AMERICAN ACADEMY *of* ACTUARIES

August 22, 2007

The Honorable Eric R. Dinallo
Superintendent, New York State Insurance Department
25 Beaver Street
New York, New York 10004

Re: New York Assembly Bill A06163

Dear Superintendent Dinallo:

The Workers' Compensation Subcommittee of the American Academy of Actuaries[1] (hereinafter "WC Subcommittee") respectfully offers the following comments and suggestions regarding New York Assembly Bill A06163. The subject legislation includes the following provision:

> "S 68. Paragraph 2 of subsection (a) of section 2316 of the insurance law is amended to read as follows:
>
> **(2) No insurer or rate service organization shall agree with any other insurer or rate service organization to charge or adhere to any rate, although insurers and rate service organizations, OTHER THAN RATE SERVICE ORGANIZATIONS WITH RESPECT TO WORKERS` COMPENSATION INSURANCE, may continue to exchange statistical information."**[2]

The emphasis in the above citation is included in the original legislation.

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[1] The American Academy of Actuaries is a national organization formed in 1965 to bring together, in a single entity, actuaries of all specializations within the United States. A major purpose of the Academy is to act as a public information organization for the profession. Academy committees, task forces, and work groups regularly prepare testimony and provide information to Congress and senior federal policymakers; comment on proposed federal and state regulations; and work closely with the National Association of Insurance Commissioners and state officials on issues related to insurance, pensions, and other forms of risk financing. The Academy establishes qualification standards for the actuarial profession in the United States and supports two independent boards. The Actuarial Standards Board promulgates standards of practice for the profession, and the Actuarial Board for Counseling and Discipline helps to ensure that high standards of professional conduct are met. The Academy also supports the Joint Committee for the Code of Professional Conduct, which develops standards of conduct for the U.S. actuarial profession.

[2] The text of the bill can be found at http://assembly.state.ny.us/leg/?bn=A06163&sh=t (last visited on August 21, 2007).

The prohibition on data sharing for workers' compensation insurance may have far-reaching, adverse consequences for New York workers' compensation system stakeholders. The Workers' Compensation Subcommittee respectfully requests that you consider these consequences in developing your report to the Governor, Speaker of the Assembly, and Majority Leader of the Senate as mandated by other portions of Assembly Bill A06163.

Workers' compensation rate service organizations, including the New York Compensation Insurance Rating Board (NYCIRB), collect several types of experience data from insurance carriers. In New York, the NYCIRB collects data from both private insurers and the State Insurance Fund (SIF). Supported by the databases thus compiled, these organizations perform many functions that are important to the maintenance and operation of a robust, competitive, and equitable marketplace. These functions include:

- Promulgating benchmark rating values for reference and/or use by insurers in establishing rates and related pricing parameters for each of several hundred work-related classifications.

- Maintaining and administering uniform classification systems, experience rating plans, merit rating plans, and other mandatory or discretionary rating programs such as New York's Construction Premium Adjustment Program and New York's Payroll Limitation Program.

- Providing system performance metrics to interested parties and preparing evaluations and forecasts, including the estimated impact of possible system changes.

These functions of rate service organizations facilitate fair and efficient competition, establish equitable price parameters, and create and maintain incentives for workplace safety and effective loss management programs by employers and insurers. These objectives could be compromised by the elimination of data sharing and impartial technical analyses customarily performed by rate service organizations.

Absent aggregated statistical information, even the derivation of an indicated overall loss cost or rate level for a state may be beyond the resources of many individual insurers, especially smaller carriers. Involving much finer levels of detail, the independent derivation of credible classification rating value relativities and balanced experience rating and merit rating plan parameters may not be possible for many individual insurers on an objective, informed, or technically sound basis. Again, smaller carriers will be at the greatest disadvantage with the implementation of this legislation.

Many business classifications may not present sufficiently credible experience to allow individual insurers to set reliable rating values. Without the ability to aggregate statewide experience data at the classification level, smaller insurers may elect not to write in these classifications, fearing the rising risk of mis-pricing their business. Some carriers may attempt to combine classifications to gain predictability and stability in rate indication. The equity and accuracy provided in the current classification system could suffer as a result of the latter approach. Additionally, no carrier could successfully promulgate mandatory experience modifications and/or merit rating adjustments without having access to experience histories for their insured accounts predating their underwriting of those employers.

Without the incentives for accident prevention and claims management provided by the experience rating and merit rating plans, workplace safety may become a casualty of the inability of the workers' compensation industry to share experience data. Oversight functions performed by rating organizations, such as verification of the accuracy of employer classification assignments and the attribution of exposures and losses to such classifications, may not be possible without the exchange of data between carriers and the rating organization. Even the ability to prospectively and/or retrospectively evaluate the effects of system changes, such as the recent New York reforms, rests on the availability of comprehensive, shared experience data.

In conclusion, absent the numerous and significant system features provided by a rate service organization possessed of a universe of insured experience data, many carriers, especially small carriers, may not be able, effectively or efficiently, to participate in the New York workers' compensation insurance market, and no carrier could do so across all classifications and/or employers. The adequacy, affordability and equity of prices, and the diversity of available markets available to employers would all be compromised. Critical tools, such as classification benchmarks and experience modifications, could not be maintained for the benefit of both employers and insurers. Preservation of accurate, equitable, flexible, and competitive bases for pricing of workers' compensation insurance requires the availability of collective insurer experience in concert with the technical and administrative services performed by a rate service organization.

We hope that this information is useful to you, and we are happy to answer any questions you have about this issue.

Sincerely,

Timothy L. Wisecarver

Timothy L. Wisecarver, Chair
Workers' Compensation Subcommittee
American Academy of Actuaries