The President’s Report

Another legislative session has come to an end with the usual flurry of activity, but it was a very different session from years past due to the new Democratic majority in the State Senate. Governor Cuomo called it, “the most productive session in modern political history” as the Legislature passed over 900 bills, many of them Democratic bills previously held up in the Republican controlled Senate.

The wave of progressive legislation passed makes it clear the Legislature is catering to what they perceive as the left-leaning electorate in NY. However there were some members in the Senate and Assembly from Long Island, Westchester and upstate who expressed their discomfort with many of the progressive bills. Governor Cuomo, often viewed as a more moderate influence on the legislative Democrats, also veered to the left and championed many of the progressive initiatives. But on some issues, he was left on the sidelines and some pundits speculated that the Governor had lost some of his influence now that the two houses are controlled by the same party as the Senate and Assembly were able to reach agreement on the rent issue (and some others) without much involvement from the Governor.

Please see the end of session report on page 2 for a full rundown of bill activity relevant to LICONY members.

Unless the Republicans can win back the Senate in 2020, this signals a long term change in NYS legislative politics.

Business groups are going to have to come up with a new strategy to make sure their voices are heard and work with the legislators from Long Island and Westchester in particular, to moderate some of the more left leaning voices in the Legislature.

At the Department of Financial Services there have also been a number of changes. Superintendent Maria Vullo resigned in February and Governor Cuomo appointed his former Chief of Staff, Linda Lacewell to be Superintendent and she was finally confirmed by the Senate on June 20. The new Superintendent worked for Governor Cuomo for many years, first as special counsel and lately as his chief of staff. Prior to that her experience was in the NY Attorney General’s office and as a prosecutor in the US Attorney’s office. At her confirmation hearing she said that although she is a former prosecutor, she recognized that the job of Superintendent is about “protecting...
The 2019 Legislative Session concluded on Friday, June 21st. The 2019 Session was an extraordinary session, with 935 bills passing both houses. The 2019 legislative session presented challenges for the broader business community, with Democratic control of both the Senate and Assembly for the first time in many years. LICONY was active throughout the session in both promoting our affirmative agenda and playing defense and seeking amendments to several proposals that would have adversely impacted the life insurance industry.

As was shared previously, LICONY is pleased to report the passage in both houses of two LICONY Program bills, Duty to Cooperate – S3639 (Breslin)/A7664 (Stirpe) and Lost Policy Finder – S3637 (Breslin)/A3075 (Hunter), as well as the defeat of several troubling proposals including, (1) the unisex disability proposal (S3664-A (Gianaris)/A3024 (Glick)), (2) the disability claims practices bill (S4026 (Parker)/A3101 (Dinowitz)), (3) the Department's UDAAP bill (S6498 (Comrie)/A8187 (Wright)), (4) the Unlawful Business Practices/Private Right of Action proposal (S2407-C (Comrie)/A679-C (Niou)), (5) the bill addressing pension derisking transfers (S4864 (Gounardes/A5818 (Abbate)), and (6) several proposals that would amend the State's Paid Family Leave Program. In addition, the Department's draft language to address group accident and health insurance certificates was ultimately not introduced in either house.

The salary history proposal (A5308-B (Crespo)/S6549 (Carlucci)), which was amended in the final days of the legislative session to include amendments requested by LICONY, as well as the Cyber Shield Act (S5575-B (Thomas)/A5635-B (DenDekker)), and GILTI (S6615 (Krueger)/A8433 (Weinstein)) passed both houses in the final days of the session. The Attorney General's proposal to clarify that the statute of limitations for Martin Act violations is six years (S6536 (Gianaris)/A8318 (Carroll)), the Call Center Act (S1826-C (Kennedy)/A567-C (Rosenthal)), and the Women on Corporate Boards Study bill (S4278 (Krueger)/A6330 (Seawright)) also passed both houses. LICONY plans to seek a veto of the Call Center bill, and will be reaching out to further engage with our members on that proposal.

As a reminder, we are in the first year of a two year legislative cycle, and all bills introduced this session remain live next session, but will reset back to their committee of origin in both houses. We will update our members throughout the next six months as the bills passing both houses are delivered to the Governor for his approval or veto. Here's a breakdown of the major bill activity that occurred during session.

**LICONY 2019 Affirmative Legislative Program – Passed Both Houses**

- Extension of Lost Policy Search Response Time (S.3637 /A.3075 )
- Duty to Cooperate (S.3639 /A.7664)
- In addition, the LICONY Affirmative Program bill to address Mutual Company Surplus (S.5212) was resolved through discussions with the Department following the introduction of the bill this session by Senator Breslin. The Department has agreed to issue a Circular Letter to clarify that surplus notes should be excluded from the calculation of the surplus cap set forth in Insurance Law Section 4219.

