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

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2009-2010 Regular Sessions

I N A S S E M B L Y

February 5, 2009

Introduced by M. of A. SCHIMMINGER, MORELLE, REILLY, DelMONTE, GALEF, PHEFFER -- read once and referred to the Committee on Insurance -- recommitted to the Committee on Insurance in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the insurance law and the navigation law, in relation to requiring certain policies of insurance for public vessels which carry passengers

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

Section 1. Subsection (a) of section 2105 of the insurance law, as amended by chapter 626 of the laws of 2006, is amended to read as follows:

(a) The superintendent may issue an excess line broker's license to any person, firm, association or corporation who or which is domiciled or maintains an office in this state and is licensed as an insurance broker under section two thousand one hundred four of this article, or who or which is licensed as an excess line broker in the licensee's home state, provided, however, that the applicant's home state grants non-resident licenses to residents of this state on the same basis, except that reciprocity is not required in regard to the placement of liability insurance on behalf of a purchasing group or any of its members; authorizing such person, firm, association or corporation to procure, subject to the restrictions herein provided, policies of insurance from insurers which are not authorized to transact business in this state of the kind or kinds of insurance specified in paragraphs four through fourteen, sixteen, seventeen, nineteen, twenty, TWENTY-ONE, twenty-two, twenty-seven, twenty-eight and thirty-one of subsection (a) of section one

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

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thousand one hundred thirteen of this chapter and in subsection (h) of this section, provided, however, that the provisions of this section and section two thousand one hundred eighteen of this article shall not apply to ocean marine insurance and other contracts of insurance enumerated in subsections (b) and (c) of section two thousand one hundred seventeen of this article. Such license may be suspended or revoked by the superintendent whenever in his judgment such suspension or revocation will best promote the interests of the people of this state.

S 2. Section 50 of the navigation law, as amended by chapter 672 of the laws of 1962, is amended to read as follows:

S 50. Owners to notify inspector and apply for inspection. It shall be the duty of the owner of a public vessel which he OR SHE intends to operate on the navigable waters of the state to notify the inspector of such intention at least one month before it is desired to place the vessel in operation and to request an inspection of such vessel. Upon receipt of such notification the inspector shall enter the application on the records of his OR HER office. A temporary permit to operate such vessel pending inspection may be issued by the inspector, if he OR SHE finds through documentary evidence that such vessel is properly equipped and manned for the safety of life and property. No public vessel shall be used or operated without a certificate of inspection or a temporary permit as herein provided. NO CERTIFICATE OF INSPECTION OR TEMPORARY PERMIT SHALL BE ISSUED UNLESS THE OWNER OF A PUBLIC VESSEL PRODUCES PROOF OF INSURANCE TO THE INSPECTOR IN ACCORDANCE WITH SECTION FIFTY-ONE OF THIS PART.

S 3. The navigation law is amended by adding two new sections 51 and 52 to read as follows:

S 51. LIABILITY INSURANCE ON PUBLIC VESSELS. 1. EVERY PUBLIC VESSEL CERTIFIED BY THE OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION TO CARRY PASSENGERS THAT IS OPERATED ON THE NAVIGABLE WATERS OF THE STATE, EXCEPT VESSELS THAT NAVIGATE ON WATERS WHICH THE UNITED STATES EXERCISES ACTIVE CONTROL, SHALL BE COVERED BY A SURETY BOND THAT MAY BE PURCHASED BY A SELF-INSURED PUBLIC VESSEL OWNER APPROVED AS A SELF-INSURER PURSUANT TO SECTION FIFTY-TWO OF THIS PART, OR A POLICY OF MARINE PROTECTION AND INDEMNITY INSURANCE AS DEFINED IN PARAGRAPH TWENTY-ONE OF SUBSECTION (A) OF SECTION ONE THOUSAND ONE HUNDRED THIRTEEN OF THE INSURANCE LAW. SUCH POLICY MAY BE OBTAINED FROM AN AUTHORIZED INSURER OR THROUGH A LICENSED EXCESS LINE BROKER IN ACCORDANCE WITH AND IN THE MANNER PRESCRIBED IN THE INSURANCE LAW. PUBLIC VESSELS CERTIFIED BY THE OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION TO CARRY PASSENGERS SHALL PROVIDE COVERAGE OF AT LEAST ONE MILLION DOLLARS PER OCCURRENCE BECAUSE OF INJURY TO OR DEATH OF ANY PERSON ARISING OUT OF THE NEGLIGENT OPERATION OF SAID PUBLIC VESSEL.

