

7764

I N S E N A T E

June 5, 2014

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 expanding the definition of a domestic insurer and the applicability of risk-based capital to certain health organizations (Part A); and to amend the insurance law, in relation to extending prior approval for certain motor vehicle insurance rates, adding an additional date for the superintendent to collect, analyze and compile periodic reports regarding certain property/casualty insurance policies, extending the date for exemptions on certain property/casualty insurance policies, and extending certain rate periods, in relation to extending additional powers of the New York property insurance underwriting association and in relation to extending the authority for certain domestic property/casualty insurers to write in the free trade zone; and to repeal section 2341 of such law relating to the consumers advisory council; business advisory council (Part B)

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

1 Section 1. This act enacts into law components of legislation relating  
2 to risk-based capital, property/casualty insurance provisions that  
3 sunset. Each component is wholly contained within a Part identified as  
4 Parts A and B. The effective date for each particular provision  
5 contained within such Part is set forth in the last section of such  
6 Part. Any provision in any section contained within a Part, including  
7 the effective date of the Part, which makes a reference to a section "of  
8 this act", when used in connection with that particular component, shall  
9 be deemed to mean and refer to the corresponding section of the Part in  
10 which it is found. Section three of this act sets forth the general  
11 effective date of this act.

12 PART A

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

LBD15519-01-4

1 Section 1. Subsection (a) of section 1109 of the insurance law, as  
2 amended by chapter 246 of the laws of 2005, is amended to read as  
3 follows:

4 (a) An organization complying with the provisions of article forty-  
5 four of the public health law may operate without being licensed under  
6 this chapter and without being subject to any provisions of this chap-  
7 ter, except: (1) to the extent that such organization must comply with  
8 the provisions of this chapter by virtue of such article, and (2) the  
9 provisions of sections three hundred eight, [three hundred thirteen,  
10 three hundred thirty-two,] one thousand three hundred one, one thousand  
11 three hundred two, one thousand three hundred seven, ONE THOUSAND THREE  
12 HUNDRED TWENTY-TWO, WITH REGARD TO HEALTH MAINTENANCE ORGANIZATIONS THAT  
13 ARE DOMICILED IN THIS STATE AND CERTIFIED OR OPERATING IN AT LEAST ONE  
14 OTHER STATE, two thousand one hundred three, two thousand one hundred  
15 twelve, two thousand one hundred fourteen, two thousand one hundred  
16 fifteen, two thousand one hundred seventeen, two thousand one hundred  
17 twenty-three, two thousand six hundred eight-a, two thousand six hundred  
18 twelve, three thousand two hundred twenty-four-a, four thousand three  
19 hundred eight, four thousand three hundred seventeen, four thousand  
20 three hundred eighteen, four thousand three hundred twenty, four thou-  
21 sand three hundred twenty-one, four thousand three hundred twenty-two  
22 and four thousand three hundred twenty-three of this chapter.

23 S 2. The section heading of section 1322 of the insurance law, as  
24 added by chapter 215 of the laws of 1993, is amended to read as follows:

25 Risk-based capital for life [and] INSURANCE COMPANIES, accident and  
26 health insurance companies, CORPORATIONS ORGANIZED PURSUANT TO ARTICLE  
27 FORTY-THREE OF THIS CHAPTER, AND CERTAIN HEALTH MAINTENANCE ORGANIZA-  
28 TIONS.

29 S 3. Paragraph 3 of subsection (a) of section 1322 of the insurance  
30 law, as added by chapter 215 of the laws of 1993, is amended to read as  
31 follows:

32 (3) "Domestic insurer" means any authorized life insurance company or  
33 accident and health insurance company incorporated or organized under  
34 any law of this state; CORPORATION ORGANIZED PURSUANT TO ARTICLE FORTY-  
35 THREE OF THIS CHAPTER; OR HEALTH MAINTENANCE ORGANIZATION DOMICILED IN  
36 THIS STATE AND CERTIFIED OR OPERATING IN AT LEAST ONE OTHER STATE.

