 22 of the Laws of 2008**  
**A.8813A (Weprin) / S.5431-B (Seward)**

This chapter requires fraternal benefit societies to maintain surplus amounts in their insurance funds, as dictated by the Superintendent, and submit annual business reports and plans showing their activities and expenditures from the previous year. The Superintendent may require them to take action to keep minimum reserves, even if it results in a prohibition against new contracts or result in the merger or consolidation with another society. Fraternal Benefit societies must: (1) submit notice of investment plans and proof that the plan has been approved by its Board of Directors; (2) show compliance with risk-based capital requirements for life, health, and accident insurance; (3) have been in continuous operations for at least five years; and (4) have total admitted assets of at least two billion dollars for a period of five continuous years. This legislation benefits societies because they may now make investments similar to life insurance companies. At the same time, it grants the Superintendent certain powers to ensure that fraternal benefit societies remain solvent and have the ability to pay all their legitimate claims.

**E. Foreign Investment Requirements**  
**Chapter 60 of the Laws of 2008**  
**A.8818A (Gianaris) / S.805-B (Seward)**

This chapter increases the aggregate amount of foreign investments that can be made by an insurer from nine percent to sixteen percent of the insurer's assets. It also expands the requirements for investment grade ratings which are set by an independent and nationally recognized United States ratings agency from the top three categories to the top four categories. It also requires insurers that have approved derivative use plans to use counterparties permitted under their plans to affect the required foreign currency hedges in addition to the other specified counterparties. By increasing the amount of foreign investments, insurance companies benefit from the safety-enhancing diversification of their portfolios and the expanded investment alternatives which allow them to maintain their competitive position.

**F. Life Insurance Surplus**  
**Chapter 72 of the Laws of 2008**  
**A.9883 (Morelle) / S.6655 (Seward)**

This chapter makes permanent the authorization of the use of the current formula to determine the amount of surplus that must be accumulated by certain domestic life insurance companies. This allows for reduced surplus limits that are more appropriate to the amount of risk that life insurers are designed to protect against. This legislation allows insurance companies to participate in investment opportunities which they might otherwise not have been able to and compete with other life insurers, while at the same time remaining economically stable and protecting policyholders.

**G. Compensation of Directors and Employees**  
**Chapter 263 of the Laws of 2008**  
**A.11194 (Morelle) / S.7764 (Seward)**

This chapter requires disclosure in all life insurance companies' annual statements of the compensation and names of the chief executive officer, the four highest other executive officers- regardless of amount of compensation- and the next five highly compensated employees whose individual compensation exceeds \$100,000. It also requires that all directors not included in the above group disclose their compensation, and all employees whose individual compensation is in excess of \$750,000 must have their name and compensation reported. It also defines "compensation" as a remuneration paid to a director, officer, or employee including wages, salaries, bonuses, commissions, stock grants, and gains from the exercise of stock options, and requires compensation to include payment for services on the board and committees or any other activities or services. This legislation brings New York into compliance with the requirements of the National Association of Insurance Commissioners and strikes an appropriate balance between the appropriate disclosure of the salaries of highly compensated employees of life insurance companies without imposing unnecessarily arduous reporting requirements.

**H. Variable Premium Life Policies**  
**Chapter 264 of the Laws of 2008**  
**A.11195 (Morelle) / S.7765 (Seward)**

This Chapter creates a 61-day grace period for variable premium life insurance policies. When a policy's net cash surrender value is insufficient to keep the policy in force an insurance company may terminate the policy. This legislation requires insurers to notify policyholders of the option to make additional premium payments. During the 61-day grace period the policy remains in force, but if a claim is made during that time the settlement amount will be reduced by the amount of premiums still owed. When the policyholder pays their premiums within the grace period, the policy is extended for three months. This legislation corrects an omission in the current law, which does not cover variable and universal life insurance products, by extending to those policyholders the benefits of the grace period and notice requirements.

