S T A T E O F N E W Y O R K

3858

2013-2014 Regular Sessions

I N S E N A T E

February 25, 2013

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:

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

ARTICLE 58

DOMESTIC EXCESS LINE INSURANCE COMPANIES

SECTION 5801. PURPOSE AND APPLICABILITY OF ARTICLE.
5802. DEFINITIONS.
5803. ORGANIZATION AND APPROVAL.
5804. TAXATION.
5805. POLICY RATE AND FORMS.
5806. APPLICABILITY OF OTHER INSURANCE LAWS.
5807. EXEMPTIONS.
5808. PRINCIPAL PLACE OF BUSINESS.
5809. MANDATORY DISCLOSURE NOTICE.

S 5801. PURPOSE AND APPLICABILITY OF ARTICLE. THE PURPOSE OF THIS ARTICLE IS TO FACILITATE THE FORMATION AND OPERATION OF DOMESTIC EXCESS LINE INSURANCE COMPANIES WITHIN THE STATE OF NEW YORK WHICH SHALL BE SUBJECT TO REGULATION AND OVERSIGHT, WITH RESPECT TO FINANCIAL SOLVENCY, INVESTMENTS, CORPORATE GOVERNANCE, REPORTING AND DISCLOSURE, AS PROVIDED FOR IN THIS ARTICLE.

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

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

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

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(1) ENTER INSURANCE TRANSACTIONS THROUGH EXCESS LINE LICENSEES PROCURING EXCESS LINE INSURANCE;

(2) SELL INSURANCE DIRECTLY TO INSUREDS WHO INDEPENDENTLY PROCURE INSURANCE WHERE PERMITTED BY LAW BUT IN NO EVENT TO AN INSURED WHOSE HOME STATE IS NEW YORK FROM ANY OFFICE OF SUCH INSURER LOCATED IN NEW YORK STATE; AND

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

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

(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:

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

(B) SELL INSURANCE DIRECTLY TO INSUREDS WHO INDEPENDENTLY PROCURE INSURANCE WHERE PERMITTED BY LAW BUT IN NO EVENT TO AN INSURED WHOSE HOME STATE IS NEW YORK FROM ANY OFFICE OF SUCH INSURER LOCATED IN NEW YORK STATE; AND

(C) INSURE 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 SET FORTH 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, UNLESS THE SUPERINTENDENT, UPON A WRITTEN RECORD DETERMINES THAT ANY INCORPORATOR, DIRECTOR, OFFICER, PROPOSED SHAREHOLDER OR MEMBER OF THE PROPOSED HOLDING COMPANY SYSTEM, IS UNTRUSTWORTHY, IN A FINANCIALLY HAZARDOUS CONDITION OR OTHERWISE COULD NOT QUALIFY TO OBTAIN A CERTIFICATE OF AUTHORITY IN NEW YORK, THE SUPERINTENDENT SHALL, WITHIN NINETY 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 INSUREDS 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 EXCEPT SUBSECTION (F) OF SUCH SECTION, 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 INSURANCE LAWS. (A) EXCEPT AS MODIFIED BY THE PROVISIONS OF THIS ARTICLE DOMESTIC EXCESS LINE INSURANCE COMPANIES ARE SUBJECT TO THE PROVISIONS OF:

(1) ARTICLE ONE OF THIS CHAPTER. GENERAL PROVISIONS.

(2) ARTICLE TWO OF THIS CHAPTER. ORGANIZATION OF THE DEPARTMENT OF FINANCIAL SERVICES.

(3) ARTICLE THREE OF THIS CHAPTER. ADMINISTRATIVE AND PROCEDURAL PROVISIONS.

(4) ARTICLE FOUR OF THIS CHAPTER. INSURANCE FRAUDS PREVENTION.

(5) ARTICLE ELEVEN OF THIS CHAPTER. LICENSING OF INSURERS.

(6) ARTICLE TWELVE OF THIS CHAPTER. ORGANIZATION AND CORPORATE PROCEDURE.

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

(8) ARTICLE FOURTEEN OF THIS CHAPTER. INVESTMENTS.

