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

6949--A

Cal. No. 682

I N S E N A T E

March 1, 2010

Introduced by Sens. BRESLIN, THOMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the insurance law, in relation to authorizing the issuance of group policies for service providers listed in a commercial directory

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

Section 1. The insurance law is amended by adding a new section 3453 to read as follows:

S 3453. GROUP POLICY FOR SERVICE PROVIDERS LISTED IN A COMMERCIAL DIRECTORY. (A) FOR PURPOSES OF THIS SECTION, THE FOLLOWING DEFINITIONS SHALL APPLY:

(1) "COMMERCIAL DIRECTORY" MEANS ANY LISTING OF BUSINESSES IN PRINT OR ELECTRONIC FORM THAT IS ISSUED BY AN ENTITY THAT PUBLISHES BOTH WHITE AND YELLOW PAGE DIRECTORIES.

(2) "GROUP MEMBER" MEANS A SERVICE PROVIDER THAT IS INSURED UNDER THE GROUP POLICY.

(3) "GROUP POLICYHOLDER" MEANS AN ENTITY THAT PUBLISHES COMMERCIAL DIRECTORIES.

(4) "SERVICE PROVIDER" MEANS ANY INDIVIDUAL OR BUSINESS ENTITY WHO IS LISTED IN A COMMERCIAL DIRECTORY; PURCHASES ADVERTISING SERVICES FROM A PUBLISHER OF A COMMERCIAL DIRECTORY; AND PROVIDES CERTAIN TYPES OF SERVICES AS SPECIFIED BY THE PUBLISHER OF THE COMMERCIAL DIRECTORY.

(B) A GROUP POLICY MAY BE ISSUED OR ISSUED FOR DELIVERY IN THIS STATE TO A GROUP POLICYHOLDER ONLY IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION.

(C) COVERAGE UNDER A GROUP POLICY SHALL EXTEND ONLY TO SERVICE PROVIDERS, AND SHALL BE ASSOCIATED WITH THE PERFORMANCE OF CONTRACTS ENTERED INTO BY SERVICE PROVIDERS.

(D) A GROUP POLICY MAY PROVIDE COVERAGE FOR THE KIND OF INSURANCE AUTHORIZED BY PARAGRAPH SIXTEEN OF SUBSECTION (A) OF SECTION ONE THOU-

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

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SAND ONE HUNDRED THIRTEEN OF THIS CHAPTER, AND THE AMOUNT OF COVERAGE SHALL NOT EXCEED FIVE THOUSAND DOLLARS FOR EACH CONTRACT GUARANTEED BY THE COVERAGE.

(E) THE PREMIUM FOR THE GROUP POLICY, INCLUDING CERTIFICATES, MAY BE PAID BY THE GROUP POLICYHOLDER FROM THE FUNDS CONTRIBUTED:

(1) WHOLLY BY THE GROUP POLICYHOLDER;

(2) WHOLLY BY THE GROUP MEMBERS; OR

(3) JOINTLY BY THE GROUP POLICYHOLDER AND THE GROUP MEMBERS.

(F)(1) A GROUP POLICY, INCLUDING CERTIFICATES, ON WHICH ALL OR PART OF THE PREMIUM IS TO BE DERIVED FROM FUNDS CONTRIBUTED BY THE GROUP MEMBERS SPECIFICALLY FOR THEIR INSURANCE MAY BE PLACED IN FORCE ONLY IF THE GROUP POLICY INSURES NOT LESS THAN FIFTY PERCENT OF THE THEN ELIGIBLE SERVICE PROVIDERS, OR, IF LESS, ONE HUNDRED OR MORE OF SUCH ELIGIBLE SERVICE PROVIDERS EXCLUDING ANY AS TO WHOM EVIDENCE OF INDIVIDUAL INSURABILITY IS NOT SATISFACTORY TO THE INSURER. A GROUP POLICY, INCLUDING CERTIFICATES, ON WHICH NO PART OF THE PREMIUM IS TO BE DERIVED FROM FUNDS CONTRIBUTED BY THE GROUP MEMBERS SPECIFICALLY FOR THEIR INSURANCE MUST INSURE ALL ELIGIBLE SERVICE PROVIDERS, EXCLUDING ANY AS TO WHOM EVIDENCE OF INDIVIDUAL INSURABILITY IS NOT SATISFACTORY TO THE INSURER.