**Bills Passing Both Houses or Enacted – Highlights**

- Cyber Security Bill – NY SHIELD Act (S.5575-B /A.5635-B )
- Salary History – Enacted 7/10/19 as Chapter 94 of the Laws of 2019
- Part I --GILTI Tax Provision (S6615/A8433) – Enacted 6/24/19 as Chapter 39 of the Laws of 2019
- Martin Act Statute of Limitations (S.6536/A.8318)
- Call Center Job Restrictions (S.1826C/A.567C)
- Farm Workers Rights (S6578/A8419) - Delivered to the Governor 7/16/19
- Study of Corporate Board Gender Diversity (S4278/ continued on page 5
Kate Herlihy has announced that her time at LICONY is coming to an end. Kate will be leaving LICONY in September to return to the firm where she started her career -- Whiteman, Osterman & Hanna.

Kate has served as LICONY’s Director & Counsel since she started in September of 2016. Kate has been a tremendous asset to the organization and has served LICONY members well as the lead contact for several legislative and regulatory issues, including those relating to Disability Insurance, Paid Family Leave, E-Commerce, Policy Forms Filings, Long-Term Care, Tax, Supplemental Health Products, and Reinsurance matters.

Each year, Kate has shepherded LICONY’s Affirmative Legislative Program and has successfully raised awareness of LICONY member company issues in the Legislature and Executive Office. This year, Kate was instrumental in the passage of duty to cooperate legislation and a measure extending the time frame of lost policy searches. Kate also did significant work helping companies implement New York’s Paid Family Leave program and articulating industry concerns to the Department of Financial Services and Workers Compensation Board.

“Kate has served LICONY tirelessly in her 3 years here. Coming from a law firm, she jumped head first into insurance issues and accomplished a great deal,” said Mary A. Griffin, President & CEO of LICONY. “In addition to all of her successes, Kate has been a wonderful colleague and team player, generous and always willing to help out on projects, a delightful presence in our office. We will all miss Kate.”

Kate will be named a partner at Whiteman Osterman & Hanna LLP in Albany, where she will represent clients in legislative and regulatory matters before the Department of Financial Services, State Legislature, Executive Chamber, and various state agencies including the Department of Health, State Education Department, Department of Environmental Conservation, and, the Workers Compensation Board.

Kate had this to say of her time at LICONY. “I have been honored to represent the life insurance industry before the Legislature and Department the past three years, and greatly appreciate the expertise and friendship offered by my colleagues at LICONY and all of our member company representatives. It has been a wonderful professional experience, and I hope to have the opportunity to continue to work with many of you in the future.”

Kate graduated cum laude from Amherst College, and received her J.D. from Fordham University School of Law. She is admitted to practice law in New York and in the U.S. District Court, Northern District of New York.

LICONY is currently interviewing candidates for the position.

President’s Report cont..

consumers, safeguarding markets and encouraging financial services innovation.” Since taking office, she has brought a number of new staff to the Department including a new head of cyber security and a new Deputy for Enforcement. Some of the staff under Superintendent Vullo have departed for jobs in the private sector including General Counsel Nat Dorfman to Ernst and Young and Executive Deputy Richard Loconte who became head of government relations at a healthcare company. Deputy Superintendent for Life Insurance, James Regalbuto was promoted to be Deputy Superintendent of the Insurance Division and we wish James well in his new job. No replacement for James as Deputy for Life has been announced yet.

LICONY will have no lack of challenges throughout the rest of the year and in 2020 as the political dynamic is not likely to change in the foreseeable future.
In August, insurers and producers will begin implementation in New York of the Regulation that will rework the entire sales and servicing process for most products sold by life insurers. So -- how did we get here and where we are going as we move forward into this new progressive frontier?

In December of 2017, the part of the Obama-era federal DOL fiduciary rule relating to best interest had been implemented and the provisions of the rule that had not yet been implemented were stayed by the new Trump administration. The entire rule was under legal challenge in the US District courts and the NAIC was discussing how to proceed in the states, given this fluctuating state of affairs at the federal level. The new Deputy Superintendent for Life Insurance in New York, James Regalbuto, was advancing the NY Department of Financial Service’s (DFS) thoughts on the expansion of the current Annuity Suitability Model to the NAIC without gaining much traction. New York believed that an Obama-type best interest standard was the path to take and argued that it should not be difficult for companies to implement, since they were already complying with the DOL best interest rule for certain annuity products.

