

7220

I N S E N A T E

March 24, 2010

Introduced by Sen. BRESLIN -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance

AN ACT to amend the insurance law, in relation to exempting large commercial insureds from certain rate and policy form requirements

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Sections 6301, 6302, 6303 and 6304 of the insurance law,
2 paragraph 3 of subsection (c) of section 6302 as amended by chapter 534
3 of the laws of 1985, are amended to read as follows:
4 S 6301. Special risks[; filing exemption]. (a) (1) Notwithstanding any
5 provision of this chapter, the superintendent shall, pursuant to regu-
6 lations promulgated by him, permit exemption from filing requirements
7 only with respect to rates and policy forms, where applicable, for any
8 of the kinds of insurance authorized to be written in this state. THE
9 EXEMPTION PERMITTED BY THIS PARAGRAPH SHALL NOT APPLY TO POLICIES INSUR-
10 ING LARGE COMMERCIAL INSURED AS DEFINED IN SECTION SIX THOUSAND THREE
11 HUNDRED TWO OF THIS ARTICLE.
12 (2) POLICIES INSURING LARGE COMMERCIAL INSURED, AS DEFINED IN SECTION
13 SIX THOUSAND THREE HUNDRED TWO OF THIS ARTICLE, SHALL BE EXEMPT FROM ALL
14 RATE AND POLICY FORM REQUIREMENTS EXCEPT FOR SECTIONS TWO THOUSAND THREE
15 HUNDRED ONE, TWO THOUSAND THREE HUNDRED TWO, TWO THOUSAND THREE HUNDRED
16 THREE, TWO THOUSAND THREE HUNDRED SIXTEEN, TWO THOUSAND THREE HUNDRED
17 SEVENTEEN, TWO THOUSAND THREE HUNDRED EIGHTEEN, TWO THOUSAND THREE
18 HUNDRED TWENTY, TWO THOUSAND THREE HUNDRED TWENTY-FOUR, TWO THOUSAND
19 THREE HUNDRED FORTY, TWO THOUSAND THREE HUNDRED FORTY-TWO, THREE THOU-
20 SAND ONE HUNDRED THREE, THREE THOUSAND ONE HUNDRED FIVE, THREE THOUSAND
21 ONE HUNDRED SIX, THREE THOUSAND FOUR HUNDRED ONE, THREE THOUSAND FOUR
22 HUNDRED TWO, THREE THOUSAND FOUR HUNDRED NINE, THREE THOUSAND FOUR
23 HUNDRED TEN, THREE THOUSAND FOUR HUNDRED THIRTEEN, THREE THOUSAND FOUR
24 HUNDRED FOURTEEN, THREE THOUSAND FOUR HUNDRED FIFTEEN, THREE THOUSAND
25 FOUR HUNDRED TWENTY-NINE, THREE THOUSAND FOUR HUNDRED FORTY, THREE THOU-
26 SAND FOUR HUNDRED THIRTY-ONE, THREE THOUSAND FOUR HUNDRED THIRTY-TWO,
27 THREE THOUSAND FOUR HUNDRED THIRTY-THREE, THREE THOUSAND FOUR HUNDRED
28 THIRTY-FIVE AND THREE THOUSAND FOUR HUNDRED THIRTY-SIX OF THIS CHAPTER,
29 FOR ANY OF THE KINDS OF INSURANCE AUTHORIZED TO BE WRITTEN IN THIS
30 STATE.

