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

3551

2009-2010 Regular Sessions

I N S E N A T E

March 24, 2009

Introduced by Sens. BRESLIN, STACHOWSKI, DIAZ -- (at request of the New York State Insurance Department) -- 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 modernizing the licensing process by creating three new lines of authority, requiring entities seeking to provide insurance agent and broker licensing courses to file for approval with the superintendent of insurance, requiring independent adjusters to complete pre-licensing and continuing education courses, granting the superintendent of insurance the authority to require an applicant for an article 21 license to submit his or her fingerprints, and permitting the licensing of non-resident adjusters on a reciprocal basis; and to repeal certain provisions of such law relating to licensing of adjusters

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

Section 1. Paragraph 2 of subsection (a) of section 2101 of the insurance law, as amended by chapter 687 of the laws of 2003, is amended to read as follows:

(2) [employees] AN EMPLOYEE of [insurers] AN INSURER, fraternal benefit [societies] SOCIETY, or health maintenance [organizations] ORGANIZATION or [organizations] AN ORGANIZATION employed by [insurers] AN INSURER, fraternal benefit [societies] SOCIETY, or health maintenance [organizations] ORGANIZATION, who [are] IS engaging in the inspection, rating or classification of risks, or in the supervision of the training of licensed insurance producers and who [are] IS not individually engaged in the sale, solicitation or negotiation of insurance;

S 2. Subsections (l), (m), (n) and (o) of section 2101 of the insurance law, as added by chapter 687 of the laws of 2003, are amended to read as follows:

(l) In this article, "home state" means [the District of Columbia or] any state or territory of the United States in which an insurance

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

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producer maintains his, her, or its principal place of residence or principal place of business, and is licensed to act as an insurance producer.

(m) In this article, "negotiate" or "negotiation" means the act of conferring directly with, or offering advice directly to, a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract, provided that the person engaged in that act either sells insurance or obtains insurance from [licensed insurers] AN INSURER, fraternal benefit [societies] SOCIETY, or health maintenance [organizations] ORGANIZATION for purchasers.

(n) In this article, "sell" or "sale" means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of [a licensed] AN insurer, fraternal benefit society, or health maintenance organization.

(o) In this article, "solicit" or "solicitation" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular [licensed] insurer, fraternal benefit society, or health maintenance organization.

S 3. Paragraphs 6 and 7 of subsection (r) of section 2101 of the insurance law, are renumbered paragraphs 9 and 10, and three new paragraphs 6, 7, and 8 are added to read as follows:

(6) CREDIT: INSURANCE COVERAGE PROVIDED UNDER POLICIES OF: (A) CREDIT LIFE AND CREDIT ACCIDENT AND HEALTH; AND

(B) CREDIT UNEMPLOYMENT, INVOLUNTARY UNEMPLOYMENT, MOTOR VEHICLE CREDITOR GAP, NON-MOTOR VEHICLE CREDITOR GAP, OR ANY OTHER TYPE OF INSURANCE THAT THE SUPERINTENDENT DETERMINES IS OFFERED IN CONNECTION WITH AN EXTENSION OF CREDIT IS LIMITED TO PARTIALLY OR WHOLLY EXTINGUISHING THE CREDIT OBLIGATION, EXCEPT AS PROVIDED UNDER SUBPARAGRAPH (A) OF THIS PARAGRAPH;

(7) CROP: INSURANCE COVERAGE PROVIDING PROTECTION AGAINST DAMAGE TO CROPS FROM UNFAVORABLE WEATHER CONDITIONS, FIRE OR LIGHTNING, FLOOD, HAIL, INSECT INFESTATION, DISEASE, OR OTHER YIELD-REDUCING CONDITIONS OR PERILS, INCLUDING MULTI-PERIL CROP INSURANCE;

(8) SURETY: A BOND OR CONTRACT AS SPECIFIED IN SUBPARAGRAPHS (C) THROUGH (J) OF PARAGRAPH SIXTEEN OF SUBSECTION (A) OF SECTION ONE THOUSAND ONE HUNDRED THIRTEEN OF THIS CHAPTER, BUT SHALL NOT INCLUDE A BAIL BOND;