Few will recall that the idea for imposing a suitability standard for life insurance policies has been around in New York since the implementation of the current Regulation 187 in 2010. At that time, NY Life Bureau staff floated the idea of expanding the annuity suitability regulation under development to include life insurance products. The industry fought the idea but the concept remained percolating with staff and had resonated with the new Deputy. Regalbuto was a true believer in the best interest concept and agreed that the extension of a suitability and best interest standard to life insurance was the right approach. He also believed that the best interest/suitability concept should be extended to producer advice being provided to customers on inforce policies, a concept foreign to most in the industry and something that many would come to believe was an unnecessary complication to customer servicing.

Industry reaction to the initial Proposal of the 1st Amendment to Regulation 187 in January 2018 was nearly universally negative and LICNY, along with many of our members, the agents and others, spent much time in the first quarter of 2018 attempting to advocate for changes with Department staff.

As the comment period on the initial Proposal of Regulation 187 ticked away, the landscape around it had changed remarkably – the DOL Rule was struck down and eventually vacated by a US Fifth Circuit Court of Appeals decision and the SEC stepped in with its own Proposal when it released proposed Regulation Best Interest for public comment in April 2018. The life insurance industry shifted their advocacy to achieving uniformity and harmonization between the federal and state approaches on this topic, something that New York – not surprisingly – did not seem to care much about.

The Department published a revised Proposal in May 2018, which reflected some of the changes advocated by the industry but not enough from the perspective of most and certainly not standardization between the proposed state and federal approaches. The industry was frustrated that the Regulation continued to include life insurance policies, when many believed that the DFS had not demonstrated a need for their inclusion and when taking into consideration the public policy benefit of the product and the fact that it is not an easy sale to make in the first place. Its application to inforce transaction had been modified to only apply a best interest standard to producers, with no supervision required by insurers—something to which the industry reacted positively.

The final Regulation was adopted in July 2018 – becoming effective on August 1, 2019 for annuities and February 1, 2020 for life insurance. Both life insurer and producer organizations considered a legal challenge of the new Regulation based largely on the grounds that it imposed a fiduciary standard without statutory authority. Life insurer organizations eventually elected not to file litigation but the producer associations (PIANY/Big I NY and NAIFA-
End of Session cont...

- Sexual Harassment Bills (S.6594/A8424 and S6577/A8421)
- Student Health Insurance Bill (S6197/A492)
- Producer CE Credit (S.4365/A.5922)
- Wild Card Bank Parity Extender (S5411/A7604) * Includes Section 2114(a)(4) Extender
- Funeral Director Compensation (S.5677-A/A.7777)
- Veterans Pension Poaching Prevention Act – (A6292/S4807)
- Shareholder Remote Access – (A434/S4088)

Bills Failing to pass Both Houses

- DFS Program Bill -- A/H Group Certificate Language
- DFS Program Bill -- UDAAP (A.8187/S.6498)
- Unisex Disability (A.3024/S.3664-A and A.8328)
- Expansion of Unfair Business Practices Law and Private Right of Action (S2407C/A.679-C)
- Disability Claims Practices (S.4026/A.3103)
- Bills to Expand Paid Family Leave Program – S5090-A (Domestic Violence), A3640 (Siblings), S4694/A6891 (Bereavement), and S3821/A5875 (Religious Teachers)
- Secure Choice Auto Enrollment (S.6115/A.5978-A)
- Investment Transparency Act (S.2872A/A.2476A)
- Pension Derisking (S4864/A5818)
- Bond ETF (S5730)
- New York Privacy Act (S5642)
- Executive Compensation Tax (S1659/A7454)
- Opioid Reversal Unfair Discrimination (S.3159-A/A.5952-A)
- Modifications to Statutory Power of Attorney (S3923/A5630)
- Federal Home Loan Bank (A8040)
- Credit History in Hiring Decisions (S2884-D/A2611-D)
- Arbitration (S3754/A5777)

Suitability cont....

NY) filed legal challenges in both New York and Albany County Supreme Court in November 2018. The two challenges were consolidated in Albany County Supreme Court in the early part of 2019 and a decision is expected in the near future. Likely that whichever party does not prevail will appeal the decision.

The SEC adopted their Regulation Best Interest in June 2019 but not in a fashion that is consistent with the approach taken in New York and not covering the expanse of products and transactions that New York’s rule does. The NAIC also seems poised to replicate the SEC approach in an effort to achieve uniformity between state and federal regulation when it comes to the standard of care for annuity sales. Although certain, particularly “blue” states, may elect to join New York in their unique approach to this topic, that has not yet occurred—leaving this state to, once again, be an island unto itselfs when it comes to insurance regulation.

On the eve of the implementation of NY Regulation 187 for annuity contracts, the insurers are poised to apply the rule and ensure appropriate compliance. However, the impact the Rule will have on the marketplace in New York remains unknown, especially when considering that it appears that most states and the SEC will be taking a different approach. In other words – the “jury is still out” on the legacy that will be created by the application of this regulatory approach in a single state.