

6808

I N S E N A T E

March 23, 2012

Introduced by Sen. SEWARD -- 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 domestic excess line insurance companies

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

1 Section 1. The insurance law is amended by adding a new article 58 to
2 read as follows:

3 ARTICLE 58

4 DOMESTIC EXCESS LINE INSURANCE COMPANIES

5 SECTION 5801. PURPOSE AND APPLICABILITY OF ARTICLE.

6 5802. DEFINITIONS.

7 5803. ORGANIZATION AND APPROVAL.

8 5804. TAXATION.

9 5805. POLICY RATE AND FORMS.

10 5806. APPLICABILITY OF OTHER LAWS.

11 5807. EXEMPTIONS.

12 5808. MANDATORY DISCLOSURE NOTICE.

13 S 5801. PURPOSE AND APPLICABILITY OF ARTICLE. THE PURPOSE OF THIS
14 ARTICLE IS TO FACILITATE THE FORMATION AND OPERATION OF DOMESTIC EXCESS
15 LINE INSURANCE COMPANIES WITHIN THE STATE OF NEW YORK.

16 S 5802. DEFINITIONS. FOR THE PURPOSES OF THIS ARTICLE, THE FOLLOWING
17 TERMS SHALL HAVE THE FOLLOWING MEANINGS:

18 (A) "CERTIFICATE OF ELIGIBILITY" MEANS A WRITTEN AUTHORIZATION FROM
19 THE SUPERINTENDENT PERMITTING A DOMESTIC EXCESS LINE INSURANCE COMPANY
20 TO:

21 (1) ENTER INSURANCE TRANSACTIONS THROUGH EXCESS LINE LICENSEES PROCUR-
22 ING EXCESS LINE INSURANCE;

23 (2) PROVIDE INDEPENDENTLY PROCURED INSURANCE TO THE EXTENT PERMITTED
24 BY LAW; AND

25 (3) CONDUCT AN EXCESS LINE AND/OR SURPLUS LINE BUSINESS IN ANY OTHER
26 STATE WHICH GRANTS THE INSURER ELIGIBILITY.

27 (B) "DOMESTIC EXCESS LINE INSURANCE COMPANY" MEANS:

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

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(1) AN INSURER ORGANIZED AND INCORPORATED IN NEW YORK AS AN INSURER WHICH IS NOT AN AUTHORIZED INSURER AS DEFINED IN SECTION ONE HUNDRED SEVEN OF THIS CHAPTER BUT WHICH IS GRANTED A CERTIFICATE OF ELIGIBILITY BY THE SUPERINTENDENT TO INSURE:

(A) RISKS PLACED BY EXCESS LINE LICENSEES OF THE KINDS OF INSURANCE SET FORTH IN SECTION TWO THOUSAND ONE HUNDRED FIVE OF THIS CHAPTER;

(B) INDEPENDENTLY PROCURED INSURANCE TO THE EXTENT PERMITTED BY LAW; AND

(C) EXCESS LINE AND/OR SURPLUS LINE RISKS FOR ANY INSURED WHOSE HOME STATE IS A STATE OTHER THAN NEW YORK PROVIDED THE INSURER IS ELIGIBLE TO WRITE SUCH RISKS IN SUCH STATE.

(2) A DOMESTIC EXCESS LINE INSURANCE COMPANY IS DEEMED A NONADMITTED INSURER FOR PURPOSES OF THE DODD FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT, PUB. L. NO. 111-203.

S 5803. ORGANIZATION AND APPROVAL. (A) A DOMESTIC EXCESS LINE INSURANCE COMPANY MAY BE INCORPORATED AND ORGANIZED IN THE MANNER DESCRIBED IN SECTION ONE THOUSAND TWO HUNDRED ONE OF THIS CHAPTER, EXCEPT AS MODIFIED BY THE PROVISIONS OF THIS ARTICLE.

(B) UPON INCORPORATION AND COMPLETION OF THE REQUIREMENTS OF ORGANIZATION UNDER SECTION ONE THOUSAND TWO HUNDRED ONE AND SUBJECT TO ALL PROVISIONS OF THIS ARTICLE, THE SUPERINTENDENT SHALL, WITHIN THIRTY DAYS OF RECEIPT OF A CERTIFIED COPY OF A RESOLUTION ADOPTED BY THE BOARD OF DIRECTORS DECLARING THAT THE INSURER INTENDS TO ACT AS A DOMESTIC EXCESS LINE INSURANCE COMPANY, ISSUE A CERTIFICATE OF ELIGIBILITY.

(C) EVERY DOMESTIC EXCESS LINE INSURANCE COMPANY MUST HAVE AND MAINTAIN PRIOR TO ISSUANCE OF A CERTIFICATE OF ELIGIBILITY AND AT ALL TIMES THEREAFTER A MINIMUM CAPITAL AND PAID IN SURPLUS IN AN AMOUNT EQUAL TO OR EXCEEDING THE GREATER OF FORTY-FIVE MILLION DOLLARS OR THE MINIMUM AMOUNT REQUIRED BY NEW YORK FOR FOREIGN AND ALIEN INSURER EXCESS LINE ELIGIBILITY AS SET FORTH IN A REGULATION PROMULGATED BY THE SUPERINTENDENT.

(D) TRANSACTIONS UNDER THIS ARTICLE SHALL NOT CONSTITUTE DOING AN INSURANCE BUSINESS WITHOUT A LICENSE IN VIOLATION OF SUBSECTION (A) OF SECTION ONE THOUSAND ONE HUNDRED TWO OF THIS CHAPTER.