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

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

(11) ARTICLE SEVENTY-ONE OF THIS CHAPTER. MERGER, CONSOLIDATION, REDOMESTICATION, ACQUISITION OF ASSETS AND ACQUISITION OF CERTAIN SHARES OF INSURERS.

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

(B) NOTWITHSTANDING SUBSECTION (A) OF THIS SECTION:

(1) NO LICENSE TO ACT AS AN AUTHORIZED INSURER IS REQUIRED FOR ANY INSURER TO WHICH A CERTIFICATE OF ELIGIBILITY HAS BEEN ISSUED.

(2) SECTION ONE THOUSAND TWO HUNDRED THIRTEEN OF THIS CHAPTER SHALL NOT APPLY TO DOMESTIC EXCESS LINE INSURERS.

(C) EXCEPT AS MODIFIED BY THIS ARTICLE, DOMESTIC EXCESS LINE INSURERS ARE SUBJECT TO EACH PROVISION OF THIS CHAPTER WHICH:

(1) APPLY BROADLY TO INSURANCE POLICIES ISSUED OR DELIVERED IN NEW YORK AND NOT EXCLUSIVELY TO AUTHORIZED INSURERS; OR

(2) EXPRESSLY APPLY TO OR EXEMPT EXCESS LINE INSURANCE POLICIES OR COVERAGE PROVIDED, IN SUCH POLICIES; AND

(3) ARE SET FORTH IN ANY OF THE FOLLOWING:

(A) ARTICLE TWENTY-ONE OF THIS CHAPTER. AGENTS, BROKERS, ADJUSTERS, CONSULTANTS AND INTERMEDIARIES.

(B) ARTICLE TWENTY-FOUR OF THIS CHAPTER. UNFAIR METHODS OF COMPETITION AND UNFAIR AND DECEPTIVE ACTS AND PRACTICES.

(C) ARTICLE TWENTY-FIVE OF THIS CHAPTER. PROHIBITIONS AGAINST CONTROLLED BUSINESS.

(D) ARTICLE TWENTY-SIX OF THIS CHAPTER. UNFAIR CLAIM SETTLEMENT PRACTICES; OTHER MISCONDUCT; DISCRIMINATION.

(E) ARTICLE TWENTY-SEVEN OF THIS CHAPTER. HOLOCAUST VICTIMS INSURANCE ACT OF 1998.

(F) ARTICLE THIRTY-FOUR OF THIS CHAPTER. INSURANCE CONTRACTS-PROPERTY/CASUALTY.

(G) ARTICLE FORTY-ONE OF THIS CHAPTER. PROPERTY/CASUALTY INSURANCE COMPANIES.

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

(D) NOTWITHSTANDING SUBSECTION (C) OF THIS SECTION, SECTION FOUR THOUSAND ONE HUNDRED THREE OF THIS CHAPTER SHALL NOT APPLY TO DOMESTIC EXCESS LINE INSURANCE COMPANIES.

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

(A) ARTICLE FIFTY-TWO OF THIS CHAPTER. MOTOR VEHICLE ACCIDENT INDEMNIFICATION CORPORATION.

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

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

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

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

S 5808. PRINCIPAL PLACE OF BUSINESS. A DOMESTIC EXCESS LINE INSURER SHALL MAINTAIN ITS PRINCIPAL PLACE OF BUSINESS WITHIN THE STATE OF NEW YORK.

S 5809. MANDATORY DISCLOSURE NOTICE. THE SUPERINTENDENT SHALL, BY REGULATION, REQUIRE EVERY POLICY AND/OR BINDER ISSUED BY A DOMESTIC EXCESS LINE INSURANCE COMPANY TO BEAR SPECIFIC LANGUAGE CONSPICUOUSLY DISPLAYED, WHICH ADVISES THE INSURED THAT THE INSURER IS NOT LICENSED BY THE STATE OF NEW YORK, THAT IN THE EVENT OF INSOLVENCY OF THE INSURER PROTECTIONS PROVIDED BY THE NEW YORK STATE SECURITY FUNDS DO NOT APPLY AND THAT THE POLICY MAY NOT BE SUBJECT TO ALL OF THE REGULATIONS PERTAINING TO POLICY FORMS.

S 2. This act shall take effect on the one hundred twentieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date is authorized to be made on or before such date.