S 4. Subsections (a) and (b) of section 2103 of the insurance law, as amended by chapter 687 of the laws of 2003, are amended to read as follows:

(a) The superintendent may issue a license to any person, firm or corporation who or [which] THAT has complied with the requirements of this chapter, authorizing [such] THE licensee to act as an insurance agent with respect to the lines of authority for life [insurance], variable life and variable annuity products, [or] accident and health [insurance and] OR sickness, CREDIT, AS PROVIDED UNDER SUBPARAGRAPH (A) OF PARAGRAPH SIX OF SUBSECTION (R) OF SECTION TWO THOUSAND ONE HUNDRED ONE OF THIS ARTICLE, or any other line of authority deemed to be similar by the superintendent, including, for this purpose, health maintenance organization contracts, legal services insurance, or with respect to any combination of the above, as specified in [such] THE license, on behalf of any insurer, fraternal benefit society, or health maintenance organization[, which] THAT is authorized to do such kind or kinds of insurance or health maintenance organization business in this state.

(b) The superintendent may issue a license to any person, firm, association or corporation who or [which] THAT has complied with the requirements of this chapter, authorizing the licensee to act as agent of any authorized insurer, other than an insurer specified in subsection (b) of section two thousand one hundred fifteen of this article, with respect to the lines of authority for accident and health or sickness, property, casualty, personal lines, CREDIT, AS PROVIDED UNDER SUBPARAGRAPH (B) OF PARAGRAPH SIX OF SUBSECTION (R) OF SECTION TWO THOUSAND ONE HUNDRED ONE OF THIS ARTICLE, CROP, SURETY, or any other line of authority granted other than life, and variable life and variable annuity products, which [such] THE insurer is authorized to do in this state.

S 5. Subparagraphs (A) and (B) of paragraph 2 of subsection (f) of section 2103 of the insurance law, as amended by chapter 687 of the laws of 2003, are amended, and a new paragraph 4 is added to read as follows:

(A) For individuals seeking to qualify to obtain a license under subsection (a) of this section, [one examination adapted to test the qualifications for a life insurance agent's license, another adapted to test the qualifications for an accident and health insurance agent's license and another adapted to test the qualifications for a legal services insurance license] EXAMINATIONS ADAPTED TO TEST THE QUALIFICATIONS FOR THE LINES OF AUTHORITY SUBJECT TO SUCH SUBSECTION. Each [such] individual shall be required to pass the type or types of examination prescribed by the superintendent for the line or lines of authority, as specified in subsection (a) of this section, for which the license is sought. [No] AN individual shall NOT be deemed qualified to take the examination or examinations unless [he shall have] THE INDIVIDUAL HAS successfully completed a course or courses, approved as to method and content by the superintendent, covering the principal branches and contracts of life insurance, annuity contracts, disability insurance, accident and health insurance, and related insurance, and requiring not less than [forty] TWENTY hours of classroom work or the equivalent in correspondence work or similar instruction FOR EACH LINE OF AUTHORITY AN INDIVIDUAL SEEKS TO QUALIFY FOR UNDER SUBSECTION (A) OF THIS SECTION, provided, however, that, at the discretion of the superintendent, insurance subject material may be eliminated from course content, with a corresponding reduction in course hours, if an insurer is not authorized to transact such kind or kinds of insurance in this state. [Such] THE course or courses either shall have been given by a degree conferring college or university which [has] HAD, when [such] THE course [is] WAS taken by [such] THE individual, a curriculum or curricula registered with the state education department, whether [such] THE course be given as part of any such curricula or separately, or by any other institution, or life or accident and health insurer [which] THAT maintains equivalent standards of instruction, and [which shall have] THAT HAS been approved for such purpose by the superintendent.