## **IV. LONG-TERM CARE INSURANCE**

### **A. Disclosure of Coverage** **Chapter 572 of the Laws of 2008** **A.6423B (Carrozza) / S.3143-B (Golden)**

This chapter requires long-term care insurers to disclose certain information to consumers prior to executing policies in connection with providing home care benefits and nursing home benefits. This includes: (1) the maximum daily and lifetime benefit levels; (2) the percentage of coverage provided for home care services and nursing home services if any, and an explanation on how the percentage is calculated; (3) a description of any inflation protection feature included or available for purchase and the additional premium required to purchase the option; (4) the daily private pay rate for that calendar year, if available, of at least four residential facilities located in the same county as the potential insured's primary residence; (5) a graphic demonstration of the maximum daily insurance home benefit level provided by the policy and, (6) the impact that the selection of any inflation protection options will have on the maximum daily nursing home benefit level. Many people who purchase long term care insurance are unaware of how the coverage compares to the actual costs of skilled nursing, rehabilitation, or custodial care. This legislation ensures that consumers are adequately informed of how their policy provides for the actual costs of care that they are likely to incur.

### **B. Third-Party Notification** **A.1218A (Latimer) / S.2905 (DeFrancisco)**

This bill protects senior citizens by requiring insurers and HMOs to permit senior citizens to designate a third-party to whom the insurer can transmit notices of non-payment of premiums due or notices of cancellation for non-payment of premiums for health and long-term care policies. Because the cancellation of a policy can have devastating effects to seniors, this bill protects them by establishing an optional procedure whereby multiple parties will be notified should an insurer decide to cancel a policy based on non-payment.

This bill passed the Assembly, but died in the Senate Insurance Committee.

## V. MISCELLANEOUS

**A. Accounting of Assets**  
**Chapter 311 of the Laws of 2008**  
**A.869B (Destito) / S.6749-B (Seward)**

This chapter provides that interest due or accrued upon a collateral loan by an insurer in an amount not exceeding one year's interest shall not be an admitted asset, and that interest due or accrued on any evidence of indebtedness qualifying as an admitted asset which is not in default and is not valued on a basis including accrued interest shall not be an admitted asset. For example, electronic data processing systems are now considered admitted assets, but aircraft are not. Positive goodwill may be deemed admitted by the Superintendent and will be amortized in full over a period in which the insurer benefits economically, not to exceed ten years. However, when negative goodwill exists it will be recorded as a contra-asset. Insurers now have the option of using the NAIC market value method for valuing shares of subsidiary or affiliated insurance entities that are traded on certain national exchanges. Also, the Superintendent is authorized to permit a domestic stock property casualty insurer to restate its earned surplus under a plan of quasi-reorganization. By using a uniform national standard for the accounting of assets, insurance regulators, policyholders, rating agencies and other financial institutions can make meaningful comparisons of financial statements of companies from state-to-state.

**B. Liquidation Bureau – Independent Audit**  
**Chapter 540 of the Laws of 2008**  
**A.9521A (Morelle) / S.6535-A (Seward)**

This chapter requires the Liquidation Bureau to file an annual report with both the Superintendent of Insurance and the Legislature 210 days after the end of the calendar or fiscal year. The report will discuss the financial conditions of corporations placed into rehabilitation and must be accompanied by an opinion from an independent certified public accountant. The New York State Liquidation Bureau is a quasi-governmental entity charged with rehabilitating or liquidating insolvent insurance companies, and this legislation brings transparency to the Bureau's operations.

**C. Derivative Transactions**  
**Chapter 71 of the Laws of 2008/**  
**A.9882 (Morelle) / S.6656 (Seward)**

This chapter makes permanent the current law which authorizes certain insurers to enter into derivative transactions. Derivative instruments are used by insurance companies, banks and other financial institutions to hedge against the risk of loss on underlying securities. All derivative use plans must be approved by the insurance company's board of directors, submitted for approval by the State Insurance Department, and annually audited by independent CPA firms. By using derivative instruments, insurance companies reduce their exposures to risk while enhancing investment return, helping them remain solvent, better serve their customers and able to pay claims.

**D. Frauds Bureau Annual Report**  
**Chapter 191 of the Laws of 2008**  
**A.10371 (Peoples) / S.7368 (Seward)**

This chapter extends the date that the Superintendent of Insurance has to present the Fraud Bureau Annual Report from January 15 to March 15; and extends the date that the insurers have to file the annual fraud prevention report with the Superintendent of Insurance from January 15 to March 15. Insurers are required to submit to the Insurance Department a report describing their experience, performance, and cost effectiveness of their fraud prevention plans which includes corporate accounting data. By extending the deadline more time is given for compiling and reviewing the data and producing a more accurate report.