(E) UPON ISSUANCE OF A CERTIFICATE OF ELIGIBILITY THE DIRECTORS AND INCORPORATORS SHALL HAVE NO FURTHER LIABILITY FOR THE DEBTS AND LIABILITIES OF THE INSURER.

S 5804. TAXATION. (A) THE TAX SET FORTH IN SECTION TWO THOUSAND ONE HUNDRED EIGHTEEN OF THIS CHAPTER SHALL APPLY TO THE GROSS PREMIUMS CHARGED LESS THE AMOUNT OF PREMIUM RETURNED TO SUCH INSURED ON EVERY POLICY PROCURED BY AN EXCESS LINE LICENSEE WHEN NEW YORK IS THE HOME STATE OF THE INSURED. IT IS THE DUTY OF THE EXCESS LINE LICENSEE TO PAY SUCH TAX.

(B) EVERY DOMESTIC EXCESS LINE INSURANCE COMPANY IS EXEMPT FROM ARTICLE NINETY-ONE OF THIS CHAPTER, SECTION TWO HUNDRED SIX OF THE FINANCIAL SERVICES LAW, AND ARTICLES NINE, NINE-A AND THIRTY-THREE OF THE TAX LAW.

S 5805. POLICY RATE AND FORMS. DOMESTIC EXCESS LINE INSURANCE COMPANIES ARE EXEMPT FROM ARTICLE TWENTY-THREE OF THIS CHAPTER AND SHALL NOT BE REQUIRED TO FILE NOR SEEK APPROVAL FOR ANY FORM, CONTRACT OR OTHER DOCUMENT WHICH EXPRESSES COVERAGE TERMS AND CONDITIONS.

S 5806. APPLICABILITY OF OTHER LAWS. (A) DOMESTIC EXCESS LINE INSURANCE COMPANIES ARE SUBJECT TO THE PROVISIONS OF:

(1) ARTICLE THIRTEEN OF THIS CHAPTER. ASSETS AND DEPOSITS.

(2) ARTICLE FOURTEEN OF THIS CHAPTER. INVESTMENTS.

(3) ARTICLE FIFTEEN OF THIS CHAPTER. HOLDING COMPANIES.

1 (4) ARTICLE SIXTEEN OF THIS CHAPTER. SUBSIDIARIES OF DOMESTIC
2 PROPERTY/CASUALTY INSURANCE COMPANIES AND CERTAIN OTHER ENTITIES.

3 (5) ARTICLE SEVENTY-ONE OF THIS CHAPTER. MERGER, CONSOLIDATION, REDO-
4 MESTICATION, ACQUISITION OF ASSETS AND ACQUISITION OF CERTAIN SHARES OF
5 INSURERS.

6 (6) ARTICLE SEVENTY-FOUR OF THIS CHAPTER. REHABILITATION, LIQUIDATION,
7 CONSERVATION AND DISSOLUTION OF INSURERS.

8 (7) SECTION ONE THOUSAND TWO HUNDRED TWELVE OF THIS CHAPTER, SERVICE
9 OF PROCESS UPON SUPERINTENDENT AS ATTORNEY.

10 (B) ANY PROVISION OF THIS CHAPTER WHICH APPLIES TO ELIGIBLE FOREIGN
11 AND ALIEN EXCESS LINE INSURERS UNLESS INCONSISTENT WITH THIS ARTICLE.

12 S 5807. EXEMPTIONS. DOMESTIC EXCESS LINE INSURANCE COMPANIES ARE
13 EXEMPT FROM THE PROVISIONS OF:

14 (A) ARTICLE FIFTY-TWO OF THIS CHAPTER. MOTOR VEHICLE ACCIDENT INDEMNIFI-
15 CATION CORPORATION.

16 (B) ARTICLE FIFTY-THREE OF THIS CHAPTER. MOTOR VEHICLE INSURANCE
17 ASSIGNED RISK PLANS.

18 (C) ARTICLE FIFTY-FOUR OF THIS CHAPTER. NEW YORK PROPERTY INSURANCE
19 UNDERWRITING ASSOCIATION.

20 (D) ARTICLE FIFTY-FIVE OF THIS CHAPTER. MEDICAL MALPRACTICE INSURANCE
21 ASSOCIATION.

22 (E) ARTICLE SEVENTY-SIX OF THIS CHAPTER. PROPERTY/CASUALTY SECURITY
23 FUNDS.

24 (F) SECTION ONE THOUSAND TWO HUNDRED THIRTEEN OF THIS CHAPTER, SERVICE
25 OF PROCESS UPON SUPERINTENDENT AS ATTORNEY FOR UNAUTHORIZED INSURERS.

26 S 5808. MANDATORY DISCLOSURE NOTICE. THE SUPERINTENDENT MAY, BY REGU-
27 LATION, REQUIRE EVERY POLICY AND/OR BINDER ISSUED BY A DOMESTIC EXCESS
28 LINE INSURANCE COMPANY TO BEAR SPECIFIC LANGUAGE CONSPICUOUSLY
29 DISPLAYED, WHICH ADVISES THE INSURED THAT THE INSURER IS A DOMESTIC
30 EXCESS LINE INSURANCE COMPANY, THAT IN THE EVENT OF INSOLVENCY OF THE
31 INSURER PROTECTIONS PROVIDED BY THE NEW YORK STATE SECURITY FUNDS DO NOT
32 APPLY AND THAT THE POLICY MAY NOT BE SUBJECT TO ALL OF THE REGULATIONS
33 PERTAINING TO POLICY FORMS.

34 S 2. This act shall take effect on the one hundred twentieth day after
35 it shall have become a law. Effective immediately, the addition, amend-
36 ment and/or repeal of any rule or regulation necessary for the implemen-
37 tation of this act on its effective date is authorized to be made on or
38 before such date.