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

650

2009-2010 Regular Sessions

I N S E N A T E

January 12, 2009

Introduced by Sens. LARKIN, SEWARD, ALESI, BONACIC, DeFRANCISCO, FARLEY, FLANAGAN, GOLDEN, LAVALLE, LEIBELL, LITTLE, MAZIARZ, MORAHAN, NOZZOLIO, SALAND, SKELOS, VOLKER -- 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 licensing and regulating health insurance purchasing cooperatives

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

Section 1. Section 2101 of the insurance law is amended by adding a new subsection (v) to read as follows:

(V) IN THIS ARTICLE, A "HEALTH INSURANCE PURCHASING COOPERATIVE" OR "COOPERATIVE" MEANS ANY INDIVIDUAL, FIRM, ASSOCIATION, BUSINESS CORPORATION OR NOT-FOR-PROFIT CORPORATION LICENSED PURSUANT TO THIS ARTICLE THAT PROVIDES HEALTH INSURANCE OR A HEALTH BENEFITS PLAN THROUGH MULTIPLE UNAFFILIATED PARTICIPATING INSURERS OR HEALTH MAINTENANCE ORGANIZATIONS TO MEMBER SOLE PROPRIETORS AND SMALL EMPLOYERS AND THEIR EMPLOYEES WITHIN A DEFINED SERVICE AREA AUTHORIZED BY THE SUPERINTENDENT. FOR THE PURPOSES OF THIS SUBSECTION, "SMALL EMPLOYER" SHALL MEAN ANY EMPLOYER THAT EMPLOYS NOT FEWER THAN TWO NOR MORE THAN NINETY-NINE EMPLOYEES.

S 2. The insurance law is amended by adding a new section 2104-a to read as follows:

S 2104-A. HEALTH INSURANCE PURCHASING COOPERATIVE: LICENSING. (A) THE SUPERINTENDENT MAY ISSUE A HEALTH INSURANCE PURCHASING COOPERATIVE LICENSE TO ANY NON-RISK BEARING INDIVIDUAL, FIRM, ASSOCIATION, BUSINESS CORPORATION, OR NOT-FOR-PROFIT CORPORATION WHO OR WHICH IS DEEMED BY THE SUPERINTENDENT TO BE TRUSTWORTHY AND COMPETENT TO ACT AS AN INSURANCE BROKER PURSUANT TO SECTION TWO THOUSAND ONE HUNDRED FOUR OF THIS ARTICLE AND TO EXERCISE THE ADDITIONAL POWERS GRANTED TO A COOPERATIVE LICENSEE PURSUANT TO THIS SECTION. BEFORE ISSUING A COOPERATIVE LICENSE, THE APPLICANT MUST HAVE AN INSURANCE BROKER'S LICENSE OR HAVE EMPLOYED BY SUCH COOPERATIVE AN EMPLOYEE THAT HAS A BROKER'S LICENSE.

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

LBD05217-01-9

(B) A COOPERATIVE MAY MARKET, SELL OR OFFER FOR SALE OR ARRANGE FOR A PACKAGE OF ONE OR MORE HEALTH INSURANCE BENEFITS PLANS UNDERWRITTEN BY THREE OR MORE INSURERS OR HEALTH MAINTENANCE ORGANIZATIONS TO SOLE PROPRIETORS AND SMALL EMPLOYERS AND THEIR EMPLOYEES. FOR THE PURPOSES OF THIS SECTION, "SMALL EMPLOYER" MEANS ANY EMPLOYER THAT EMPLOYS NOT FEWER THAN TWO NOR MORE THAN NINETY-NINE EMPLOYEES. A COOPERATIVE MAY NOT ISSUE CONTRACTS OR QUOTE PREMIUM RATES OR PROVIDE COVERAGE UNTIL CONTRACTS AND PREMIUM RATES FOR INSURERS AND HEALTH MAINTENANCE ORGANIZATIONS PARTICIPATING IN THE COOPERATIVE ARE APPROVED BY THE SUPERINTENDENT.