(B) For individuals seeking to qualify to obtain a license under subsection (b) of this section, [not more than six types of examinations, each adapted to test the qualifications of an individual with respect to the kinds of insurance business specified in such classification] EXAMINATIONS ADAPTED TO TEST THE QUALIFICATIONS FOR THE LINES OF AUTHORITY SUBJECT TO SUCH SUBSECTION. Every [such] individual shall be required to pass the type or types of examination prescribed by the superintendent for the line or lines of authority for which the license is sought. [No] AN individual shall NOT be deemed qualified to take the examination unless [he] THE INDIVIDUAL shall have successfully completed

a course or courses, approved as to method and content by the superintendent, covering the principal branches of the insurance business and requiring not less than [ninety] TWENTY hours of classroom work, in institutions of learning meeting the standards prescribed by paragraph one of subsection (a) of section two thousand one hundred four of this article[; provided, however, with respect to a license issued pursuant to subsection (b) of this section for a personal line of authority, there shall be required not less than forty hours of such classroom work] FOR EACH LINE OF AUTHORITY AN INDIVIDUAL SEEKS TO QUALIFY FOR UNDER SUBSECTION (B) OF THIS SECTION.

(4)(A) ANY ENTITY ELIGIBLE TO PROVIDE COURSES, PROGRAMS OF INSTRUCTION, OR SEMINARS IN ACCORDANCE WITH THIS SECTION, SHALL FILE FOR APPROVAL BY THE SUPERINTENDENT ON A BIENNIAL BASIS, TO CONFORM WITH ITS AREA OF INSTRUCTION, A PROVIDER ORGANIZATION APPLICATION AND A COURSE SUBMISSION APPLICATION FOR EACH COURSE, PROGRAM AND SEMINAR.

(B) THE PROVIDER ORGANIZATION APPLICATION SHALL INCLUDE THE NAMES OF ALL INSTRUCTORS TO BE USED DURING THE CONTRACT PERIOD, AND INSTRUCTORS MAY BE ADDED DURING THE PERIOD BY NOTIFYING THE SUPERINTENDENT AND PAYING THE APPROPRIATE FILING FEE.

(C) THE COMPLETED APPLICATIONS SHALL BE RETURNED IN A TIMELY MANNER, AS SPECIFIED BY THE SUPERINTENDENT, WITH A NON-REFUNDABLE FILING FEE OF TWO HUNDRED DOLLARS PER ORGANIZATION, FIFTY DOLLARS PER COURSE, PROGRAM AND SEMINAR, AND FIFTY DOLLARS PER INSTRUCTOR.

(D) APPROVAL OF THE APPLICATION SHALL BE AT THE DISCRETION OF THE SUPERINTENDENT.

S 6. Paragraphs 1, 9, and 10 of subsection (g) of section 2103 of the insurance law, paragraphs 9 and 10 as amended by chapter 687 of the laws of 2003, are amended to read as follows:

(1) as a prerequisite to the issuance of a [baggage or accident and health insurance] TRAVEL INSURANCE agent's license to any ticket selling agent or representative of a railroad company, steamship company, carrier by air, [or] public bus carrier, OR OTHER COMMON CARRIER, who shall act [thereunder] as AN insurance agent only in reference to [the issuance of] INSURANCE COVERAGE FOR TRIP CANCELLATION, TRIP INTERRUPTION, baggage [or], LIFE, accident [insurance tickets primarily for the purpose of covering risk of travel] AND HEALTH, DISABILITY AND PERSONAL EFFECTS, WHEN LIMITED TO A SPECIFIC TRIP AND SOLD IN CONNECTION WITH TRANSPORTATION PROVIDED BY THE COMMON CARRIER;

(9) in the discretion of the superintendent, as to all or any part of the written examination or the prerequisite [minimum forty hour] PRE-LICENSING course specified in subparagraph (A) of paragraph two of subsection (f) of this section, of any individual seeking to be named a licensee or sub-licensee, upon whom has been conferred the Chartered Life Underwriter (C.L.U.) or Chartered Life Underwriter Associate designation by [The] THE American College OR ANY OTHER DESIGNATION THAT THE SUPERINTENDENT DETERMINES IS ACCEPTABLE PURSUANT TO A REGULATION;