(2) THE GROUP POLICY SHALL INSURE AT LEAST ONE HUNDRED SERVICE PROVIDERS AT DATE OF ISSUE, EXCEPT THAT IF PART OF THE PREMIUM IS TO BE DERIVED FROM FUNDS TO BE CONTRIBUTED BY THE GROUP MEMBERS SPECIFICALLY FOR THEIR INSURANCE, THEN THE GROUP POLICY SHALL INSURE AT LEAST TWO HUNDRED SERVICE PROVIDERS AT DATE OF ISSUE.

(G) (1) ANY POLICY DIVIDEND, RETROSPECTIVE PREMIUM CREDIT, OR RETROSPECTIVE PREMIUM REFUND IN RESPECT OF PREMIUMS PAID BY THE GROUP POLICYHOLDER MAY:

(A) BE APPLIED TO REDUCE THE PREMIUM CONTRIBUTION OF THE GROUP POLICYHOLDER, BUT NOT IN EXCESS OF THE PROPORTION TO ITS CONTRIBUTION; OR

(B) BE RETAINED BY THE GROUP POLICYHOLDER.

(2) ANY POLICY DIVIDEND, RETROSPECTIVE PREMIUM CREDIT, OR RETROSPECTIVE PREMIUM REFUND NOT DISTRIBUTED UNDER PARAGRAPH ONE OF THIS SUBSECTION SHALL BE:

(A) APPLIED TO REDUCE FUTURE PREMIUMS AND, ACCORDINGLY, FUTURE CONTRIBUTIONS, OF EXISTING OR FUTURE GROUP MEMBERS, OR BOTH; OR

(B) PAID OR REFUNDED TO THOSE GROUP MEMBERS INSURED ON THE DATE THE PAYMENT OR REFUND IS MADE TO THE GROUP POLICYHOLDER, IF DISTRIBUTED BY THE GROUP POLICYHOLDER, OR ON THE DATE OF MAILING, IF DISTRIBUTED DIRECTLY BY THE INSURER, SUBJECT TO THE FOLLOWING REQUIREMENTS:

(I) THE INSURER SHALL BE RESPONSIBLE FOR DETERMINING THE ALLOCATION OF THE PAYMENT OR REFUND TO THE GROUP MEMBERS;

(II) IF THE GROUP POLICYHOLDER DISTRIBUTES THE PAYMENT OR REFUND, THE INSURER SHALL BE RESPONSIBLE FOR AUDIT TO ASCERTAIN THAT THE PAYMENT OR REFUND IS ACTUALLY MADE IN ACCORDANCE WITH THE ALLOCATION PROCEDURE; AND

(III) IF THE GROUP POLICYHOLDER FAILS TO MAKE THE PAYMENT OR REFUND, THE INSURER SHALL MAKE THE PAYMENT OR REFUND DIRECTLY OR USE THE METHOD PROVIDED IN SUBPARAGRAPH (A) OF THIS PARAGRAPH.

(3) NOTWITHSTANDING PARAGRAPHS ONE AND TWO OF THIS SUBSECTION, IF A DIVIDEND ACCRUES UPON TERMINATION OF COVERAGE UNDER A GROUP POLICY, THE PREMIUM FOR WHICH WAS PAID OUT OF FUNDS CONTRIBUTED BY GROUP MEMBERS SPECIFICALLY FOR THE COVERAGE, THEN THE DIVIDEND SHALL BE PAID OR REFUNDED BY THE GROUP POLICYHOLDER TO THE GROUP MEMBERS INSURED ON THE DATE THE PAYMENT OR REFUND IS MADE TO THE GROUP POLICYHOLDER NET OF REASONABLE EXPENSES INCURRED BY THE GROUP POLICYHOLDER IN PAYING OR REFUNDING THE DIVIDEND TO SUCH GROUP MEMBERS.