37 S 4. Subsection (b) and paragraph 1 of subsection (c) of section 1322  
38 of the insurance law, as added by chapter 215 of the laws of 1993, are  
39 amended to read as follows:

40 (b) Applicability. This section shall apply to every authorized life  
41 insurance company and accident and health insurance company INCORPORATED  
42 OR ORGANIZED UNDER ANY LAW OF THIS STATE; CORPORATION ORGANIZED PURSUANT  
43 TO ARTICLE FORTY-THREE OF THIS CHAPTER; OR HEALTH MAINTENANCE ORGANIZA-  
44 TION DOMICILED IN THIS STATE AND CERTIFIED OR OPERATING IN AT LEAST ONE  
45 OTHER STATE.

46 (1) Every domestic insurer OTHER THAN A HEALTH MAINTENANCE ORGANIZA-  
47 TION DOMICILED IN THIS STATE AND CERTIFIED OR OPERATING IN AT LEAST ONE  
48 OTHER STATE shall, on or prior to each March fifteenth, AND EVERY SUCH  
49 HEALTH MAINTENANCE ORGANIZATION, ON OR PRIOR TO EACH APRIL FIFTEENTH  
50 (the "filing date"), prepare and submit to the superintendent a report  
51 of its RBC levels as of the end of the calendar year just ended, in a  
52 form and containing such information as is required by the RBC  
53 instructions. In addition, the insurer shall file the RBC report:

54 (A) With the National Association of Insurance Commissioners in  
55 accordance with the RBC instructions; and

1 (B) With the insurance commissioner in any state in which the insurer  
2 is authorized to do business, upon the written request of the insurance  
3 commissioner. The insurer shall file the RBC report by the later of:

4 (i) The filing date; or

5 (ii) Fifteen days after the date of the request.

6 S 5. Subparagraph (D) of paragraph 2 of subsection (c) of section 1322  
7 of the insurance law, as added by chapter 215 of the laws of 1993, is  
8 amended to read as follows:

9 (D) All other business risks and such other [relevent] RELEVANT risks  
10 as are set forth in the RBC instructions.

11 S 6. Paragraph 1 of subsection (d) of section 1322 of the insurance  
12 law, as added by chapter 215 of the laws of 1993, is amended to read as  
13 follows:

14 (1) "Company action level event" means, with respect to a domestic  
15 insurer:

16 (A) The filing by the insurer of a RBC report indicating that: (i) The  
17 insurer's total adjusted capital is greater than or equal to its regula-  
18 tory action level RBC but less than its company action level RBC; or

19 (ii) (I) The insurer has total adjusted capital [which] THAT is great-  
20 er than or equal to its company action level RBC but less than the prod-  
21 uct of [2.5] 3.0 and its authorized control level RBC; and

22 (II) there is a negative trend;

23 (B) The notification by the superintendent to the insurer of an  
24 adjusted RBC report that indicates the occurrence of an event described  
25 in item (i) or (ii) of subparagraph (A) of this paragraph, provided the  
26 insurer does not challenge the adjusted RBC report under subsection (h)  
27 of this section; or

28 (C) If, under subsection (h) of this section, the insurer challenges  
29 an adjusted RBC report that indicates the occurrence of an event  
30 described in item (i) or (ii) of subparagraph (A) of this paragraph,  
31 THEN the notification by the superintendent to the insurer that the  
32 superintendent has, after a hearing, rejected the insurer's challenge.

33 S 7. Paragraphs 2 and 3 of subsection (l) of section 1322 of the  
34 insurance law, as added by chapter 215 of the laws of 1993, are amended  
35 to read as follows:

36 (2) In the event of [an] A regulatory action level event under subpar-  
37 agraph (A), (B) or (C) of paragraph one of subsection (e) of this  
38 section the superintendent shall take the actions required under  
39 subsection (d) of this section.