(10) in the discretion of the superintendent, as to all or any part of the written examination or the prerequisite [minimum ninety hour] PRE-LICENSING course specified in subparagraph (B) of paragraph two of subsection (f) of this section, of any individual seeking to be named a licensee or sublicensee, upon whom has been conferred the Chartered Property Casualty Underwriter (C.P.C.U.) designation by the American Institute for Property and Liability Underwriters, OR ANY OTHER DESIGNATION THAT THE SUPERINTENDENT DETERMINES IS ACCEPTABLE PURSUANT TO A REGULATION; or

S 7. Subparagraphs (A), (B), and (C) of paragraph 1 of subsection (c) of section 2104 of the insurance law, as amended by chapter 505 of the laws of 2000, are amended, paragraph 2 of subsection (c) is renumbered paragraph 3, and a new paragraph 2 is added to read as follows:

(A) [He] THE INDIVIDUAL shall have successfully completed a course or courses, approved as to method and content by the superintendent, [covering the principal branches of the insurance business and requiring, in the case of a license under subparagraph (B) of paragraph one of subsection (b) of this section,] not less than [ninety] TWENTY hours[, and in the case of a license under subparagraph (A) of paragraph one of subsection (b) of this section, not less than forty hours] of classroom work or the equivalent thereof in correspondence work FOR EACH LINE OF AUTHORITY AN INDIVIDUAL SEEKS TO QUALIFY FOR UNDER SUBSECTION (B) OF THIS SECTION. [Such] THE course or courses either were given by a degree conferring college or university which [has] HAD, when [such] THE course [is] WAS taken by [such] THE individual, a curriculum or curricula registered with the state education department, whether [such] THE course [be] WAS given as a part of any such curriculum or separately, [or were given by the The College of Insurance,] or by any other institution [which] THAT maintains equivalent standards of instruction, [which] THAT has been continuously in existence for not less than five years prior to the taking of [such] THE course by [such] THE individual, and [which shall have been] THAT WAS approved for such purpose by the superintendent.

(B) [He] THE INDIVIDUAL shall have been regularly employed by an insurance company or an insurance agent or an insurance broker, for a period or periods aggregating not less than one year during the three years next preceding the date of application, in the case of a license under subparagraph (B) of paragraph one of subsection (b) of this section, in responsible insurance duties relating to the underwriting or adjusting of losses in any one or more of the following branches of insurance: fire, marine, liability and workers' compensation, and fidelity and surety; in the case of a license under subparagraph (A) of paragraph one of subsection (b) of this section in responsible insurance duties relating to the use of life insurance, accident and health insurance and annuity contracts in the design and administration of plans for estate conservation and distribution, employee benefits and business continuation; and [he] THE INDIVIDUAL shall submit with his OR HER application a statement subscribed and affirmed as true under the penalties of perjury by such employer or employers stating facts [which] THAT show compliance with this requirement.

(C) [He] THE INDIVIDUAL shall have been regularly employed by an insurance company or an insurance agent or an insurance broker, for a period or periods aggregating not less than one year, during the three years next preceding the date of entrance into the service of the armed forces of the United States or immediately following [his] THE INDIVIDUAL'S discharge therefrom, in the case of a license under subparagraph (B) of paragraph one of subsection (b) of this section, in responsible insurance duties relating to the underwriting or adjusting of losses in any one or more of the following branches of insurance: fire, marine, liability and workers' compensation, and fidelity and surety; in the case of a license under subparagraph (A) of paragraph one of subsection (b) of this section in responsible insurance duties relating to the use of life insurance, accident and health insurance and annuity contracts in the design and administration of plans for estate conservation and distribution, employee benefits and business continuation; provided the

application for [such] THE license is filed within one year from the date of discharge; and [he] THE INDIVIDUAL shall submit with his OR HER application a statement subscribed and affirmed as true under the penalties of perjury by such employer or employers stating facts [which] THAT show compliance with this requirement.

(2)(A) ANY ENTITY ELIGIBLE TO PROVIDE COURSES, PROGRAMS OF INSTRUCTION, OR SEMINARS IN ACCORDANCE WITH THIS SECTION, SHALL FILE FOR APPROVAL BY THE SUPERINTENDENT ON A BIENNIAL BASIS, TO CONFORM WITH ITS AREA OF INSTRUCTION, A PROVIDER ORGANIZATION APPLICATION AND A COURSE SUBMISSION APPLICATION FOR EACH COURSE, PROGRAM AND SEMINAR.