**E. Excess Lines Advisory Organization**  
**Chapter 130 of the Laws of 2008**  
**A.11428A (Morelle) / S.8385-A (Seward)**

This chapter extends the statutory authorization of the Excess Line Association of New York (ELANY) from July 1, 2009 to July 1, 2014. Established by the Legislature in 1988, ELANY acts as a facilitator between insurance brokers and regulators and serves many functions such as conducting financial reviews of the non-admitted markets, providing continuing education for brokers, maintaining information databases, reviewing insurance documents for compliance, and protecting members and consumers against insurance fraud. They also collect and process insurance data and monitor the solvency of insurers in the excess line marketplace. In fulfilling its statutory mandate to notify the Superintendent if ELANY determines that an unauthorized insurer does not meet the standards of eligibility imposed by New York, they have compiled extensive data on every foreign and alien insurer writing business in New York, while monitoring their activities. This legislation extends their existence for another five years because of the many important contributions that ELANY offers the State.

## **VI. PUBLIC FORUMS**

### **A. Hearing on Bond Insurance**

The Insurance Committee held a public hearing on March 14, 2008, to examine the current state of the bond insurance industry. It heard testimony from many different interested parties covering a range of topics including past decisions and policies which have led to the current market crisis.

### **B. Roundtable on Coastal Market Issues**

The Insurance Committee held a public roundtable discussion on May 7, 2008, to explore issues related to the availability of property insurance in coastal areas. The roundtable panel heard testimony from the State Insurance Department, representatives and members of various insurance and reinsurance companies who underwrite along the coast, insurance agents' organizations and councils, and consumer protection and public interest groups. The focus was on how homeowners insurance companies have been increasing premiums and non-renewing homeowners policies for homes located in New York's coastal areas due to their exposure and perceived risk of weather storms. Chapter 136 of 2008 contains several provisions that address the concerns raised at the roundtable (see page 9). The Insurance committee will continue to monitor the market activity in these regions.

### **C. Public Hearing on the Interstate Insurance Compact**

The Insurance Committee held a public hearing on May 8, 2008, to examine whether New York should join the Interstate Insurance Compact ("the Compact"). The Committee heard testimony from the State Insurance Department, representatives from the Compact, and other interested parties.

### **D. Credit Default Swaps Hearing**

The Insurance Committee held a public hearing on December 5, 2008, to discuss how the financial market would benefit and change as a result of the proposed regulation of Credit Default Swaps (CDS) as insurance by the State Insurance Department. Testimony was heard from the Department, as well as financial institutions and insurance companies. The information gathered from this hearing was helpful to the Insurance Committee, and we will continue to look at the many issues surrounding this topic during the next legislative session.

## VII. OUTLOOK FOR 2009

In 2009, the Committee will continue its obligation to propose and review legislation that will strengthen the insurance market in this State by increasing consumer protections and allowing more products to be made available. Our focus will include, but not be limited to:

- Health insurance availability and affordability
- Regulation of life settlement transactions
- Financial guarantee insurer's economic stability

**Life Settlements:** The demand for these settlements has led to a new financial market where investors purchase settled policies and then hope to profit by the death of the insured, leading to concerns of safety for the people who have settled their life insurance policies. The Insurance Committee will continue to work towards implementing a system whereby insured parties receive an appropriate settlement value based on a competitive market, personal identification information of the insured parties is protected from general public disclosure, and stranger-originated life insurance settlements are prevented from occurring.

**Credit Default Swaps:** Our Committee held a public hearing on December 5, and the focus was on the regulation of Credit Default Swaps (CDS) as a form of insurance by the State Insurance Department (SID). Whether by implementing part of the SID's proposed new regulations or by drafting our own legislation, the Committee is already taking steps before the new session starts so that we can make prudent and educated decisions on how to strengthen and stabilize the CDS marketplace and regulate this form of financial insurance.

**Increased Availability and Reform for Health Insurance:** Our Committee will continue to work hard to make sure that health care insurance is both affordable and properly administered. Some things we will look at include offering health insurance to groups who traditionally cannot afford health insurance, fixing accounting loop-holes, making in-network and out-of-network laws more consistent, the current file and use system for rate changes, and the utilization of electronic filing.