(4) FOR THE PURPOSES OF THIS SUBSECTION, "DIVIDEND" MEANS A RETURN BY AN INSURER TO A GROUP POLICYHOLDER OF EXCESS PREMIUMS PAID BY THAT GROUP POLICYHOLDER IN LIGHT OF FAVORABLE LOSS EXPERIENCE, INCLUDING RETROSPECTIVE PREMIUM CREDITS OR RETROSPECTIVE PREMIUM REFUNDS. THE TERM "DIVIDEND" DOES NOT INCLUDE REIMBURSEMENTS OR FEES RECEIVED BY A GROUP POLICYHOLDER IN CONNECTION WITH THE OPERATION OR ADMINISTRATION OF A GROUP POLICY, INCLUDING ADMINISTRATIVE REIMBURSEMENTS, FEES FOR SERVICES PROVIDED BY THE GROUP POLICYHOLDER, OR TRANSACTIONAL SERVICE FEES.

(H) THE INSURER MUST TREAT IN LIKE MANNER ALL ELIGIBLE GROUP MEMBERS OF THE SAME CLASS AND STATUS.

(I) A GROUP POLICY OR CERTIFICATE SHALL NOT BE ELIGIBLE FOR PLACEMENT BY AN EXCESS LINE BROKER LICENSED PURSUANT TO ARTICLE TWENTY-ONE OF THIS CHAPTER.

(J)(1) THE INSURER SHALL BE RESPONSIBLE FOR THE MAILING OR DELIVERY OF A CERTIFICATE OF INSURANCE TO EACH GROUP MEMBER. THE INSURER ALSO SHALL BE RESPONSIBLE FOR THE MAILING OR DELIVERY TO EACH GROUP MEMBER OF AN AMENDED CERTIFICATE OF INSURANCE, OR ENDORSEMENT TO THE CERTIFICATE, WHENEVER THERE IS A CHANGE OF LIMITS; CHANGE IN TYPE OF COVERAGE; ADDITION, REDUCTION, OR ELIMINATION OF COVERAGE; OR ADDITION OF EXCLUSION, UNDER THE GROUP POLICY OR CERTIFICATE.

(2) THE CERTIFICATE SHALL CONTAIN IN SUBSTANCE ALL MATERIAL TERMS AND CONDITIONS OF COVERAGE AFFORDED TO THE GROUP MEMBER, UNLESS THE GROUP POLICY IS INCORPORATED BY REFERENCE AND A COPY OF THE GROUP POLICY ACCOMPANIES THE CERTIFICATE.

(3) IF COVERAGE AFFORDED TO THE GROUP MEMBER IS IN EXCESS OF OTHER APPLICABLE INSURANCE COVERAGE, THEN THE CERTIFICATE SHALL CONTAIN A NOTICE ADVISING THE GROUP MEMBER THAT IF THE MEMBER HAS OTHER INSURANCE COVERAGE, SPECIFIED COVERAGES UNDER THE GROUP POLICY WILL BE EXCESS OVER THE OTHER INSURANCE.

(K) A GROUP POLICYHOLDER SHALL COMPLY WITH THE PROVISIONS OF SECTION TWO THOUSAND ONE HUNDRED TWENTY-TWO OF THIS CHAPTER, IN THE SAME MANNER AS AN AGENT OR BROKER, IN ANY ADVERTISEMENT, SIGN, PAMPHLET, CIRCULAR, CARD, OR OTHER PUBLIC ANNOUNCEMENT REFERRING TO COVERAGE UNDER A GROUP POLICY OR CERTIFICATE.

(L) A GROUP POLICY OR CERTIFICATE SHALL NOT BE SUBJECT TO SECTION THREE THOUSAND FOUR HUNDRED TWENTY-FIVE OR SECTION THREE THOUSAND FOUR HUNDRED TWENTY-SIX OF THIS ARTICLE. THE FOLLOWING REQUIREMENTS SHALL APPLY IN REGARD TO TERMINATION OF COVERAGE:

(1)(A) AN INSURER MAY TERMINATE A GROUP POLICY OR CERTIFICATE ONLY IF CANCELLATION IS BASED ON ONE OR MORE OF THE REASONS SET FORTH IN SUBPARAGRAPHS (A) THROUGH (D) OR (F) THROUGH (H) OF PARAGRAPH ONE OF SUBSECTION (C) OF SECTION THREE THOUSAND FOUR HUNDRED TWENTY-SIX OF THIS ARTICLE; PROVIDED, HOWEVER, THAT AN ACT OR OMISSION BY A GROUP MEMBER THAT WOULD CONSTITUTE THE BASIS FOR CANCELLATION OF AN INDIVIDUAL CERTIFICATE SHALL NOT CONSTITUTE THE BASIS FOR CANCELLATION OF THE GROUP POLICY.

