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

7465

I N S E N A T E

April 13, 2010

Introduced by Sen. BRESLIN -- (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 service contracts; 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:

Section 1. Subsection (a) of section 308 of the insurance law, as amended by chapter 11 of the laws of 2008, is amended to read as follows:

(a) The superintendent may also address to any health maintenance organization, any authorized insurer or rate service organization, SERVICE CONTRACT PROVIDER, or officers thereof, any inquiry in relation to its transactions or condition or any matter connected therewith. Every corporation or person so addressed shall reply in writing to such inquiry promptly and truthfully, and such reply shall be, if required by the superintendent, subscribed by such individual, or by such officer or officers of a corporation, as he shall designate, and affirmed by them as true under the penalties of perjury. In the event any corporation or person does not provide a good faith response to an inquiry from the superintendent pursuant to this section relating to accident insurance, health insurance, accident and health insurance or health maintenance organization coverage, OR SERVICE CONTRACTS, within a time period specified by the superintendent of not less than fifteen business days, the superintendent is authorized to levy a civil penalty, after notice and hearing, against such corporation or person not to exceed five hundred dollars per day for each day beyond the date specified by the superintendent for response, but in no event shall such penalty exceed seven thousand five hundred dollars.

S 1-a. Subsection (a) of section 308 of the insurance law, as amended by chapter 499 of the laws of 2009, is amended to read as follows:

(a) (1) The superintendent may also address to any health maintenance organization, life settlement provider, life settlement intermediary or its officers, or any authorized insurer or rate service organization,

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

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SERVICE CONTRACT PROVIDER, or officers thereof, any inquiry in relation to its transactions or condition or any matter connected therewith. Every corporation or person so addressed shall reply in writing to such inquiry promptly and truthfully, and such reply shall be, if required by the superintendent, subscribed by such individual, or by such officer or officers of a corporation, as the superintendent shall designate, and affirmed by them as true under the penalties of perjury.

(2) In the event any corporation or person does not provide a good faith response to an inquiry from the superintendent pursuant to this section relating to accident insurance, health insurance, accident and health insurance or health maintenance organization coverage OR SERVICE CONTRACTS or with respect to life settlements, within a time period specified by the superintendent of not less than fifteen business days, the superintendent is authorized to levy a civil penalty, after notice and hearing, against such corporation or person not to exceed five hundred dollars per day for each day beyond the date specified by the superintendent for response, but in no event shall such penalty exceed seven thousand five hundred dollars.

S 2. Paragraph 3-a of subsection (b) of section 1101 of the insurance law, as amended by chapter 486 of the laws of 2000, is amended to read as follows:

(3-a) Notwithstanding the foregoing, the marketing, sale, offer for sale, issuance, making, proposing to make or administration of THE FOLLOWING SHALL NOT CONSTITUTE DOING AN INSURANCE BUSINESS IN THIS STATE:

(A) a service contract pursuant to article seventy-nine of this chapter [or];

(B) A warranty, [service contract or] maintenance agreement, OR SERVICE CONTRACT AS DEFINED IN SUBSECTION (K) OF SECTION SEVEN THOUSAND NINE HUNDRED TWO OF THIS CHAPTER, ISSUED BY A SELLER OR DELIVERER OF HEATING FUEL AND conditioned upon or otherwise associated with the sale or supply of heating fuel [shall not constitute doing an insurance business in this state]; OR

(C) A CONTRACT OR AGREEMENT TO PROVIDE TOWING, RENTAL, OR EMERGENCY ROAD SERVICES MADE BY A MOTOR CLUB THAT IS A NOT-FOR-PROFIT ORGANIZATION AND THAT HAS BEEN OPERATING AS SUCH IN THIS STATE FOR AT LEAST TEN YEARS, OR ANY SUCCESSOR THERETO.

S 3. Subsection (a) of section 2302 of the insurance law, paragraphs 5 and 6 as amended and paragraph 7 as added by chapter 614 of the laws of 1997, is amended to read as follows:

(a) This article shall apply to all kinds of insurance written on risks or operations in this state by an insurer authorized to do business in this state except:

(1) reinsurance (other than joint reinsurance to the extent stated in section two thousand three hundred seventeen of this article);

(2) accident and health insurance;

(3) annuities, life insurance, including provisions for non-cancellable disability benefits in conjunction therewith;

(4) marine insurance (other than inland marine insurance and insurance upon automobiles, airplanes, seaplanes, dirigibles or other aircraft);

(5) marine protection and indemnity insurance; AND

(6) insurance issued by an assessment cooperative fire insurance company[; and

(7) service contract reimbursement insurance].

