

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

5374--A

2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

Introduced by Sens. KLEIN, HASSELL-THOMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the insurance law, in relation to an exemption to certain provisions of law relating to risk-based capital for property/casualty insurance companies; and in relation to the financial regulation of medical malpractice liability insurance companies; and to repeal certain provisions of such law relating thereto

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

1 Section 1. Subsection (a) of section 1301 of the insurance law is
2 amended by adding two new paragraphs 19 and 20 to read as follows:
3 (19) FOR THOSE STOCK AND NON-STOCK COMPANIES TO WHICH SUBPARAGRAPH (B)
4 OF PARAGRAPH TWO OF SUBSECTION (B) OF SECTION ONE THOUSAND THREE HUNDRED
5 TWENTY-FOUR OF THIS ARTICLE APPLY, THE AMOUNT OF THE SURCHARGE ON PREMI-
6 UMS TO SATISFY A PROJECTED DEFICIENCY THAT IS ATTRIBUTABLE TO THE PREMI-
7 UM LEVELS ESTABLISHED PURSUANT TO SECTION FORTY OF CHAPTER TWO HUNDRED
8 SIXTY-SIX OF THE LAWS OF NINETEEN HUNDRED EIGHTY-SIX, AS SUCH SURCHARGE
9 IS PROVIDED IN SUCH CHAPTER, WHETHER OR NOT SUCH SURCHARGE IS ACTUALLY
10 IMPOSED BY THE SUPERINTENDENT; PROVIDED, HOWEVER, THAT SUCH SURCHARGES,
11 IF IMPOSED, WILL BE SUBJECT TO THE LIMITATIONS PROVIDED FOR IN THIS
12 CHAPTER RELATING TO THE AMOUNTS TO BE COLLECTED IN A GIVEN POLICY YEAR.
13 (20) FOR RECIPROCAL INSURERS ORGANIZED AND LICENSED PURSUANT TO ARTI-
14 CLE SIXTY-ONE OF THIS CHAPTER TO WRITE MEDICAL MALPRACTICE INSURANCE AS
15 THAT TERM IS DEFINED IN SUBSECTION (B) OF SECTION FIVE THOUSAND FIVE
16 HUNDRED ONE OF THIS CHAPTER, THE AMOUNT OF ANY ASSESSMENT AUTHORIZED BY
17 SUBSECTIONS (A) AND (B) OF SECTION SIX THOUSAND ONE HUNDRED EIGHT OF
18 THIS CHAPTER; PROVIDED, HOWEVER, THAT SUCH ASSESSMENTS, IF IMPOSED, WILL
19 BE SUBJECT TO THE LIMITATIONS PROVIDED FOR IN THIS CHAPTER RELATING TO
20 THE AMOUNTS TO BE COLLECTED IN A GIVEN POLICY YEAR.

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

LBD11667-04-9

1 S 2. Section 1311 of the insurance law is amended by adding a new
2 subsection (e) to read as follows:

3 (E) IN DETERMINING THE TOTAL ADMITTED ASSETS OF AN INSURER THE SUPER-
4 INTENDENT SHALL INCLUDE IN SUCH DETERMINATION ALL ASSETS ALLOWED AS
5 ADMITTED ASSETS PURSUANT TO SUBSECTION (A) OF SECTION ONE THOUSAND THREE
6 HUNDRED ONE OF THIS ARTICLE.

7 S 3. Section 1325 of the insurance law is REPEALED and a new section
8 1325 is added to read as follows:

9 S 1325. EXEMPTION. (A) FOR THE PURPOSES OF EXEMPTING CERTAIN INSURANCE
10 COMPANIES FROM THE PROVISIONS OF SECTION ONE THOUSAND THREE HUNDRED
11 TWENTY-FOUR OF THIS ARTICLE, THE SUPERINTENDENT SHALL EXEMPT THOSE STOCK
12 AND NON-STOCK INSURANCE COMPANIES TO WHICH SUBPARAGRAPH (B) OF PARAGRAPH
13 TWO OF SUBSECTION (B) OF SUCH SECTION APPLIES.

14 (B) THE SUPERINTENDENT SHALL NO LATER THAN JUNE THIRTIETH, TWO THOU-
15 SAND ELEVEN PROMULGATE, FOR APPLICATION DURING THE NEXT SUCCEEDING
16 CALENDAR YEAR, AND AFTER CONSULTATION WITH THE COMMISSIONER OF HEALTH
17 AND DOMESTIC MEDICAL MALPRACTICE INSURERS WRITING MEDICAL MALPRACTICE
18 INSURANCE IN THIS STATE, A REGULATION WHICH PROVIDES A SEPARATE FINAN-
19 CIAL SECURITY STANDARD AND RATE APPROVAL PROCESS FOR THOSE STOCK AND
20 NON-STOCK INSURANCE COMPANIES TO WHICH SUBPARAGRAPH (B) OF PARAGRAPH TWO
21 OF SUBSECTION (B) OF SECTION ONE THOUSAND THREE HUNDRED TWENTY-FOUR OF
22 THIS CHAPTER APPLY. SUCH STANDARD SHALL TAKE INTO ACCOUNT THE SPECIAL-
23 IZED NATURE OF THE COVERAGE PROVIDED BY SUCH COMPANIES, THE MONOLINE AND
24 SINGLE STATE STATUS OF SUCH CARRIERS AND THE UNIQUE OBLIGATIONS IMPOSED
25 ON SUCH COMPANIES BY STATUTE AND REGULATION, AND SHALL BE BASED ON ITS
26 ABILITY TO PAY CLAIMS BASED UPON CLAIMS RESERVE ANALYSES. FURTHER, THE
27 REGULATION SHALL INCLUDE NEW STATUTORY FINANCIAL STATEMENT BLANKS AND
28 EXAMINATION PROTOCOLS CONSISTENT WITH THE NEW STANDARD.

