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Amended N.H. Bill Accepted by Insurers, Agents

*Senate Bill 188 Bolsters Dept. Authority to Fine, Grant Restitution;
Penalties Raised to \$25,000; Consumer Protection Exemption Retained*

CONCORD, N.H. — A New Hampshire bill (SB-188) that would have eliminated the insurance industry's exemption from the state's consumer protection act has been amended to instead give Granite State insurance regulators more authority to penalize insurers that engage in unfair claims settlement practices.

The bill as passed by the New Hampshire Senate would have allowed dissatisfied parties to sue insurers for attorneys' fees and receive compensation thrice the amount of actual damages. The measure was touted to senators as a cost-saving measure for consumers, but industry observers say it would have the opposite effect.

However, members of the New Hampshire House of Representatives' Commerce Committee last week opted to defang the bill in such a way that industry representatives feel they can now support it. House lawmakers increased the fines available to the Insurance Department to \$25,000 per occurrence and enabled regulators to require restitution in addition to fines.

New Hampshire Insurance Commissioner Roger A. Sevigny told **The Standard** he met with Rep. James Martin (R-Sanborn), chairman of the subcommittee working on the bill, to discuss ideas for altering the language.

"We took his ideas and put some words around them and put them in a way that we felt would be good for consumers," Sevigny told **The Standard**. "The two things that it does basically is increase the fine we can assess for each incident and it provides me with the formal authority to require restitution."

Martin, a former California antitrust lawyer, offered his firsthand views of California's experience with this type of tort action and the costs and litigation that ensued. He informed **The Standard** that California's Supreme Court issued a decision in 1979 allowing accident victims to sue not only the at-fault parties

but their insurers as well.

"It was disastrous," he said. "The number of lawsuits filed in tort actions virtually doubled."

Insurers had to hire lawyers to defend their insureds and separate counsel to defend themselves, Martin added.

"It virtually doubled the cost of defense," he said. "The cost of premiums went up astronomically."

After about 10 years, Martin noted, the state Supreme Court reversed its earlier decision, but the problems that ensued were instructive enough for his fellow New Hampshire lawmakers.

The resulting measure provides state insurance regulators "a lot more ammunition to use with insurance companies that don't behave properly," said Martin.

Sevigny agreed, commenting, "It puts teeth into what our current practice already is. It provides the formal authority to do what we informally do all the time."

The Department can currently levy fines or require restitution in lieu of a fine, the commissioner noted.

"We've imposed fines with regularity," Sevigny said. "Frankly, for the most part, before it gets to a formal finding, carriers will voluntarily provide

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restitution, without being ordered.”

The amendment to Senate Bill 188 continues to allow aggrieved parties to take their arguments to court. Sevigny noted that to receive restitution through the Department, however, claimants must agree to accept administrative action as the final remedy.

Rep. Martin said he feels the House Commerce Committee's amended bill will pass both the full House and a conference committee with the Senate.

“I think [its chance are] excellent in both places, because it's a common sense solution,” he said. “The bill as drafted was simply a repeat of what was tried and failed in California.”

Favor From Industry

Industry representatives find the amended bill far more appealing than its predecessor, with agents and companies agreeing they can support the measure now.

“As far as we're concerned, the most important thing is abiding by the legislative philosophy,” said Robert Nash, executive director of the Independent Insurance Agents & Brokers of New Hampshire (IIABNH). “If you're going to be heavily regulated by an agency, you're going to remain exempt from the consumer protection act.”

Removing the exemption would have raised the specter of treble damages, he added.

“That's an invitation to insurance fraud,” said Nash. He noted that IIABNH would like to see the bill “tweaked” further to make it clear consumers are provided with an administrative avenue, but that anyone truly “aggrieved” can still go to court.

“We differ a little bit from our company brethren,” Nash told **The Standard**.

According to George Roussos, attorney with Orr & Reno and counsel for the New Hampshire Domestic Insurers Association, the changes “scrap the original bill entirely, which is good.”

“People were just happy to get rid of 188,” he noted, “Most companies that I've talked to don't see this as a serious issue, although they certainly would prefer to have the amount lower. \$25,000 is high compared to most states.”

Companies feel the Department would likely use discretion in meting out fines, Roussos noted. And, by limiting losses to direct economic losses for first parties, the state ensures no one gets “two bites at the apple,” he said.

Roussos attributed the more favorable result in the House to the fact that with more legislators, the House has more time to fully understand the ramifica-

tions of legislation.

“They knew, whether liberal or conservative, that this kind of mischief is just going to cost consumers money,” he said.

According to Donald Pfundstein, attorney with the Concord law firm of Gallagher, Callahan and Gartrell, the original bill could have increased insurance premiums and potentially raised the Granite State's uninsured population.

“The [original] bill is not about the consumer; it's about money and leverage,” he told **The Standard**. The amendment focuses on equipping the Insurance Department with the tools to help consumers, “instead of encouraging litigation,” he said.

“It's focused on the consumer as opposed to the trial bar,” Pfundstein said. ■