

July 2018



New York 2018 Regular Legislative Session Concludes

The regular session of the New York State Legislature adjourned on June 21. While there is a possibility of the Legislature coming back this summer for a brief special session to address speed cameras near New York City schools, the Legislature is not currently scheduled to reconvene until January 2019. More information on a possible special session is detailed below.

On a positive note, there were no bills that passed both houses with a harmful impact on MLMIC's policyholders or operations. The NY Trial Lawyers were unable to advance any of their significant measures such as expansion of damages in wrongful death cases or the creation of a "bad faith" cause of action against liability insurers.

With respect to MLMIC's affirmative agenda, we were able to obtain introduction in both houses of our legislation to create a strong affidavit of merit and allow for complete disclosure of expert witnesses in medical malpractice cases, Senate bill S7728 and Assembly bill A11168 Rules/Abbate.

In addition, a bill (A1683B Hevesi/S2526B Seward) to codify and expand the ability of property and casualty

insurers such as MLMIC to deliver policy documents and all transaction notices electronically to policyholders passed both houses. Since a similar bill was vetoed two years ago, we will be meeting with the Department of Financial Services (DFS) and the Governor's office to urge his approval of this legislation.

An extension of law that, while noncontroversial, is very important to MLMIC was also passed by both houses. This extender concerned MLMIC's ability, as a domestic medical professional liability carrier, to write certain large or complex policies in the Free Trade Zone. This provision of law allows an insurer to write certain risks without DFS's usual rate and form filing requirements. This authorization was due to expire on December 31, 2018, with the bill S7746A Seward/A10634 Steck providing for an extension to December 31, 2020. The bill passed both houses and we will be urging the Governor to approve this measure.

Other important legislative issues MLMIC was involved in were ones that our healthcare partners advanced. One of these issues was medical malpractice peer review and quality improvement programs for qualifying medical group practices, S3662 Hannon/A2734 Gottfried.



MLMIC continued its longtime advocacy of these programs with our support of this bill and its provisions for strong confidentiality and immunity protections under New York law. Unfortunately, this bill was strongly opposed by the plaintiff's bar and did not pass either house.

A second issue involved the creation of a maternal mortality review board to study and make recommendations regarding the unacceptably high rate of maternal deaths and how to reduce these tragedies. The bill, A10346B Joyner/S8907 Hannon, originally contained the stringent confidentiality and immunity protections needed for such a program. Unfortunately, the Assembly Codes committee (with prompting from the plaintiff's bar) insisted on language that would have severely diluted these confidentiality and immunity protections. As a result, this bill did not pass in either house.

On a general level, the session changed dramatically when the Senate experienced a stalemate in early June when the Republican conference lost its 32nd vote, Senator Tom Croci, to active military service. This resulted in a 31 to 31 margin, with 32 votes required to pass any legislation in the Senate. As a result, noncontroversial bills managed to pass both houses, while bills with even modest opposition were not addressed. The November 2018 elections may address this stalemate.

Political Developments

The speed camera program expires on July 25, with the Assembly and Senate passing different versions of

legislation to extend it. As of now, there are no plans to return for a special legislative session, but the political pressure on New York City Senate Republican members and Democrat Senator Simcha Felder, who conferences with the Senate Republicans, over this program may lead to a special session occurring later this summer to take up this issue and possibly some others that the two houses want to pass in this election year when all 213 legislative seats are up for election.

Since the election for all statewide offices such as Governor and Attorney General also fall on this year's political calendar, it will be a very busy four months in terms of campaigning and politicking in New York. The stakes are amplified by the current composition of the Senate, with 31 Republicans, 31 Democrats and the crucial 32nd vote that determines control of New York's upper house held by Democrat Simcha Felder, a socially conservative Senator. The Senate Republicans will be defending 5 open seats where Republican Senators are retiring and hence not seeking reelection. Meanwhile, the Senate Republicans will be seeking to regain a seat they view as an opportunity, namely the Long Island seat where Democratic Senator John Brooks narrowly defeated Republican Senator Michael Venditto in 2016. The fall issue of the Albany Report will provide additional information on the political campaigns as they heat up.

Questions? Email Marc Crow at mcraw@fakslaw.com or call Marc at (518) 786-2777.