(B) WHERE THE PREMIUM IS DERIVED WHOLLY FROM FUNDS CONTRIBUTED BY THE GROUP POLICYHOLDER, AN INSURER MAY CANCEL AN INDIVIDUAL CERTIFICATE ONLY IF CANCELLATION IS BASED ON ONE OR MORE OF THE REASONS SET FORTH IN SUBPARAGRAPH (B), (C) OR (H) OF PARAGRAPH ONE OF SUBSECTION (C) OF SECTION THREE THOUSAND FOUR HUNDRED TWENTY-SIX OF THIS ARTICLE.

(2)(A) AN INSURER'S CANCELLATION OF A GROUP POLICY, INCLUDING ALL CERTIFICATES, SHALL NOT BECOME EFFECTIVE UNTIL FIFTEEN DAYS AFTER THE INSURER MAILS OR DELIVERS WRITTEN NOTICE OF CANCELLATION TO THE GROUP POLICYHOLDER AT THE MAILING ADDRESS SHOWN IN THE POLICY.

(I) WHERE ALL OR PART OF THE PREMIUM IS DERIVED FROM FUNDS CONTRIBUTED BY THE GROUP MEMBER SPECIFICALLY FOR THE COVERAGE, THE INSURER ALSO SHALL MAIL OR DELIVER WRITTEN NOTICE OF CANCELLATION OF THE GROUP POLICY TO THE GROUP MEMBER AT THE GROUP MEMBER'S MAILING ADDRESS.

(II) WHERE NONE OF THE PREMIUM IS DERIVED FROM FUNDS CONTRIBUTED BY A GROUP MEMBER SPECIFICALLY FOR THE COVERAGE, THE GROUP POLICYHOLDER SHALL MAIL OR DELIVER WRITTEN NOTICE TO THE GROUP MEMBER ADVISING THE GROUP MEMBER OF THE CANCELLATION OF THE ACCOUNT GROUP POLICY AND THE EFFECTIVE DATE OF CANCELLATION. THE GROUP POLICYHOLDER SHALL MAIL OR DELIVER THE WRITTEN NOTICE WITHIN NINETY DAYS AFTER RECEIVING NOTICE OF CANCELLATION FROM THE INSURER.

(B) AN INSURER'S CANCELLATION OF AN INDIVIDUAL CERTIFICATE SHALL NOT BECOME EFFECTIVE UNTIL FIFTEEN DAYS AFTER THE INSURER MAILS OR DELIVERS WRITTEN NOTICE OF CANCELLATION TO THE GROUP MEMBER AT THE GROUP MEMBER'S MAILING ADDRESS AND TO THE GROUP POLICYHOLDER AT THE MAILING ADDRESS SHOWN IN THE GROUP POLICY.

(C)(I) A GROUP POLICYHOLDER MAY CANCEL A GROUP POLICY, INCLUDING ALL CERTIFICATES, OR ANY INDIVIDUAL CERTIFICATE, FOR ANY REASON UPON THIRTY DAYS WRITTEN NOTICE TO THE INSURER AND EACH GROUP MEMBER; AND

(II) THE GROUP POLICYHOLDER SHALL MAIL OR DELIVER WRITTEN NOTICE TO EACH AFFECTED GROUP MEMBER OF THE GROUP POLICYHOLDER'S CANCELLATION OF THE GROUP POLICY OR CERTIFICATE AND THE EFFECTIVE DATE OF CANCELLATION. THE GROUP POLICYHOLDER SHALL MAIL OR DELIVER THE WRITTEN NOTICE TO THE GROUP MEMBER'S MAILING ADDRESS AT LEAST THIRTY DAYS PRIOR TO THE EFFECTIVE DATE OF CANCELLATION.

(3)(A) UNLESS A GROUP POLICY PROVIDES FOR A LONGER POLICY PERIOD, THE POLICY AND ALL CERTIFICATES SHALL BE ISSUED OR RENEWED FOR A ONE-YEAR POLICY PERIOD.