(B) THE PROVIDER ORGANIZATION APPLICATION SHALL INCLUDE THE NAMES OF ALL INSTRUCTORS TO BE USED DURING THE CONTRACT PERIOD, AND INSTRUCTORS MAY BE ADDED DURING THE PERIOD BY NOTIFYING THE SUPERINTENDENT AND PAYING THE APPROPRIATE FILING FEE.

(C) THE COMPLETED APPLICATIONS SHALL BE RETURNED IN A TIMELY MANNER, AS SPECIFIED BY THE SUPERINTENDENT, WITH A NON-REFUNDABLE FILING FEE OF TWO HUNDRED DOLLARS PER ORGANIZATION, FIFTY DOLLARS PER COURSE, PROGRAM AND SEMINAR, AND FIFTY DOLLARS PER INSTRUCTOR.

(D) APPROVAL OF THE APPLICATION SHALL BE AT THE DISCRETION OF THE SUPERINTENDENT.

S 8. Subparagraph (B) of paragraph 1 of subsection (e) of section 2104 of the insurance law, as amended by chapter 505 of the laws of 2000, is amended to read as follows:

(B) An exemption may be granted, at the discretion of the superintendent, as to all or any part of the written examination or the prerequisite course specified in subparagraph (A) of paragraph one of subsection (c) of this section, of any individual seeking to be named a licensee or sub-licensee, upon whom has been conferred, in the case of a license under subparagraph (B) of paragraph one of subsection (b) of this section, the Chartered Property Casualty Underwriter (C.P.C.U.) designation by the American Institute for Property and Liability Underwriters, OR ANY OTHER DESIGNATION THAT THE SUPERINTENDENT DETERMINES IS ACCEPTABLE PURSUANT TO A REGULATION, or on whom has been conferred, in the case of a license under subparagraph (A) of paragraph one of subsection (b) of this section, the Chartered Life Underwriter (C.L.U.), Chartered Financial Consultant (Ch.F.C.) or the Master of Science in Financial Services (M.S.F.S.) designations by the American College of Financial Service Professionals, OR ANY OTHER DESIGNATION THAT THE SUPERINTENDENT DETERMINES IS ACCEPTABLE PURSUANT TO A REGULATION.

S 9. Paragraph 2 of subsection (d) of section 2108 of the insurance law is REPEALED.

S 10. Paragraph 1 of subsection (f) of section 2108 of the insurance law is amended to read as follows:

(1) The superintendent shall, in order to determine the trustworthiness and competency to act as an independent adjuster of each individual applicant for such license, and of each proposed sub-licensee, except in the case of a renewal license, require every such individual to take and pass, to the satisfaction of the superintendent, a personal written examination. AN INDIVIDUAL SHALL NOT BE DEEMED QUALIFIED TO TAKE THE EXAMINATION WITHOUT HAVING DEMONSTRATED BY EVIDENCE SATISFACTORY TO THE SUPERINTENDENT THAT: (A) THE INDIVIDUAL POSSESSES A MINIMUM OF ONE-YEAR'S EXPERIENCE IN THE INSURANCE BUSINESS, WITH INVOLVEMENT IN SALES, UNDERWRITING, CLAIMS, OR OTHER EXPERIENCE CONSIDERED SUFFICIENT BY THE SUPERINTENDENT; OR (B) THE INDIVIDUAL SUCCESSFULLY COMPLETED FORTY HOURS OF FORMAL TRAINING IN A COURSE, PROGRAM OF INSTRUCTION, OR

SEMINARS APPROVED BY THE SUPERINTENDENT. The superintendent may prescribe the types of written examinations according to the kind or kinds of insurance claims [which] THAT the applicant is to be licensed to investigate and adjust.

S 11. Paragraphs 1 and 2, and clause (i) of subparagraph (A) of paragraph 3 of subsection (r) of section 2108 of the insurance law, as added by chapter 264 of the laws of 1998, are amended to read as follows:

(1) The following continuing education requirements shall apply to resident and non-resident persons licensed as [public] adjusters.