**APPENDIX A  
2008 SUMMARY SHEET**

**Summary of Action On All Bills  
Referred to the Insurance Committee**

<b>FINAL ACTION</b>	<b>ASSEMBLY BILLS</b>	<b>SENATE BILLS</b>	<b>TOTAL BILLS</b>
<b>Bills Reported With or Without Amendment</b>			
To Floor; Not Returning To Committee	20		20
To Floor; Recommitted and Died	0		0
To Ways and Means	3		3
To Codes	11		11
To Rules	25		25
To Judiciary	0		0
<b>Total</b>	59		59
<b>Bills Having Committee Reference Changed</b>			
To Health	1		1
To Economic Development	1		1
To Government Employees	1		1
<b>Total</b>	3		3
<b>Senate Bills Substituted or Recalled</b>			
Substituted		16	16
Recalled		2	2
<b>Total</b>		18	18
<b>Bills Defeated In Committee</b>	0	0	0
<b>Bills Never Reported, Held in Committee</b>	32	0	32
<b>Bills Never Reported, Died in Committee</b>	247	13	260
<b>Bills Having Enacting Clause Stricken</b>	0	0	0
<b>Motions to Discharge Lost</b>	0	0	0
<b>TOTAL Number of Bills In Committee</b>	341	29	370
<b>TOTAL Number of Committee Meetings Held</b>	11		

**APPENDIX B  
CHAPTERS OF 2008**

<b>Chapter #</b>	<b>Bill# and Sponsor</b>	<b>Description</b>
<b>21</b>	<b>A.6344B (Gunther)</b>	Requires policyholders to be provided with an annual notice that their policy does not cover damage caused by flooding or mudslides.
<b>22</b>	<b>A.8813A (Weprin)</b>	Enacts the fraternal benefit society modernization act of 2008.
<b>60</b>	<b>A.8818A (Gianaris)</b>	Relates to foreign investments by life insurance companies.
<b>71</b>	<b>A.9882 (Morelle)</b>	Relates to authorizing insurers to enter into derivative transactions.
<b>72</b>	<b>A.9883 (Morelle)</b>	Makes permanent limitations on accumulation of surplus by certain domestic life insurance companies.
<b>77</b>	<b>A.7249A (Espaillat)</b>	Relates to reporting on insurance agent licensing exams.
<b>130</b>	<b>A.11428A (Morelle)</b>	Relates to the effectiveness of provisions of law establishing an excess line advisory organization.
<b>132</b>	<b>A.11445 (Morelle)</b>	Extends the provisions of chapter 673 of the laws of 2005, relating to excess medical malpractice insurance, until 2013.
<b>136</b>	<b>A.11693 (Morelle)</b>	Extends certain provisions of law relating to the New York property insurance underwriting association and of certain powers of such association; repealers.
<b>170</b>	<b>A.8343A (Sweeney)</b>	Relates to annuity contracts with an equity index account.
<b>178</b>	<b>A.9181A (Morelle)</b>	Relates to life insurance contracts by or for the benefits of minors; on the lives of minors.
<b>191</b>	<b>A.10371 (Peoples)</b>	Relates to changing the reporting date for the frauds bureau annual report and the special investigations unit's annual report.
<b>263</b>	<b>A.11194 (Morelle)</b>	Relates to the information required in the annual statements of life insurance companies.
<b>264</b>	<b>A.11195 (Morelle)</b>	Relates to the grace period, premium due and notice requirements for life insurance policies.
<b>301</b>	<b>A.7245A (Canestrari)</b>	Relates to the definition of independent adjusters.
<b>306</b>	<b>A.7896A (Destito)</b>	Relates to certain requirements for group life insurance contracts.
<b>311</b>	<b>A.869B (Destito)</b>	Relates to the accounting of certain assets.
<b>318</b>	<b>A.10403A (Morelle)</b>	Expands permissible types of property/casualty group insurance, permits new types of insurance to be written in N.Y. state and makes section 3442 permanent.

<b>331</b>	<b>A.7699A (Destito)</b>	Relates to a volunteer firefighters and volunteer ambulance worker health program.
<b>385</b>	<b>A.11566 (Morelle)</b>	Exempts certain medical malpractice liability insurance companies from provisions of law applicable to risk-based capital for property/casualty insurance companies.
<b>504</b>	<b>A.7120B (Gianaris)</b>	Expands and defines the term “employees” for the purposes of blanket and/or health policies and contracts of insurance.
<b>517</b>	<b>A.10656 (Morelle)</b>	Relates to health insurance premium rates for individual proprietors.
<b>540</b>	<b>A.9521A (Morelle)</b>	Provides that insurance rehabilitators and liquidators have an independent audit done annually.
<b>572</b>	<b>A.6423B (Carrozza)</b>	Provides for disclosure of certain terms of coverage provided in long term care insurance contracts.
<b>592</b>	<b>A.10884A (Morelle)</b>	Authorizes health insurers, medical service corporations and health maintenance organizations to establish wellness programs.

