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New York Governor Proposes Bigger Fines for Financial Services Violators

ALBANY, N.Y. - Insurance industry representatives pushed back hard in New York as Gov. Andrew M. Cuomo rolled out his 2021 executive budget plan calling for tougher enforcement by the Department of Financial Services on regulated industries, including insurance.

Turning over authority for enforcement to the DFS would be a “far-reaching usurpation of the authority long retained by the New York attorney general,” said Cassandra Anderson, vice president of the New York Insurance Association Inc.
Cuomo’s budget plan calls for a “broad consumer protection agenda,” which includes several regulatory changes, including updating state law that protects consumers from “intentional fraud or intentional misrepresentation of a material fact” regarding financial products or services.

However, the current law “does not empower state authorities to bring the type of enforcement actions that federal authorities can bring for a broad range of unfair, deceptive, abusive acts and practices,” it said, so Cuomo has proposed making New York consumer protection law consistent with federal law.

Cuomo also proposed increases in fines, saying the current structure is too low to deter willful violators. Under current insurance law, violations are subject to a maximum penalty of $1,000 per offense, it said.

Anderson said the increase to a maximum of $10,000 per violation would be “truly excessive,” and noted as recently as 2011, a violation of insurance law was $500.

“NYIA is not aware of any case where misconduct in the property and casualty insurance industry could not be fully enforced due to the amount of the current penalty,” Anderson added. “Keep in mind that each policy with a violation of the Insurance Law constitutes a separate and distinct violation so penalties can quickly add up to hundreds of thousands and millions of dollars, even when the violation of law was an innocent mistake.”

According to the budget proposal, the state also would add to the state Financial Services Law explicit authority for the DFS to collect restitution and damages.

Mary A. Griffin, president and chief executive officer of the Life Insurance Council of New York, agreed the industry does not need more government oversight.

“New York’s insurance industry is heavily regulated, and subject to numerous fraud statutes, which address unfair and deceptive practices, along with providing the Department of Financial Services ample means to exact restitution,” she said. “LICONY shares the Department’s goal of ensuring unregulated financial products and services are properly regulated to protect New York consumers from fraud. We look forward to continued discussions with DFS to reach a compromise on this important legislation."

Cuomo is seeking tougher penalties partly in response to what his budget proposal said was weakening enforcement by federal authorities that undermine state efforts.

"The Trump Administration, however, is often working against these efforts," it said. "The Consumer Financial Protection Bureau has recently rolled back key federal consumer financial protections and scaled-back enforcement efforts in critical areas including payday lending, predatory student loans, and discrimination in the provision of financial services. This is particularly troubling as new and sophisticated financial products flood the marketplace and consumer debt reaches record levels."

Linda Lacewell, the DFS superintendent, urged the National Association of Insurance Commissioners to follow the state in incorporating consumer advocates in more of its work, just as the DFS is appointing a consumer advocate to work across divisions and "put the consumer at the center of everything we do" (Best's News Service, Aug. 5, 2019).

(By Timothy Darragh, associate editor, BestWeek: Timothy.Darragh@ambest.com)

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