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2021 LICONY AFFIRMATIVE LEGISLATIVE PROGRAM

A. Large Group Filing Exemption **S.5432 (Breslin) / A.7661 (Stirpe)**

This proposal would allow life insurers to market certain group life insurance and group annuity products to large and sophisticated group buyers without the requirement to obtain prior approval from the Department of Financial Services, provided that the policies, contracts and certificates contain provisions which are at least as favorable as the standard provisions required in the law.

Large commercial insurers were granted similar exemptions from rate and form filing requirements in 2011 ([Chapter 490 of Laws of 2011](#)) to increase the speed to market and permit greater customization of certain commercial insurance products. This legislation would similarly enable life insurers to respond to the time frames and flexibility demanded by the large group insurance marketplace, yet maintain the statutory standards for the protection of policyholders and insureds. Sophisticated group policyholders have a variety of non-traditional means to implement their benefit plans, including shifting the situs of their plan to more receptive jurisdictions with faster and less complicated regulatory frameworks. This legislation would allow insurers to obtain relief from these procedural policy form filing and premium rate filing/approval requirements, but still require the policy and contract forms to meet the substantive provisions in the Insurance Law governing the content, benefits and other coverage requirements.

B. Authorize Certain Non-Insurance Benefits as Part of a Group Life or Health Insurance Policy **S.3521 (Breslin) / A.3539 (Pretlow)**

This bill adds a new §3242 of the Insurance Law to authorize certain non-insurance benefits, such as financial counseling, estate planning, grief counseling, travel assistance for beneficiaries, to be included as part of a group life insurance policy or group or blanket accident & health insurance policy without running afoul of the provisions of the Insurance Law that prohibit rebating.

C. Enactment of Interstate Insurance Product Regulation Compact **S.3507 (Breslin) / A.1180 (Simotas)**

This bill would provide for a new Article 82 of the Insurance Law to establish that NYS would become a member of the Interstate Insurance Product Regulation Compact (IIPRC). To date, 45 jurisdictions have joined the compact. The IIPRC offers a single point of filing for life insurance policy forms, so that policies approved by the Commission may be sold in every state which has become a member.

D. Enactment of NAIC Redomestication Model Law **S.3504 (Breslin)**

This bill would amend §7120 of the Insurance Law to bring the law into conformance with the NAIC Redomestication Model Law. The NAIC Model provides for the orderly transition of the home office of an insurer both in and out of NYS and will facilitate corporate restructuring and mergers by domestic life insurers, so that they can more easily grow their business in the state.

E. Promulgation of NAIC Life Insurance & Annuities Replacements Model Regulation S.3502 (Breslin)

This bill amends §§2123 and 4226 of the Insurance Law to remove impediments in the existing law relating to the replacement of an existing life policy or contract with a new policy or contract and will facilitate the promulgation of the NAIC Life Insurance & Annuities Replacements Model Regulation

New Proposals for 2021

F. Expansion of the Permissible Criteria of Wellness Programs and Incentives

This bill amends §3239 of the Insurance Law to include preventive care or chronic disease management programs in the categories of allowable wellness programs. The proposal will also make corresponding changes to the categories of permissible rewards and incentives associated with the wellness programs, including premium refunds, discounts, credit, discounts on products/services intended to incent behavioral changes that improve health or reduce the risk of death, and full or partial reimbursement of the cost of a device and any associated subscription membership that can be used to track physical activity and biometric data.

G. Low Interest Rate Fixes to Nonforfeiture Laws for Life Insurance and Annuities

This bill amends the Insurance Law to address problems associated with the low interest rate environment and the life insurance and annuity nonforfeiture laws. The bill amends §4221 of the Insurance Law to add a nonforfeiture interest rate floor that references the interest rate used in the Cash Value Accumulation Test in §7702 of the Internal Revenue Code and eliminates the four percent interest rate requirement for paid-up life insurance nonforfeiture. It also amends §4223 of the Insurance Law to reduce from one to .15 percent the minimum nonforfeiture interest rate for annuities. This would be consistent with what the NAIC is expected to adopt later this year.

H. Modernization of Bookkeeping Requirements

This bill would modernize the record keeping requirements mandated by §325 of the Insurance Law. The bill authorizes domestic insurers to “make available by electronic means” various records, including its charter, by-laws, and books of account, that current law requires insurers to maintain in their principal office in the state. Currently, the Department requires domestic insurers, upon examination, to maintain printed documents at their principal office. This outdated requirement is no longer necessary to ensure proper accountability and transparency, and the proposed amendment seeks to maintain both while allowing insurers to be more efficient and make use of the current state of technology.

I. Regulatory Relief/Modernization of Reporting, Book Keeping, and Signature Requirements:

This bill addresses three requirements of the Insurance Law that are duplicative, burdensome, and outdated. Section one is the bill previously mentioned above in H. (Modernization of Bookkeeping Requirements). Section two of the bill would eliminate the enterprise risk report filing requirement. Current law mandates that insurers adopt a formal enterprise risk management (ERM) function and file an enterprise risk report annually. Current law also requires insurers to conduct an own risk and solvency assessment (ORSA) and submit an ORSA summary report to the Department annually. The ORSA summary report is more comprehensive than the ERM report, and therefore the ERM report is redundant and unnecessary. Lastly, this bill would amend the Insurance Law (Insurance Law §3201 governs the approval of life policy forms. Insurance Law S4226 requires

notice to policyholders of a replacement policy) to provide that any signature affixed to an approved policy form or authorized replacement form provided to the policyholder may be provided electronically.

J. LIBOR Legacy Contracts & Safe Harbor Legislation:

The Alternative Rates Recommendation Committee (ARRC) Proposal has proposed this legislation to address the issue of LIBOR referencing financial contracts not having appropriate fallback language. The ARRC Proposal contemplates a statutorily endorsed benchmark replacement, and would prohibit a party from refusing to perform its contractual obligations or declaring a breach of contract as a result of LIBOR discontinuance or the use of the endorsed benchmark replacement; establish that the endorsed benchmark replacement is a commercially reasonable substitute for, and a commercially substantial equivalent to, LIBOR; and provide a safe harbor from litigation when the endorsed benchmark replacement is used.

The proposed legislation would require the use of the endorsed benchmark replacement where a contract lacks a fallback or the fallback provisions prescribe the use of LIBOR. In addition, where a contract provides for a discretionary fallback, the safe harbor is intended to encourage the selection of the recommended benchmark replacement. Finally, the proposed legislation would not impact legacy contracts that fall back to a non-LIBOR replacement rate.