S 4. Section 7901 of the insurance law, as added by chapter 614 of the laws of 1997, paragraphs 2 and 3 as amended and paragraph 4 of

subsection (b) as added by chapter 257 of the laws of 1998, is amended to read as follows:

S 7901. Scope and purposes. (a) The purposes of this article are to:

(1) create a legal framework within which service contracts may be sold in this state;

(2) encourage the marketing and developing of more economical and effective means of providing services under service contracts; [and]

(3) permit and encourage fair and effective competition among different systems of providing and paying for these services; AND

(4) PROTECT SERVICE CONTRACT HOLDERS.

(b) This article shall not apply to:

(1) Express or implied warranties MADE WITHOUT SEPARATE OR ADDITIONAL CONSIDERATION;

(2) Maintenance agreements;

(3) Warranties, service contracts or maintenance agreements offered by public utilities on their transmission devices to the extent they are regulated by the public service commission; [and]

(4) Warranties, service contracts and maintenance agreements that are MADE BY A SELLER OR DELIVERER OF HEATING FUEL AND conditioned upon or otherwise associated with the sale or supply of heating fuel[.]; AND

(5) A CONTRACT OR AGREEMENT TO PROVIDE TOWING, RENTAL, OR EMERGENCY ROAD SERVICES MADE BY A MOTOR CLUB THAT IS A NOT-FOR-PROFIT ORGANIZATION AND THAT HAS BEEN OPERATING AS SUCH IN THIS STATE FOR AT LEAST TEN YEARS, OR ANY SUCCESSOR THERETO.

S 5. Subsections (a) and (l) of section 7902 of the insurance law are REPEALED, subsections (b), (c), (d), (m) and (n) are relettered subsections (a), (b), (c), (l) and (m).

S 5-a. Subsections (a), (b), (c) and (k) of section 7902 of the insurance law, as added by chapter 614 of the laws of 1997, subsection (k) as amended by chapter 264 of the laws of 2006, and subsections (a), (b), and (c) as relettered by section five of this act are amended to read as follows:

(a) "Administrator" means any person [designated by a], OTHER THAN A PROVIDER'S EMPLOYEE, WHO THE provider APPOINTS, to [be responsible for administration of] ADMINISTER THE PROVIDER'S service contracts, including servicing, claims management and processing, recordkeeping, customer service and collection of fees, BUT WHO IS NOT AN OBLIGOR UNDER THE SERVICE CONTRACTS THE PERSON ADMINISTERS.

(b) "Incidental [damages" has the meaning as set forth in subdivision one of section 2-715 of the uniform commercial code, as such definition may be amended from time to time] EXPENSES" MEANS EXPENSES ASSOCIATED WITH OR ARISING OUT OF LOSSES COVERED UNDER A SERVICE CONTRACT.

(c) "Maintenance agreement" means a contract of limited duration that provides for scheduled maintenance of property, other than contracts providing for the repair or replacement of such property due to a defect in materials or workmanship, or wear and tear.

(k) (1) "Service contract" means a contract or agreement[, for a separate or additional consideration,] for a specific duration, to:

(A) perform the repair, replacement or maintenance of property, or indemnification for repair, replacement or maintenance, due to a defect in materials or workmanship or FROM wear and tear[, with or without additional provision for];

(B) REPAIR OR REPLACE A TIRE OR WHEEL AS A RESULT OF DAMAGE ARISING FROM A ROAD HAZARD AND THAT IS MADE BY OR FOR THE MANUFACTURER OR SELLER OF THE MOTOR VEHICLE TIRE; OR

(C) PROVIDE MOTOR VEHICLE TOWING, RENTAL OR EMERGENCY ROAD SERVICE AND THAT IS MADE BY A MOTOR CLUB.

(2) A SERVICE CONTRACT AS DESCRIBED IN SUBPARAGRAPH (A) OR (B) OF PARAGRAPH ONE OF THIS SUBSECTION, MAY ALSO PROVIDE THE FOLLOWING:

(A) indemnity payments for incidental [damages] EXPENSES, provided THAT any such indemnity payment per incident shall not exceed the purchase price of the property [serviced. Service contracts may include]; OR

(B) MOTOR VEHICLE towing, rental and emergency road service[, and].

(3) A SERVICE CONTRACT AS DESCRIBED IN SUBPARAGRAPH (A) OF PARAGRAPH ONE OF THIS SUBSECTION, may also provide for the repair, replacement or maintenance of property for damage resulting from power surges and accidental damage from handling RESULTING FROM THE NORMAL AND CUSTOMARY USE OF THE PROPERTY. [Service contracts may also include contracts to repair, replace or maintain residential appliances and systems. Such term shall also mean a contract or agreement made by or for the manufacturer or seller of a motor vehicle tire for repair or replacement of the tire or wheel as the result of damage arising from a road hazard.]