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 (b) No exemption pursuant to subsection (a) [hereof] OF THIS SECTION
2 shall be permitted in relation to the kinds of insurance set forth in
3 paragraph one, two, three, fifteen, eighteen [or], twenty-three, TWEN-
4 TY-FOUR, TWENTY-FIVE, TWENTY-SIX, TWENTY-EIGHT OR TWENTY-NINE of
5 subsection (a) of section one thousand one hundred thirteen of this
6 chapter, (EXCEPT FOR COVERAGE WRITTEN PURSUANT TO SUBPARAGRAPH (II) OF
7 PARAGRAPH THREE OF SUBSECTION (A) OF SECTION ONE THOUSAND ONE HUNDRED
8 SIXTEEN), TO ANY POLICY ISSUED TO PROVIDE MEDICAL MALPRACTICE INSURANCE
9 AS DEFINED IN SUBSECTION (B) OF SECTION FIVE THOUSAND FIVE HUNDRED ONE
10 OF THIS CHAPTER, or to coverage for personal lines to natural persons
11 for non-business purposes. However, any risk pursuant to paragraph one,
12 two or three of such subsection of such section of this chapter or
13 personal lines risk (except private passenger, non-fleet automobile
14 insurance) shall be exempt pursuant to subsection (a) [hereof] OF THIS
15 SECTION if it is included by the superintendent on the list maintained
16 by him pursuant to subsection (a) of section six thousand three hundred
17 three of this article.

18 (c) An exemption granted pursuant to this section shall apply only to
19 authorized insurers complying with this chapter, except that it shall
20 not apply to insurers subject to article sixty-six of this chapter. The
21 exemption shall not be an exemption for joint underwriting or joint
22 reinsurance transactions pursuant to section two thousand three hundred
23 seventeen of this chapter.

24 S 6302. Special license; DEFINITION. (a) An authorized insurer, as a
25 condition precedent to the obtaining of such exemption, shall obtain a
26 special license from the superintendent.

27 (b) Before such special license shall be issued or renewed the
28 prospective licensee shall file in the office of the superintendent an
29 application in such form and supplements thereto as the superintendent
30 prescribes. Such license shall be subject to annual renewal with an
31 annual fee of one thousand dollars.

32 (c) Such license may only be issued to:

33 (1) an authorized insurer which maintains at all times a surplus to
34 policyholders of at least twice the minimum surplus to policyholders
35 required to be maintained for the kinds of insurance which it is author-
36 ized to write in this state; OR

37 (2) a United States branch which maintains at all times a trusteed
38 surplus of at least twice the minimum trusteed surplus required to be
39 maintained for the kinds of insurance which it is authorized to write in
40 this state; or

41 (3) an insurer initially licensed on or after July first, nineteen
42 hundred eighty-two pursuant to article forty-one of this chapter, or
43 pursuant to article forty-two of this chapter as an accident and health
44 insurer, or pursuant to article sixty-one of this chapter as a recipro-
45 cal insurer, if such insurer is at least meeting the minimum surplus to
46 policyholders requirement or the minimum trusteed surplus requirement
47 imposed upon such insurer by the provisions of the article pursuant to
48 which it was initially licensed.

49 (d) The superintendent may revoke, suspend, or refuse to renew such
50 license if, after notice and a hearing, he finds that such action will
51 protect the best interests of the people of this state.

52 (E) "LARGE COMMERCIAL INSURED" MEANS A COMMERCIAL RISK POLICY INSURED
53 THAT MEETS AT LEAST TWO OF THE FOLLOWING CRITERIA:

54 (1) HAS A NET WORTH OF AT LEAST SEVEN MILLION FIVE HUNDRED THOUSAND
55 DOLLARS, AS DETERMINED BY AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT, AS

1 OF THE INSURED'S FISCAL YEAR END IMMEDIATELY PRECEDING THE POLICY'S
2 EFFECTIVE DATE; OR

3 (2) HAS GROSS ASSETS EXCEEDING TWENTY-FIVE MILLION DOLLARS AND A NET
4 WORTH OF AT LEAST ONE MILLION FIVE HUNDRED THOUSAND DOLLARS, AS DETER-
5 MINED BY AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT, AS OF THE INSURED'S
6 FISCAL YEAR END IMMEDIATELY PRECEDING THE POLICY'S EFFECTIVE DATE; OR

7 (3) IS A FOR-PROFIT BUSINESS ENTITY THAT GENERATES ANNUAL GROSS REVEN-
8 UES EXCEEDING FIFTEEN MILLION DOLLARS, AS DETERMINED BY AN INDEPENDENT
9 CERTIFIED PUBLIC ACCOUNTANT, AS OF THE INSURED'S FISCAL YEAR END IMME-
10 DIATELY PRECEDING THE POLICY'S EFFECTIVE DATE; OR