**APPENDIX C  
BILLS THAT PASSED THE ASSEMBLY IN 2008**

<b>Bill# and Sponsor</b>	<b>Description</b>
<b>A.143 (Lafayette)</b>	Provides that comprehensive medical insurance policies shall include coverage for regular, non-emergency out-of-network dialysis, with proper medical authorization, notice and no increase in cost to insurer, applies to individual and group policies.
<b>A.144 (Lafayette)</b>	Prohibits refusal to issue or renew certain insurance policies solely on the ground of the nature of the occupation of the applicant or insured; applies to personal lines insurance including personal umbrella policies as well as automobile liability policies.
<b>A.395 (Morelle)</b>	Alters the requirements applicable to health insurance secured by qualifying small businesses related to the Healthy New York program.
<b>A.869B (Destito)</b>	Relates to the accounting of certain assets in determining the financial condition of a domestic or foreign insurer and relating to the cost of any electronic data processing apparatus and related equipment and positive goodwill and trade names; provides conformity with practices of the Nationals Association of Insurance Commissioners.
<b>A.1218A (Latimer)</b>	Requires third-party notification prior to termination of long-term care and health insurance for persons 65 and older; imposes burden of notifying such insurer by certified mail of such third party designation.
<b>A.2160 (Galef)</b>	Relates to boating liability insurance rates; allows for a schedule of rates or rating plans for boat liability insurance submitted to the superintendent to provide for an actuarially appropriate reduction in premium charges for any insured who completed a boat safety course approved by the commissioner of parks, recreation and historic preservation.
<b>A.2161 (Galef)</b>	Authorizes insurance premium reductions for non-commercial private passenger vehicles retrofitted with daytime running lamps; requires commissioner to promulgate by rule, qualifications and standards for the installation of such lamps.
<b>A.2859 (Gantt)</b>	Prohibits discrimination in the issuance of homeowner's insurance policies based upon the subject property's location or age of structures contained thereon; makes various provisions clarifying prohibition on refusal to issue or renew certain policies including homeowner's fire and extended coverage based solely on geographical location.
<b>A.3094 (Bradley)</b>	Requires insurance providers to remove the names of any non-participating physicians from their website.
<b>A.5477 (Gottfried)</b>	Provides that subscribers of certain policies of health insurance shall be entitled to reimbursement for any service which is within the lawful scope of practice of a certified nurse practitioner when said service is performed by a certified nurse practitioner.
<b>A.5512 (Magnarelli)</b>	Authorizes insurance premium reductions for non-commercial private passenger vehicles equipped with retrofitted daytime running lamps; requires commissioner to promulgate by rule, qualifications and standards

	for the installation of such lamps.
<b>A.6344B (Gunther)</b>	Requires policy holders to be provided with an annual notice that their policy does not cover damage caused by flooding or mudslides and that such insurance is available under a separate policy issued in accordance with the national flood insurance program.
<b>A.6423B (Carrozza)</b>	Provides for disclosure of certain terms of coverage provided in a long term care insurance contract such as maximum daily benefits provided by the policy, protections provided by the policy against inflation and the cost thereof, and the cost of daily private pay rate at covered health care facilities.
<b>A.7120B (Gianaris)</b>	Expands and defines the term “employees” for the purposes of blanket and/or health policies and contracts of insurance.
<b>A.7245A (Canestrari)</b>	Relates to further restricting the definition of independent adjusters to exclude certain officers and employees within a holding company system.
<b>A.7249A (Espailat)</b>	Relates to reporting on insurance agent licensing exams; requests applicants to provide certain personal information for statistical purposes.
<b>A.7699A (Destito)</b>	Relates to a volunteer firefighter and volunteer ambulance worker health program.
<b>A.7780 (Carrozza)</b>	Requires insurers to provide certificate holders with at least thirty days prior written notice of termination of group health insurance coverage.
<b>A.7896A (Destito)</b>	Relates to certain requirements for group life insurance contracts; requires certain notice requirements for policies which insure the life of employees.
<b>A.8343A (Sweeney)</b>	Relates to annuity contracts with an equity index account; provides that for contracts that provide a cash surrender benefit prior to commencement of annuity payments, the death benefit attributable to any account, other than an equity index account, shall not be less than the actual accumulation amount, and the death benefit attributable to an equity index account shall not be less than the value of the equity index account; makes related provisions.
<b>A.8813A (Weprin)</b>	Enacts the fraternal benefit society modernization act; requires reporting, authorizes reinsurance, and regulates investments of large fraternal benefit societies.
<b>A.8818A (Gianaris)</b>	Increases the permitted foreign investments by life insurance companies from nine to sixteen percent of the insurers assets.
<b>A9181A (Morelle)</b>	Relates to life insurance contracts by or for the benefits of minors; on the lives of minors.
<b>A.9521A (Morelle)</b>	Provides that insurance rehabilitators and liquidators have an independent audit done annually.
<b>A.9982 (Morelle)</b>	Relates to authorizing domestic life, property/casualty, reciprocal, mortgage guaranty, co-operative property/casualty and financial guaranty insurers to enter into derivative transactions.
<b>A.9883 (Morelle)</b>	Amends section 4219 of the insurance law to make permanent limitations on accumulation of surplus by certain domestic life insurance companies.
<b>A.10000 (Dinowitz)</b>	Established an insurer may not exclude basic economic loss from certain coverages; establishes where a covered person is guilty of operating a