(B) THE GROUP POLICYHOLDER SHALL BE ENTITLED TO RENEW THE GROUP POLICY AND ALL CERTIFICATES UPON TIMELY PAYMENT OF THE PREMIUM BILLED TO THE GROUP POLICYHOLDER FOR THE RENEWAL, UNLESS:

(I) THE INSURER MAILS OR DELIVERS TO THE GROUP POLICYHOLDER AND ALL GROUP MEMBERS WRITTEN NOTICE OF NONRENEWAL, OR CONDITIONAL RENEWAL; AND

(II) THE INSURER MAILS OR DELIVERS THE WRITTEN NOTICE AT LEAST THIRTY, BUT NOT MORE THAN ONE HUNDRED TWENTY DAYS PRIOR TO THE EXPIRATION DATE SPECIFIED IN THE POLICY OR, IF NO DATE IS SPECIFIED, THE NEXT ANNIVERSARY DATE OF THE POLICY.

(4) WHERE THE GROUP POLICYHOLDER NONRENEWS THE GROUP POLICY, THE GROUP POLICYHOLDER SHALL MAIL OR DELIVER WRITTEN NOTICE TO EACH GROUP MEMBER ADVISING THE GROUP MEMBER OF NONRENEWAL OF THE GROUP POLICY AND THE EFFECTIVE DATE OF NONRENEWAL. THE GROUP POLICYHOLDER SHALL MAIL OR DELIVER WRITTEN NOTICE AT LEAST THIRTY DAYS PRIOR TO THE NONRENEWAL.

(5) EVERY NOTICE OF CANCELLATION, NONRENEWAL, OR CONDITIONAL RENEWAL SHALL SET FORTH THE SPECIFIC REASON OR REASONS FOR CANCELLATION, NONRENEWAL, OR CONDITIONAL RENEWAL.

(6)(A) AN INSURER SHALL NOT BE REQUIRED UNDER THIS SUBSECTION TO GIVE NOTICE TO A GROUP MEMBER IF THE INSURER HAS BEEN ADVISED BY EITHER THE GROUP POLICYHOLDER OR ANOTHER INSURER THAT SUBSTANTIALLY SIMILAR COVERAGE HAS BEEN OBTAINED FROM THE OTHER INSURER WITHOUT LAPSE OF COVERAGE.

(B) A GROUP POLICYHOLDER SHALL NOT BE REQUIRED UNDER THIS SUBSECTION TO GIVE NOTICE TO A GROUP MEMBER IF SUBSTANTIALLY SIMILAR COVERAGE HAS BEEN OBTAINED FROM ANOTHER INSURER WITHOUT LAPSE OF COVERAGE.

(7)(A) IF, PRIOR TO THE EFFECTIVE DATE OF CANCELLATION, NONRENEWAL, OR CONDITIONAL RENEWAL OF THE GROUP POLICY, OR A CERTIFICATE, WHETHER INITIATED BY THE INSURER, GROUP POLICYHOLDER OR BY THE GROUP MEMBER IN REGARD TO THE GROUP MEMBER'S CERTIFICATE, COVERAGE ATTACHES PURSUANT TO

THE TERMS OF A GROUP POLICY, THEN THE COVERAGE SHALL BE EFFECTIVE UNTIL EXPIRATION OF THE APPLICABLE PERIOD OF COVERAGE PROVIDED IN THE GROUP POLICY NOTWITHSTANDING THE CANCELLATION, NONRENEWAL OR CONDITIONAL NONRENEWAL OF THE GROUP POLICY.

(B) NOTWITHSTANDING SUBPARAGRAPH (A) OF THIS PARAGRAPH, AN INSURER MAY TERMINATE COVERAGE UNDER AN INDIVIDUAL CERTIFICATE ON THE EFFECTIVE DATE OF CANCELLATION, IF THE CERTIFICATE IS CANCELLED IN ACCORDANCE WITH THE PROVISIONS OF SUBPARAGRAPH (B) OF PARAGRAPH ONE OF THIS SUBSECTION.

(M) NOTWITHSTANDING ANY REGULATION TO THE CONTRARY, RATES AND FORMS FOR ANY GROUP POLICY ISSUED OR ISSUED FOR DELIVERY IN THIS STATE PURSUANT TO THIS SECTION SHALL BE FILED WITH THE SUPERINTENDENT IN ACCORDANCE WITH ARTICLE TWENTY-THREE OF THIS CHAPTER.

S 2. This act shall take effect immediately.