40 (3) In the event of [an] A regulatory action level event under subpar-  
41 agraph (D), (E), (F), (G), (H) or (I) of paragraph one of subsection (e)  
42 of this section or an authorized control level event, the superintendent  
43 shall take the actions required under subsection (e) of this section  
44 with respect to the insurer.

45 S 8. This act shall take effect immediately.

46 PART B

47 Section 1. Sections 2328 and 2329 of the insurance law, as amended by  
48 chapter 102 of the laws of 2011, are amended to read as follows:

49 S 2328. Certain motor vehicle insurance rates; prior approval. For the  
50 periods February first, nineteen hundred seventy-four through August  
51 second, two thousand one, and the effective date of the  
52 property/casualty insurance availability act through June thirtieth, two  
53 thousand [fourteen] SEVENTEEN, no changes in rates, rating plans, rating  
54 rules and rate manuals applicable to motor vehicle insurance, including

1 no-fault coverages under article fifty-one of this chapter, shall be  
2 made effective until approved by the superintendent, notwithstanding any  
3 inconsistent provisions of this article; provided, however, that changes  
4 in such rates, rating plans, rating rules and rate manuals may be made  
5 effective without such approval if the rates [which] THAT result from  
6 such changes are no higher than the insurer's rates last approved by the  
7 superintendent. This section shall apply only to policies covering loss-  
8 es or liabilities arising out of ownership of a motor vehicle used prin-  
9 cipally for the transportation of persons for hire, including a bus or a  
10 school bus as defined in sections one hundred four and one hundred  
11 forty-two of the vehicle and traffic law.

12 S 2329. Motor vehicle insurance rates; excess profits. In accordance  
13 with regulations prescribed by the superintendent, each insurer issuing  
14 policies [which] THAT are subject to article fifty-one of this chapter,  
15 including policies of motor vehicle personal injury liability insurance  
16 or policies of motor vehicle property damage liability insurance or  
17 insurance for loss or damage to a motor vehicle, shall establish a fair,  
18 practicable, and nondiscriminatory plan for refunding or otherwise cred-  
19 iting to those purchasing such policies their share of the insurer's  
20 excess profit, if any, on such policies. An excess profit shall be a  
21 profit beyond a percentage rate of return on net worth attributable to  
22 such policies, computed in accordance with the regulation required by  
23 section two thousand three hundred twenty-three of this article, and  
24 determined by the superintendent to be so far above a reasonable average  
25 profit as to amount to an excess profit, taking into consideration the  
26 fact that losses or profits below a reasonable average profit will not  
27 be recouped from such policyholders. Each plan shall apply to policy  
28 periods for the periods January first, nineteen hundred seventy-four  
29 through August second, two thousand one, and the effective date of the  
30 property/casualty insurance availability act through June thirtieth, two  
31 thousand [fourteen] SEVENTEEN. In prescribing such regulations the  
32 superintendent may limit the duration of such plans, waive any require-  
33 ment for refund or credit [which] THAT he or she determines to be de-  
34 minimis or impracticable, adopt forms of returns [which] THAT shall be  
35 made to him or her in order to establish the amount of any refund or  
36 credit due, establish periods and times for the determination and  
37 distribution of refunds and credits, and shall provide that insurers  
38 receive appropriate credit against any refunds or credits required by  
39 any such plan for policyholder dividends and for return premiums [which]  
40 THAT may be due under rate credit or retrospective rating plans based on  
41 experience.

42 S 2. Paragraph 2 of subsection (1) of section 3425 of the insurance  
43 law, as amended by chapter 102 of the laws of 2011, is amended to read  
44 as follows:

45 (2) The superintendent shall collect, analyze and compile such reports  
46 with regard to the number of new insureds, non-renewed insureds and  
47 business written by each insurer in each rating territory of each such  
48 insurer and, in each case, the class of insureds (including age and sex)  
49 affected so that a statistical analysis of the results obtained pursuant  
50 to subsections (f) and (m) of this section shall be provided to each  
51 house of the legislature by March fifteenth, in the years nineteen  
52 hundred ninety-two, nineteen hundred ninety-six, nineteen hundred nine-  
53 ty-eight, two thousand one, two thousand six, two thousand seven, two  
54 thousand eight, two thousand eleven [and], two thousand fourteen, AND  
55 TWO THOUSAND SEVENTEEN.