	motor vehicle under the influence of alcohol or drugs that an insurer has as cause of action for the amount of first party benefits paid or payable on behalf of such covered persons against such covered persons.
<b>A.10001 (Morelle)</b>	Relates to homeowners' insurance/catastrophe coverage and the NY property insurance underwriting association; makes certain provisions permanent, including the New York Property Insurance Underwriting Association.
<b>A.10097 (Morelle)</b>	Authorizes issuance of limited licenses to self-storage companies for sale of insurance coverage on personal property stored in self-service storage spaces.
<b>A.10260 (Morelle)</b>	Relates to the processing of health claims and overpayments to certain health care providers.
<b>A.10369 (Carrozza)</b>	Extends the free look period for senior citizens purchasing individual health insurance policies or contracts.
<b>A.10371 (Peoples)</b>	Relates to changing the reporting date for the frauds bureau annual report and the special investigations unit's annual report.
<b>A.10403A (Morelle)</b>	Expands permissible types of property/casualty group insurance, permits new types of insurance to be written in NYS and makes section 3442 permanent.
<b>A.10656 (Morelle)</b>	Relates to health insurance premium rates for individual proprietors.
<b>A.10884A (Morelle)</b>	Relates to the establishment of wellness programs in conjunction with the issuance of certain insurance policies.
<b>A.11194 (Morelle)</b>	Relates to the information required in the annual statements of life insurance companies.
<b>A.11195 (Morelle)</b>	Relates to the grace period, premium due and notice requirements for life insurance policies.
<b>A.11428A (Morelle)</b>	Relates to the effectiveness of provisions of law establishing an excess line advisory organization.
<b>A.11445 (Morelle)</b>	Extends provisions of chapter 673 of the laws of 2005, relating to excess medical malpractice insurance, until 2013.
<b>A.11485 (Morelle)</b>	Provides for short term health insurance policies, not to exceed two years, for persons who have recently lost coverage under a parent's policy due to graduation from college and are otherwise not eligible for employer sponsored coverage.
<b>A.11566 (Morelle)</b>	Exempts certain medical malpractice liability insurance companies from provisions of law applicable to risk-based capital for property/casualty insurance companies.
<b>A.11693 (Morelle)</b>	Extends certain provisions of law relating to the New York property insurance underwriting association and provisions of chapter 42 of the laws of 1996 relating to homeowner's insurance; extends certain stand-by powers of the New York property insurance underwriting association; makes permanent certain provisions relating to the setting of automobile and property/casualty insurance rates; provides for flexible rating for non-business automobile insurance policies authorizing up to 5% annual rate

	<p>adjustments without approval of the superintendent of insurance; relates to members of the New York property insurance underwriters association who write insurance policies that include coverage for windstorm in coastal areas; provides for the writing of insurance policies providing broad form coverage; directs the New York property insurance underwriting association to create the coastal market assistance program; directs the superintendent of insurance to implement a program to encourage insurers to write residential property insurance; relates to the special advisory panel on homeowners' insurance/catastrophe coverage.</p>
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**END OF REPORT**