(2) Resident and non-resident persons licensed as [public] adjusters and any person previously so licensed whose license was not in effect on the effective date of this subsection and who has subsequently been relicensed pursuant to the provisions of this article, shall biennially satisfactorily complete such courses or programs as may be approved by the superintendent, as follows:

(A) Any person holding a license as [a public] AN adjuster shall, during each full biennial licensing period, satisfactorily complete courses or programs of instruction or attend seminars as may be approved by the superintendent equivalent to fifteen credit hours of instruction.

(B) During the same calendar year biennial licensing period, a licensee may use accumulated continuing education credits to meet the requirements of similar classes of licenses including those authorized by subsection (b) of section two thousand one hundred three, section two thousand one hundred four, section two thousand one hundred seven of this article with respect to general insurance consultants, and THIS section [two thousand one hundred eight of this article] with respect to [public] adjusters.

(C) Excess credit hours accumulated during any biennial licensing period shall not carry forward to the next biennial licensing period for that same class of license.

(i) Courses, programs of instruction or seminars, approved as to method and content by the superintendent, covering portions of the principal branches of insurance related to the kinds of insurance covered by [the public] AN adjusting license, and given by a degree conferring college or university whose curriculum is registered with the state education department at the time the person takes the course, whether [such] THE course [be] IS given as part of [such] THE curriculum or separately, or by any other institution, association, trade association, or insurer[, which] THAT maintains equivalent standards of instruction and [which] THAT shall have been approved for such purpose by the superintendent.

S 12. The insurance law is amended by adding a new section 2113 to read as follows:

S 2113. FINGERPRINT REQUIREMENT. IN ORDER TO DETERMINE THE TRUSTWORTHINESS OF ANY APPLICANT OR LICENSEE UNDER THIS ARTICLE, THE SUPERINTENDENT MAY REQUIRE THE APPLICANT OR LICENSEE TO SUBMIT HIS OR HER FINGERPRINTS AT THE TIME OF APPLICATION. BEFORE APPROVING AN APPLICATION, IT SHALL BE THE DUTY OF THE SUPERINTENDENT OR THE SUPERINTENDENT'S AUTHORIZED REPRESENTATIVE TO SUBMIT THE FINGERPRINTS TO THE DIVISION OF CRIMINAL JUSTICE SERVICES FOR A STATE CRIMINAL HISTORY RECORD CHECK, AS DEFINED IN SUBDIVISION ONE OF SECTION THREE THOUSAND THIRTY-FIVE OF THE EDUCATION LAW, AND SUCH FINGERPRINTS MAY BE SUBMITTED TO THE FEDERAL BUREAU OF INVESTIGATION FOR A NATIONAL CRIMINAL HISTORY RECORD CHECK.

S 13. Paragraph 1 of subsection (c) of section 2132 of the insurance law, as added by chapter 656 of the laws of 1992, is amended to read as follows:

(1) Any person holding a license issued pursuant to this article and not exempt under subsection (b) of this section shall, during each full biennial licensing period, satisfactorily complete courses or programs of instruction or attend seminars as may be approved by the superintendent equivalent to [fifteen] TWENTY-FOUR credit hours of instruction. IF LICENSED AS AN INDIVIDUAL AND ACTING AS A SUBLICENSEE OF ANY BUSINESS ENTITY LICENSED UNDER THIS ARTICLE, THEN THE INDIVIDUAL MAY COUNT THE CONTINUING EDUCATION CREDITS ACCUMULATED TO SATISFY THE RENEWAL REQUIREMENTS FOR BOTH THE INDIVIDUAL LICENSE AND SUBLICENSE, PROVIDED THE CREDITS ARE FOR A SAME LINE OF AUTHORITY.

S 14. Subsection (d) of section 2136 of the insurance law, as added by chapter 687 of the laws of 2003, is amended to read as follows:

(d) the applicant's home state awards nonresident insurance producer OR ADJUSTER licenses to residents of this state on the same basis as provided in this subsection.

S 15. This act shall take effect on the one hundred eightieth day after it shall have become a law.