1 S 3. Paragraphs 1 and 2 and the opening paragraph of paragraph 3 of  
2 subsection (m) of section 3425 of the insurance law, as amended by chap-  
3 ter 102 of the laws of 2011, are amended to read as follows:

4 (1) Paragraphs eight and nine of subsection (a), subsection (f) and  
5 subparagraphs (B) and (E) of paragraph one of subsection (j) of this  
6 section shall not apply to any new covered policy of automobile insur-  
7 ance voluntarily written on or after August first, nineteen hundred  
8 eighty-five and prior to January first, nineteen hundred eighty-six, and  
9 on or after August second, two thousand one and prior to the effective  
10 date of the property/casualty insurance availability act, and on or  
11 after June thirtieth, two thousand [fourteen] SEVENTEEN, but the legal  
12 rights granted to insurers or policyholders under such provisions shall  
13 not be extinguished or impaired thereby.

14 (2) In lieu of such provisions, paragraph seven of subsection (a),  
15 subparagraph (A) of paragraph one of subsection (j) and paragraph three  
16 of this subsection shall apply to such automobile insurance policies  
17 [which] THAT are newly and voluntarily written to have an effective date  
18 on or after August first, nineteen hundred eighty-five and prior to  
19 January first, nineteen hundred eighty-six, and on or after August  
20 second, two thousand one and prior to the effective date of the  
21 property/casualty insurance availability act, and on or after June thir-  
22 tieth, two thousand [fourteen] SEVENTEEN.

23 On and after August first, nineteen hundred eighty-five and prior to  
24 January first, nineteen hundred eighty-six, and on or after August  
25 second, two thousand one and prior to the effective date of the  
26 property/casualty insurance availability act, and on or after June thir-  
27 tieth, two thousand [fourteen] SEVENTEEN, no notice of nonrenewal or  
28 conditional renewal of such covered automobile insurance policies  
29 referred to in this subsection shall be issued to become effective  
30 during the required policy period unless it is based upon a ground for  
31 which the policy could have been cancelled or unless it is based upon  
32 one or more of the following grounds [which] THAT occurred during the  
33 thirty-six month period ending on the last day of the fourth month  
34 preceding the month of the effective date of such notice of nonrenewal  
35 or conditional renewal:

36 S 4. Subsection (f) of section 2305 of the insurance law, as amended  
37 by chapter 102 of the laws of 2011, is amended to read as follows:

38 (f) Subsection (a) of this section shall be of no force or effect  
39 during the period August third, two thousand one through the day before  
40 the effective date of the property/casualty insurance availability act,  
41 and after June thirtieth, two thousand [fourteen] SEVENTEEN. During the  
42 period August third, two thousand one through the day before the effec-  
43 tive date of the property/casualty insurance availability act, and again  
44 commencing on July first, two thousand [fourteen] SEVENTEEN, all rates  
45 previously subject to subsection (a) of this section, other than rates  
46 [which] THAT are not required to be filed pursuant to subsection (b) of  
47 section two thousand three hundred ten of this article or [which] THAT  
48 have been suspended from the filing requirement pursuant to section two  
49 thousand three hundred eleven of this article, shall become subject to  
50 subsections (b), (c) and (d) of this section. All other provisions of  
51 this article applicable to kinds of insurance or insurance activities  
52 the rates for which are subject to prior approval under subsection (b)  
53 of this section shall apply to kinds of insurance the rates for which  
54 were previously subject to subsection (a) of this section or the rates  
55 for which are not required to be filed pursuant to subsection (b) of  
56 section two thousand three hundred ten of this article or the rates for

1 which have been suspended from the filing requirement pursuant to  
2 section two thousand three hundred eleven of this article.