11 (4) IS A FOR-PROFIT BUSINESS ENTITY THAT HAS GROSS ASSETS EXCEEDING
12 TWENTY-FIVE MILLION DOLLARS AND GENERATES ANNUAL GROSS REVENUES EXCEED-
13 ING TWENTY-FIVE MILLION DOLLARS, AS DETERMINED BY AN INDEPENDENT CERTI-
14 FIED PUBLIC ACCOUNTANT, AS OF THE INSURED'S FISCAL YEAR END IMMEDIATELY
15 PRECEDING THE POLICY'S EFFECTIVE DATE; OR

16 (5) IS A NOT-FOR-PROFIT ORGANIZATION OR PUBLIC ENTITY WITH AN ANNUAL
17 BUDGET EXCEEDING TEN MILLION DOLLARS FOR EACH OF ITS THREE FISCAL YEARS
18 IMMEDIATELY PRECEDING THE POLICY'S EFFECTIVE DATE; OR

19 (6) HAS TWENTY-FIVE EMPLOYEES, OR ONE HUNDRED WITHIN THE CORPORATE
20 STRUCTURE, AS OF THE INSURED'S FISCAL YEAR END IMMEDIATELY PRECEDING THE
21 POLICY'S EFFECTIVE DATE; OR

22 (7) EMPLOYS OR RETAINS A RISK MANAGER TO ASSIST IN THE NEGOTIATION AND
23 PURCHASE OF A POLICY EXEMPTED UNDER THIS ARTICLE. FOR THE PURPOSE OF
24 THIS PARAGRAPH, "RISK MANAGER" SHALL MEAN AN INDIVIDUAL WHO HOLDS THE
25 PROFESSIONAL DESIGNATION CPCU, ARM, OR CRM WITH AT LEAST FIVE YEARS
26 EXPERIENCE IN THE ANALYSIS AND TREATMENT OF RISK, LOSS EXPOSURE, INSUR-
27 ANCE COVERAGES, AND ALTERNATIVE METHODS AND PROGRAMS, WHO IS NOT
28 EMPLOYED BY THE INSURER ISSUING THE POLICY; OR

29 (8) IS A MUNICIPALITY WITH A POPULATION OF NOT LESS THAN TWENTY-FIVE
30 THOUSAND PERSONS.

31 S 6303. Limitations. (a) The exemption which may be granted pursuant
32 to this article shall apply only if the business is underwritten [and],
33 transacted, OR SERVICED from an office within this state; and (i) the
34 risk, as defined in regulations of the superintendent, produces a mini-
35 mum annual premium in excess of [one hundred] TEN thousand dollars or
36 such [higher] LOWER amount as the superintendent may prescribe by regu-
37 lation; or (ii) the coverage is for a risk or class of risks which is of
38 an unusual nature, a high loss hazard, or difficult to place, pursuant
39 to a list promulgated or amended by the superintendent.

40 (b) All policies issued pursuant to the provisions of this article
41 shall contain a notice to the policyholder that the rate and policy form
42 are not subject to the filing requirements of this state and such other
43 notices required by the superintendent pursuant to regulation. THE
44 NOTICE IN ALL POLICIES ISSUED TO LARGE COMMERCIAL INSUREDS SHALL ALSO
45 ADVISE THE POLICYHOLDER THAT THE POLICY IS NOT SUBJECT TO ALL PROVISIONS
46 OF THIS CHAPTER.

47 [(c) The superintendent may by regulation prescribe limitations on the
48 total amount of business which an insurer may transact pursuant to this
49 article.]

50 S 6304. Special regulations. The superintendent, by regulation, shall
51 provide for the implementation of the provisions of this article by
52 establishing methods[,] AND procedures [and reports] for licensing and
53 for facilitating, monitoring and verifying compliance with this article.

54 S 2. This act shall take effect on the first of January next succeed-
55 ing the date on which it shall have become a law.