(C) BEFORE A HEALTH INSURANCE PURCHASING COOPERATIVE LICENSE SHALL BE ISSUED OR RENEWED, THE PROSPECTIVE LICENSEE SHALL PROPERLY FILE WITH THE SUPERINTENDENT A WRITTEN APPLICATION AND PAY A FEE OF ONE HUNDRED DOLLARS. EVERY LICENSE SHALL HAVE A DURATION OF TWO YEARS. THE LICENSE APPLICATION SHALL CONTAIN THE FOLLOWING INFORMATION TO DEMONSTRATE THAT:

(1) A SPECIFIC BUSINESS PLAN HAS BEEN DEVELOPED TO DEMONSTRATE HOW THE APPLICANT INTENDS TO REDUCE THE COST OF HEALTH INSURANCE OR ADMINISTRATIVE COSTS FOR MEMBER BUSINESSES AND INCREASE ACCESS TO HEALTH INSURANCE;

(2) THE APPLICANT WILL HAVE THE EXPERTISE AND LOGISTICAL SUPPORT TO ADEQUATELY SERVE MEMBER SOLE PROPRIETORS AND SMALL EMPLOYERS AND THEIR EMPLOYEES;

(3) THE APPLICANT IS NOT A DISTRIBUTION NETWORK FOR A SINGLE PRODUCT OR THE PRODUCTS OF A SINGLE HEALTH INSURER OR HEALTH MAINTENANCE ORGANIZATION;

(4) ADEQUATE AND ONGOING FINANCIAL CONTROLS AND SECURITY ARRANGEMENTS WILL BE INSTITUTED TO ENSURE THAT THE APPLICANT WILL REMAIN SOLVENT;

(5) THE APPLICANT WILL INSTITUTE ADEQUATE SAFEGUARDS WITH EACH PARTICIPATING INSURER AND HEALTH MAINTENANCE ORGANIZATION TO ENSURE CONTINUITY OF COVERAGE FOR PLAN SUBSCRIBERS SHOULD THE APPLICANT CEASE OPERATIONS;

(6) THE APPLICANT SHALL ATTEMPT TO EXTEND PURCHASING COOPERATIVE SPONSORED INSURANCE COVERAGES TO A LARGE NUMBER OF SMALL EMPLOYERS WITHIN THE APPLICANT'S SERVICE AREA;

(7) THE APPLICANT HAS SATISFIED THE CRITERIA NECESSARY FOR OBTAINING AN INSURANCE BROKER'S LICENSE PURSUANT TO SECTION TWO THOUSAND ONE HUNDRED FOUR OF THIS ARTICLE; AND

(8) THE APPLICANT WILL COMPLY WITH ALL PROVISIONS RELATING TO COMMUNITY RATING AND OPEN ENROLLMENT PURSUANT TO SECTION THREE THOUSAND TWO HUNDRED THIRTY-THREE OF THIS CHAPTER.

(D) COOPERATIVE LICENSEES SHALL HAVE THE FOLLOWING POWERS:

(1) TO SELL, MARKET, OFFER OR ARRANGE FOR SALE TO SOLE PROPRIETORS AND SMALL EMPLOYERS, THEIR EMPLOYEES AND THEIR FAMILIES A VARIETY OF HEALTH INSURANCE PLANS.

(2) PREPARE AND DISSEMINATE INFORMATIONAL AND SOLICITATION MATERIALS TO FACILITATE COMPARISON OF THE VARIOUS HEALTH INSURANCE PLANS OFFERED TO MEMBER SOLE PROPRIETORS AND SMALL EMPLOYERS BY THE COOPERATIVE.

(3) SET REASONABLE PURCHASING COOPERATIVE MEMBERSHIP FEES AND COOPERATIVE ADMINISTRATIVE FEES TO SERVICE EMPLOYER AND INSURER ENROLLMENT, BILLING, COLLECTION, PREMIUM DISBURSEMENT AND RECONCILIATION, COMMISSION DISBURSEMENT AND PROCESSING ACTIVITIES. THESE FEES MAY VARY BASED ON THE SIZE OF THE EMPLOYER.

