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

290--A

2009-2010 Regular Sessions

I N S E N A T E

(PREFILED)

January 7, 2009

Introduced by Sen. LITTLE -- read twice and ordered printed, and when printed to be committed to the Committee on Tourism, Recreation and Sports Development -- recommitted to the Committee on Tourism, Recreation and Sports Development in accordance with Senate Rule 6, sec. 8 -- committee discharged and said bill committed to the Committee on Cultural Affairs, Tourism, Parks and Recreation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the navigation law and the insurance 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. 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 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 office. A temporary permit to operate such vessel pending inspection may be issued by the inspector, if he 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.

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

LBD00973-02-0

S 2. 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 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 3. Subsection (b) of section 3103 of the insurance law is amended to read as follows:

(b) No policy of insurance or contract of annuity delivered or issued for delivery in this state shall provide that the rights or obligations of the insured or of any person rightfully claiming thereunder, with respect to:

(1) a policy of life, accident and health insurance or contract of annuity upon a person resident in this state,

(2) a policy of insurance upon property then in this state, or

(3) the liabilities to be incurred by the insured as a result of activity then carried on by the insured in this state,

shall be governed by the laws of any jurisdiction other than this state. This subsection shall not apply to policies of marine AND INLAND MARINE insurance AS DEFINED IN PARAGRAPH TWENTY OF SUBSECTION (A) OF SECTION ONE THOUSAND ONE HUNDRED THIRTEEN OF THIS CHAPTER, BUT SHALL APPLY TO THOSE POLICIES OF MARINE PROTECTION AND INDEMNITY INSURANCE, AS DEFINED IN PARAGRAPH TWENTY-ONE OF SUBSECTION (A) OF SECTION ONE THOUSAND ONE HUNDRED THIRTEEN OF THIS CHAPTER, THAT ARE REQUIRED TO BE PURCHASED BY PUBLIC VESSEL OPERATORS UNDER ARTICLE FOUR OF THE NAVIGATION LAW.

S 4. 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. A. EVERY PUBLIC VESSEL CERTIFIED TO CARRY PASSENGERS WHICH IS OPERATED ON THE NAVIGABLE WATERS OF THE STATE, EXCEPT VESSELS WHICH NAVIGATE ON WATERS WHICH THE UNITED STATES EXERCISES ACTIVE CONTROL, SHALL BE COVERED BY A BOND OR A POLICY OF INSURANCE. 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.

EVERY SUCH BOND OR INSURANCE POLICY SHALL CONTAIN A PROVISION FOR A CONTINUING LIABILITY THEREUNDER, NOTWITHSTANDING ANY RECOVERY THEREON, AND SHALL BE IN FULL FORCE AND EFFECT WHENEVER THE PUBLIC VESSEL IS UNDERWAY.

B. SHOULD THE AVAILABLE LIMIT UNDER SUCH BOND OR INSURANCE POLICY FOR ANY ONE OCCURRENCE BECOME LESS THAN REQUIRED BY THIS SECTION, BECAUSE OF AN AGGREGATE LIMIT OF LIABILITY APPLICABLE TO THE BOND OR INSURANCE POLICY, THE VESSEL SHALL NOT BE PLACED UNDERWAY UNTIL A REPLACEMENT OR REINSTATED BOND OR INSURANCE POLICY IS IN EFFECT PROVIDING AN UNIMPAIRED PER OCCURRENCE LIMIT IN THE FULL AMOUNT REQUIRED IN THIS SECTION.

2. NO POLICY OR CONTRACT SHALL BE ISSUED OR DELIVERED IN THIS STATE PURSUANT TO THIS SECTION UNLESS IT CONTAINS IN SUBSTANCE THE PROVISIONS OF SECTION THREE HUNDRED TWENTY OF THE INSURANCE LAW.

3. PROOF OF 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.

4. PROOF OF BOND OR INSURANCE AS 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.

5. NO OWNER OF A PUBLIC VESSEL SHALL OPERATE OR PERMIT THE SAME 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.

6. 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.

7. IN THE EVENT OF AN INSURANCE POLICY OR SURETY BOND TERMINATION, WHETHER INITIATED BY THE INSURER SURETY AND 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 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 5. This act shall take effect on the ninetieth day after it shall have become a law.