3 S 5. Section 2341 of the insurance law is REPEALED.

4 S 6. Section 2342 of the insurance law, as amended by chapter 102 of  
5 the laws of 2011, is amended to read as follows:

6 S 2342. Expiration of certain provisions. The provisions of subsection  
7 (c) of section two thousand three hundred seven, section two thousand  
8 three hundred eight, subsection (a) of section two thousand three  
9 hundred ten, sections two thousand three hundred sixteen, two thousand  
10 three hundred twenty, two thousand three hundred twenty-three, two thou-  
11 sand three hundred twenty-six, and two thousand three hundred thirty-  
12 five, AND subsection (b) of section two thousand three hundred thirty-  
13 six [and section two thousand three hundred forty-one] of this article  
14 shall cease to be of any force or effect during the period August third,  
15 two thousand one through the day before the effective date of the  
16 property/casualty insurance availability act, and after June thirtieth,  
17 two thousand [fourteen] SEVENTEEN.

18 S 7. Subsection (h) of section 2344 of the insurance law, as amended  
19 by chapter 102 of the laws of 2011, is amended to read as follows:

20 (h) This section shall cease to be of any force or effect during the  
21 period August third, two thousand one through the day before the effec-  
22 tive date of the property/casualty insurance availability act, and after  
23 June thirtieth, two thousand [fourteen] SEVENTEEN, except that rates  
24 shall reflect the likely reductive cost effects reasonably attributable  
25 to the statutory provisions specified in paragraph one of subsection (g)  
26 of this section.

27 S 8. Subsection (g) of section 5412 of the insurance law, as amended  
28 by chapter 102 of the laws of 2011, is amended to read as follows:

29 (g) The provisions of this section shall cease to be of any force or  
30 effect on or after June thirtieth, two thousand [fourteen] SEVENTEEN,  
31 except that policies issued or other obligations incurred by the associ-  
32 ation shall not be impaired by the expiration of this section and the  
33 association shall continue for the purpose of servicing such policies  
34 and performing such obligations.

35 S 9. Paragraph 3 of subsection (c) of section 6302 of the insurance  
36 law, as amended by chapter 490 of the laws of 2011, is amended to read  
37 as follows:

38 (3) until [June thirtieth, two thousand fourteen] DECEMBER  
39 THIRTY-FIRST, TWO THOUSAND SIXTEEN, a domestic property/casualty insur-  
40 ance company that maintains at all times a surplus to policyholders of  
41 at least twice the minimum surplus to policyholders required to be main-  
42 tained for the kinds of insurance that it is authorized to write in this  
43 state, or an insurer licensed pursuant to article sixty-one of this  
44 chapter as a reciprocal insurer that maintains at all times a surplus to  
45 policyholders of at least the minimum surplus to policyholders required  
46 to be maintained for the kinds of insurance that it is authorized to  
47 write in this state, provided that the domestic property/casualty insur-  
48 ance company or reciprocal insurer: (A) has total direct premiums  
49 comprised of at least ninety percent medical malpractice insurance; (B)  
50 assumes reinsurance premiums in an amount that is less than five percent  
51 of total direct premiums written; and (C) writes ninety percent of its  
52 total direct premiums in this state.

53 S 10. This act shall take effect immediately.

54 S 2. Severability clause. If any clause, sentence, paragraph, subdivi-  
55 sion, section or part of this act shall be adjudged by a court of compe-  
56 tent jurisdiction to be invalid, such judgment shall not affect, impair,

1 or invalidate the remainder thereof, but shall be confined in its opera-  
2 tion to the clause, sentence, paragraph, subdivision, section or part  
3 thereof directly involved in the controversy in which such judgment  
4 shall have been rendered. It is hereby declared to be the intent of the  
5 legislature that this act would have been enacted even if such invalid  
6 provisions had not been included herein.

7 S 3. This act shall take effect immediately provided, however, that  
8 the applicable effective date of Parts A and B of this act shall be as  
9 specifically set forth in the last section of such Parts.