(4) PROVIDE ENROLLMENT, BILLING, PREMIUM COLLECTION, PREMIUM DISBURSEMENT AND RECONCILIATION, COMMISSION DISBURSEMENT AND OTHER PROCESSING SERVICES FOR HEALTH INSURANCE PLANS OFFERED THROUGH THE COOPERATIVE.

(5) CONTRACT WITH QUALIFIED THIRD PARTIES TO PROVIDE FOR ANY SERVICE NECESSARY TO CARRY OUT THE COOPERATIVE'S POWERS AND DUTIES.

(6) CONTRACT WITH LICENSED INSURANCE AGENTS AND BROKERS TO MARKET AND SERVICE COVERAGES MADE AVAILABLE THROUGH THE COOPERATIVE AND NEGOTIATE THE DIVISION OF COMMISSION FEES BETWEEN THE INSURANCE AGENT, BROKER AND COOPERATIVE.

(7) NEGOTIATE WITH PARTICIPATING INSURERS AND HEALTH MAINTENANCE ORGANIZATIONS THE ADMINISTRATIVE EXPENSES PORTION OF PREMIUM RATES CHARGED FOR COVERAGE OFFERED BY THE COOPERATIVE.

(8) EXERCISE THOSE POWERS GRANTED TO AN INSURANCE BROKER PURSUANT TO SECTION TWO THOUSAND ONE HUNDRED FOUR OF THIS ARTICLE.

(9) ANY OTHER POWERS THAT THE SUPERINTENDENT DEEMS NECESSARY TO FACILITATE A COOPERATIVE'S ABILITY TO REDUCE THE COST OF HEALTH INSURANCE OR ADMINISTRATIVE COSTS FOR MEMBER BUSINESSES OR TO INCREASE ACCESS TO SUCH INSURANCE.

(E) INFORMATION PROVIDED TO THE SUPERINTENDENT BY AN APPLICANT FOR A COOPERATIVE LICENSE OR A COOPERATIVE LICENSEE RELATING TO ITS FINANCES OR OPERATIONS WILL, UPON REQUEST BY THE COOPERATIVE, BE GIVEN CONSIDERATION AS A TRADE SECRET PURSUANT TO PARAGRAPH (D) OF SUBDIVISION TWO OF SECTION EIGHTY-SEVEN OF THE PUBLIC OFFICERS LAW.

S 3. Section 2110 of the insurance law, as amended by chapter 687 of the laws of 2003, is amended to read as follows:

S 2110. Revocation or suspension of license of insurance producer, insurance consultant or adjuster. (a) The superintendent may refuse to renew, revoke, or may suspend for a period the superintendent determines the license of any insurance producer, HEALTH INSURANCE PURCHASING COOPERATIVE, insurance consultant or adjuster, if, after notice and hearing, the superintendent determines that the licensee or any sub-licensee has:

(1) violated any insurance laws, or violated any regulation, subpoena or order of the superintendent [of insurance] or of another state's insurance commissioner, or has violated any law in the course of his, HER, OR ITS dealings in such capacity;

(2) provided materially incorrect, materially misleading, materially incomplete or materially untrue information in the license application;

(3) obtained or attempted to obtain a license through misrepresentation or fraud;

(4)(A) used fraudulent, coercive or dishonest practices;

(B) demonstrated incompetence;

(C) demonstrated untrustworthiness; or

(D) demonstrated financial irresponsibility in the conduct of business in this state or elsewhere;

(5) improperly withheld, misappropriated or converted any monies or properties received in the course of business in this state or elsewhere;

(6) intentionally misrepresented the terms of an actual or proposed insurance contract or application for insurance;

(7) has been convicted of a felony;

(8) admitted or been found to have committed any insurance unfair trade practice or fraud;

(9) had an insurance producer license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory;

(10) forged another's name to an application for insurance or to any document related to an insurance transaction;

(11) improperly used notes or any other reference material to complete an examination for an insurance license;

(12) knowingly accepted insurance business from an individual who is not licensed;

(13) failed to comply with an administrative or court order imposing a child support obligation; or

(14) failed to pay state income tax or comply with any administrative or court order directing payment of state income tax.