2. PROOF OF SURETY BOND OR INSURANCE REQUIRED BY THIS SECTION SHALL BE PRODUCED AND DISPLAYED BY THE OWNER OR OPERATOR OF SUCH PUBLIC VESSEL UPON THE REQUEST OF ANY PERSON HAVING AUTHORITY TO ENFORCE THE PROVISIONS OF THIS CHAPTER. THE FAILURE TO PRODUCE SUCH PROOF UPON THE REQUEST OF ANY SUCH PERSON SHALL NOT BE AN OFFENSE BUT SHALL BE PRESUMPTIVE EVIDENCE THAT THE PUBLIC VESSEL IS BEING OPERATED WITHOUT HAVING SUCH BOND OR INSURANCE IN FORCE AND EFFECT.

3. PROOF OF SURETY BOND OR INSURANCE REQUIRED BY THIS SECTION SHALL BE PRODUCED AND DISPLAYED BY THE OWNER OR OPERATOR OF SUCH PUBLIC VESSEL TO ANY PERSON WHO HAS SUFFERED PERSONAL INJURY AS A RESULT OF THE OPERATION OF SUCH PUBLIC VESSEL BY THE OWNER OR OPERATOR. IT SHALL BE AN AFFIRMATIVE DEFENSE TO ANY PROSECUTION FOR A VIOLATION OF THIS SUBDIVISION THAT

SUCH PROOF WAS SO PRODUCED OR DISPLAYED WITHIN TWENTY-FOUR HOURS OF RECEIVING NOTICE OF SUCH INJURY, OR THE CLAIM OF SUCH INJURY.

4. NO OWNER OF A PUBLIC VESSEL SHALL OPERATE OR PERMIT SUCH VESSEL TO BE OPERATED UPON THE NAVIGABLE WATERS OF THIS STATE, EXCLUDING WATERS ON WHICH THE UNITED STATES EXERCISES ACTIVE CONTROL, WITHOUT HAVING IN FULL FORCE AND EFFECT THE LIABILITY INSURANCE COVERAGE REQUIRED BY THIS SECTION, AND NO PERSON SHALL OPERATE A PUBLIC VESSEL UPON THE NAVIGABLE WATERS OF THIS STATE WITH KNOWLEDGE THAT SUCH INSURANCE IS NOT IN FULL FORCE AND EFFECT.

5. THE OPERATION OF A PUBLIC VESSEL IN VIOLATION OF THE REQUIREMENTS OF THIS SECTION SHALL BE PUNISHABLE AS A MISDEMEANOR IN ACCORDANCE WITH SECTION SEVENTY-THREE-B OF THIS ARTICLE.

6. A CERTIFICATE OF INSURANCE EVIDENCING PUBLIC VESSEL LIABILITY INSURANCE COVERAGE SHALL BE PROVIDED TO THE COMMISSIONER, EXCEPT FOR PUBLIC VESSEL OWNERS WHO QUALIFY TO SELF-INSURE PURSUANT TO SECTION FIFTY-TWO OF THIS PART. SELF-INSURED PUBLIC VESSEL OWNERS SHALL PROVIDE PROOF OF A SURETY BOND OR OTHER EVIDENCE REQUIRED BY THE COMMISSIONER TO SELF-INSURE. IN THE EVENT OF AN INSURANCE POLICY OR SURETY BOND TERMINATION, WHETHER INITIATED BY THE SURETY, INSURER OR PUBLIC VESSEL OWNER, THE PUBLIC VESSEL OWNER MUST NOTIFY THE COMMISSIONER IN WRITING OF SUCH TERMINATION AND PROVIDE PROOF OF INSURANCE OR SURETY BOND TO THE COMMISSIONER WITH RESPECT TO REPLACEMENT COVERAGE PRIOR TO A LAPSE IN COVERAGE OCCURRING.

S 52. SELF-INSURERS. THE COMMISSIONER MAY, IN HIS OR HER DISCRETION, UPON THE APPLICATION OF AN OWNER OF A PUBLIC VESSEL TO HAVE SUCH PUBLIC VESSEL CERTIFIED, ISSUE A CERTIFICATE OF SELF-INSURANCE WHEN HE OR SHE IS REASONABLY SATISFIED THAT SUCH PERSON IS POSSESSED, AND WILL CONTINUE TO BE POSSESSED, OF THE FINANCIAL ABILITY TO RESPOND TO JUDGMENTS OBTAINED AGAINST SUCH PERSON ARISING OUT OF THE OWNERSHIP, MAINTENANCE, USE OR OPERATION OF ANY SUCH PERSON'S PUBLIC VESSEL. UPON DUE NOTICE AND HEARING, THE COMMISSIONER MAY, IN HIS OR HER DISCRETION AND UPON REASONABLE GROUNDS, CANCEL A CERTIFICATE OF SELF-INSURANCE.

S 4. This act shall take effect on the one hundred eightieth day after it shall have become a law.