29 (C) UNTIL SUCH TIME AS THE SUPERINTENDENT PROMULGATES REGULATIONS IN
30 ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION, THOSE STOCK AND
31 NON-STOCK INSURANCE COMPANIES TO WHICH SUBPARAGRAPH (B) OF PARAGRAPH TWO
32 OF SUBSECTION (B) OF SECTION ONE THOUSAND THREE HUNDRED TWENTY-FOUR OF
33 THIS CHAPTER APPLIED, AND NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO
34 THE CONTRARY, A CARRIER MAY FILE FOR AND USE A RATE INCREASE NOT TO
35 EXCEED FIVE PERCENT OF THE CARRIER'S CURRENT RATE UPON A FILING WITH THE
36 SUPERINTENDENT FOR THE NEXT SUCCEEDING POLICY YEAR IF SUCH SUBMISSION IS
37 FILED WITH THE SUPERINTENDENT NO LATER THAN JULY FIFTEENTH OF THE YEAR
38 PRIOR TO WHICH IT IS TO BE APPLIED. IF A CARRIER DOES NOT FILE SUCH
39 RATE ADJUSTMENT WITHIN SUCH TIME FRAME, THEN SUCH INSURER SHALL BE
40 SUBJECT TO THE RATE APPROVAL PROCESS IN PLACE AT THE TIME THIS SECTION
41 SHALL TAKE EFFECT.

42 S 4. The insurance law is amended by adding a new section 1326 to read
43 as follows:

44 S 1326. STATUTORY ASSOCIATION MEMBERSHIP. FOR THOSE STOCK AND
45 NON-STOCK COMPANIES TO WHICH SUBPARAGRAPH (B) OF PARAGRAPH TWO OF
46 SUBSECTION (B) OF SECTION ONE THOUSAND THREE HUNDRED TWENTY-FOUR OF THIS
47 ARTICLE APPLY, NO LIABILITIES ARISING FROM ANY MEMBERSHIP IN ANY STATU-
48 TORY ASSOCIATION SHALL BE DUE AND OWING FROM SUCH COMPANIES UNLESS AND
49 UNTIL SUCH LIABILITIES CAN ONLY BE SATISFIED BY A CONTRIBUTION FROM THE
50 INSURER, AND THE INSURER IS NOTIFIED OF SAME NOT LESS THAN ONE YEAR
51 PRIOR TO THE EXPECTED DATE THAT SUCH OBLIGATION WILL BE DUE AND OWING.
52 SUCH LIABILITIES SHALL NOT BE AGGREGATED AND SHALL NOT INCLUDE CONTIN-
53 GENT LIABILITIES, BUT REFLECT SPECIFIC CLAIMS LIABILITIES ACTUALLY DUE
54 AND OWING OR EXPECTED TO BE DUE AND OWING IN THAT YEAR FOR WHICH THERE
55 ARE NO OTHER ASSOCIATION OR POOL RESOURCES, INCLUDING CURRENT PREMIUM
56 INCOME, TO SATISFY SUCH OBLIGATIONS; FURTHER, COMPANIES, UPON RECEIPT OF

1 NOTICE OF SUCH OBLIGATION, SHALL HAVE THE RIGHT TO AUDIT ANY SUCH ASSO-
2 CIATION AND ITS REQUEST FOR COVERAGE OF SUCH LIABILITIES.

3 S 5. Subsection (c) of section 2343 of the insurance law, as amended
4 by section 27 of part B of chapter 58 of the laws of 2008, is amended to
5 read as follows:

6 (c) Notwithstanding any other provision of this chapter, no applica-
7 tion for an order of rehabilitation or liquidation of a domestic insurer
8 whose primary liability arises from the business of medical malpractice
9 insurance, as that term is defined in subsection (b) of section five
10 thousand five hundred one of this chapter, shall be made on the grounds
11 specified in subsection (a) or (c) of section seven thousand four
12 hundred two of this chapter at any time [prior to June thirtieth, two
13 thousand eleven].

14 S 6. Subsection (b) of section 6108 of the insurance law is amended to
15 read as follows:

16 (b) If the admitted assets of any such insurer are at any time insuf-
17 ficient for the payment of losses and expenses after providing for all
18 other liabilities of such insurer and the minimum surplus to policyhold-
19 ers required by this chapter, the advisory committee shall, within thir-
20 ty days thereafter, order an assessment for the amount necessary to pay
21 such losses and expenses, and authorize the attorney-in-fact to collect
22 from each subscriber liable therefor a pro rata share of the amount of
23 such assessment, subject to the limit specified in the contract of such
24 subscriber and to maintain an action therefor in the name of the attor-
25 ney-in-fact. FOR THE PURPOSES OF THIS SUBSECTION, ADMITTED ASSETS SHALL
26 INCLUDE A PRESUMPTION OF A SURCHARGE OR ASSESSMENT, WHERE APPLICABLE, OR
27 BOTH, HAVING BEEN AUTHORIZED BY THE ADVISORY COUNCIL OR DIRECTED BY THE
28 SUPERINTENDENT CONSISTENT WITH THE TERMS OF THE SUBSCRIBERS' CONTRACTS
29 AND COLLECTED BY AN INSURER.

30 S 7. Subsection (c) of section 6111 of the insurance law is amended to
31 read as follows:

32 (c) The contingent liability of subscribers for additional premiums or
33 assessments shall [not] be included as an asset in the financial state-
34 ment of a reciprocal insurer.

35 S 8. This act shall take effect immediately.