(b) Before revoking or suspending the license of any HEALTH INSURANCE PURCHASING COOPERATIVE, insurance producer or other licensee pursuant to the provisions of this article, the superintendent shall, except when proceeding pursuant to subsection (f) of this section, give notice to the licensee and to every sub-licensee and shall hold, or cause to be held, a hearing not less than ten days after the giving of such notice.

(c) If A HEALTH INSURANCE PURCHASING COOPERATIVE'S LICENSE, an insurance producer's license or other licensee's license pursuant to the provisions of this article is revoked or suspended by the superintendent, [he] THE SUPERINTENDENT shall forthwith give notice to the licensee.

(d) The revocation or suspension of any HEALTH INSURANCE PURCHASING COOPERATIVE'S LICENSE, insurance producer's license or other licensee's license pursuant to the provisions of this article shall terminate forthwith such COOPERATIVE'S LICENSE, producer's license or other licensee's license and the authority conferred thereby upon all sub-licensees.

(e) (1) No individual, corporation, firm or association whose license as A HEALTH INSURANCE PURCHASING COOPERATIVE, an insurance producer or other licensee subject to subsection (a) of this section has been revoked, and no firm or association of which such individual is a member, and no corporation of which such individual is an officer or director, shall be entitled to obtain any license under the provisions of this chapter for a period of one year after such revocation, or, if such revocation be judicially reviewed, for one year after the final determination thereof affirming the action of the superintendent in revoking such license.

(2) If any such license held by a firm, association or corporation be revoked, no member of such firm or association and no officer or director of such corporation shall be entitled to obtain any license, or to be named as a sub-licensee in any such license, for the same period of time, unless the superintendent determines, after notice and hearing, that such member, officer or director was not personally at fault in the matter on account of which such license was revoked.

(f) (1) As used in this subsection, "non-resident insurance producer's license or sub-license" means a license or sub-license in such capacity issued pursuant to paragraph five of subsection (g) of section two thousand one hundred three or subsection (e) of section two thousand one hundred four of this article.

(2) A non-resident insurance producer's license or sub-license may be summarily revoked in the event that the licensee's license as an agent, broker, adjuster or in any other capacity under the insurance law of the licensee's home state of domicile or such license of the firm or association of which the licensee is a member, employee or sub-licensee, or such license of the corporation of which the licensee is an officer, director, employee or sub-licensee has been suspended or revoked or renewal thereof denied in the licensee's home state of domicile by a procedure affording to the licensee or it a statutory right to a hearing, for action or conduct which, if it had been established upon a hearing before the superintendent, would have constituted grounds for revocation of a license under subsection (a) of this section.

(3) Before revoking the license of any non-resident insurance producer in accordance with this section, the superintendent shall give ten days' notice in writing to such producer of the action proposed to be taken, which notice shall be given in accordance with the applicable provisions of subsections (a) and (d) of section three hundred three of this chapter.

(4) Upon submission to the superintendent of satisfactory proof that a suspension or revocation of a license issued by a home state to act as an insurance agent, insurance broker, adjuster or in another licensed capacity under the insurance law of such other state or a denial of renewal thereof has been duly withdrawn, set aside, reversed or voided, the superintendent shall thereupon reinstate and restore any and all licenses revoked in accordance with the provisions of this subsection.

(g) If ANY HEALTH INSURANCE PURCHASING COOPERATIVE, any licensed insurance producer or any person aggrieved shall file with the superintendent a verified complaint setting forth facts tending to show sufficient ground for the revocation or suspension of any insurance producer's license OR ANY COOPERATIVE'S LICENSE, or if any licensed adjuster or any person aggrieved files with the superintendent a verified complaint setting forth facts showing sufficient grounds for the suspension or revocation of any adjuster's license, the superintendent shall, after notice and a hearing, determine whether such license shall be suspended or revoked.

(h) The superintendent shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by this chapter against any person or entity who is under investigation for or charged with a violation of this chapter, even if the person's or entity's license or registration has been surrendered, or has expired or has lapsed by operation of law.

(i) A licensee subject to this article shall report to the superintendent any administrative action taken against the licensee in another jurisdiction or by another governmental agency in this state within thirty days of the final disposition of the matter. This report shall include a copy of the order, consent to order or other relevant legal documents.

(j) Within thirty days of the initial pretrial hearing date, a licensee subject to this article shall report to the superintendent any criminal prosecution of the licensee taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing and any other relevant legal documents.

S 4. Section 2120 of the insurance law, subsection (d) as added by chapter 527 of the laws of 2004, is amended to read as follows:

S 2120. Fiduciary capacity of insurance agents, HEALTH INSURANCE PURCHASING COOPERATIVES, insurance brokers and reinsurance intermediaries. (a) Every insurance agent, EVERY HEALTH INSURANCE PURCHASING COOPERATIVE and every insurance broker acting as such in this state shall be responsible in a fiduciary capacity for all funds received or collected as insurance agent, COOPERATIVE or insurance broker, and shall not, without the express consent of his, HER or its principal, mingle any such funds with his, HER or its own funds or with funds held by him, HER or it in any other capacity.

(b) Every reinsurance intermediary acting as such in this state shall be responsible, in a fiduciary capacity for all funds received or collected in such capacity, and shall not, without the express consent of his, HER or its principal or principals, mingle any such funds with

his, HER or its own funds or with funds held by him, HER or it in any other capacity.

(c) This section shall not require any such agent, broker, COOPERATIVE or reinsurance intermediary to maintain a separate bank deposit for the funds of each such principal, if and as long as the funds so held for each such principal are reasonably ascertainable from the books of account and records of such agent, broker, COOPERATIVE or reinsurance intermediary, as the case may be.

(d) A retail insurance producer who violates paragraph (a) of subdivision two of section five hundred seventy-seven-a of the banking law shall be liable for actual damages for the failure to notify, in writing, the premium finance agency of the information required pursuant to such paragraph (a).

S 5. Section 2122 of the insurance law is amended to read as follows:

S 2122. Advertising by insurance agents [and], brokers AND COOPERATIVES. (a) (1) No insurance agent [or insurance], broker OR COOPERATIVE shall make or issue in this state any advertisement, sign, pamphlet, circular, card or other public announcement purporting to make known the financial condition of any insurer, unless the same shall conform to the requirements of section one thousand three hundred thirteen of this chapter.

(2) No insurance agent, insurance broker, COOPERATIVE or other person, shall, by any advertisement or public announcement in this state, call attention to any unauthorized insurer or insurers.

(b) Every agent of any insurer and every insurance broker AND COOPERATIVE shall, in all advertisements, public announcements, signs, pamphlets, circulars and cards, which refer to an insurer, set forth therein the name in full of the insurer referred to and the name of the city, town or village in which it has its principal office in the United States.

S 6. Every purchasing alliance or cooperative operating pursuant to a memorandum of understanding with the insurance department prior to the effective date of this act shall be exempt from this act until the superintendent of insurance reasonably determines that such alliances or cooperatives are able to comply with such provisions of this act.

Under no circumstances shall the superintendent of insurance mandate that any existing purchasing alliance or cooperative operating prior to the effective date of this act must comply with the provisions of this act for a period of at least five years from the effective date of this act or revoke or nullify in any way any memorandum of understanding with such alliances or cooperatives for a period of at least five years.

S 7. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided however, that any rules or regulations necessary to implement this act shall be promulgated on or before such effective date.