S 5-b. Section 7902 of the insurance law is amended by adding a new subsection (d) to read as follows:

(D) "MOTOR CLUB" MEANS AN ASSOCIATION OR CORPORATION THAT ENTERS INTO CONTRACTS OR AGREEMENTS WITH MEMBERS OR SUBSCRIBERS UNDER WHICH MEMBERS OR SUBSCRIBERS RECEIVE SERVICES AND BENEFITS ASSOCIATED WITH THE USE OR OPERATION OF A MOTOR VEHICLE.

S 6. Subsection (a) of section 7903 of the insurance law, as added by chapter 614 of the laws of 1997, is amended to read as follows:

(a) [Nothwithstanding] NOTWITHSTANDING any other provision of this chapter to the contrary, the marketing, sale, offering for sale, issuance, making, proposing to make and administration of service contracts by any provider, administrator or other person, shall be exempt from all other provisions of this chapter, OTHER THAN ARTICLES ONE, TWO AND THREE OF THIS CHAPTER. A provider may[, but is not required to,] appoint [an administrator or other designee] ONE OR MORE ADMINISTRATORS to [be responsible for] ADMINISTER any or all of the [administration of] PROVIDER'S service contracts [and compliance with this article].

S 7. Paragraph 1 of subsection (b) of section 7903 of the insurance law, as added by chapter 614 of the laws of 1997, is amended to read as follows:

(1) provides a receipt for, or other written evidence of, the purchase of the service contract and a copy of the terms and conditions of the service contract to the service contract holder where the sale takes place in a retail store or other place of business. A copy of the service contract in all cases shall be provided to the service contract holder within [a reasonable period of time] TEN DAYS after the date of purchase of the service contract; and

S 8. Paragraphs 1 and 2 of subsection (c) of section 7903 of the insurance law, paragraph 1 as amended by chapter 578 of the laws of 2000, and paragraph 2 as added by chapter 614 of the laws of 1997, are amended to read as follows:

(1) insure the performance of all [its] THE PROVIDER'S obligations under all service contracts pursuant to a service contract reimbursement insurance policy issued by an insurer authorized to issue service contract reimbursement insurance in this state [or procured by an excess line licensee pursuant to section two thousand one hundred eighteen of this chapter. In the event the provider fails to insure its obligations pursuant to this paragraph or in the event that such insurance shall

lapse or be terminated, the provider shall comply with either paragraph two or three of this subsection within forty-five days of the insurance lapse or termination];

(2) (A) maintain a funded reserve account for [its] THE PROVIDER'S obligations under [its] THE PROVIDER'S service contracts issued and outstanding in this state, which reserve account (i) contains reserves in an amount not less than forty percent of the gross consideration received upon the sale of[, less claims paid under,] all [its] THE PROVIDER'S service contracts then in force, but not less than [zero] ONE HUNDRED THOUSAND DOLLARS, and (ii) shall be subject to examination and review by the superintendent; and

(B) place in trust [with] FOR the superintendent a financial security deposit, having a value of not less than five percent of the gross consideration received upon the sale of[, less claims paid under,] all service contracts issued and then in force, but not less than [fifty] ONE HUNDRED thousand dollars, consisting of one or more of the following:

(i) a surety bond issued by an [authorized surety] INSURER AUTHORIZED IN THIS STATE TO WRITE FIDELITY AND SURETY INSURANCE;

(ii) securities of the type eligible for deposit by authorized insurers in this state;

(iii) cash; or

(iv) a letter of credit issued by a qualified United States financial institution; or

S 9. Subsection (e) of section 7903 of the insurance law is REPEALED and a new subsection (e) is added to read as follows:

(E)(1) A PROVIDER SHALL MAINTAIN THE MONIES IN THE FUNDED RESERVE ACCOUNT PROVIDED FOR IN SUBPARAGRAPH (A) OF PARAGRAPH TWO OF SUBSECTION (C) OF THIS SECTION IN A FIDUCIARY CAPACITY FOR THE BENEFIT OF THE SERVICE CONTRACT HOLDERS. THE ACCOUNT'S TITLE SHALL INDICATE ITS FIDUCIARY NATURE.

(2) THE PROVIDER'S FUNDED RESERVE ACCOUNT AND ITS FINANCIAL SECURITY DEPOSIT SHALL BE EXEMPT FROM LEVY, EXECUTION, AND ATTACHMENT, OR OTHER ACTION IN WHICH A PERSON OTHER THAN A SERVICE CONTRACT HOLDER OR THE SUPERINTENDENT SEEKS RECOVERY OR COLLECTION OF A DEBT AGAINST THE PROVIDER.

(3) A PROVIDER SHALL NOT ASSIGN, PLEDGE AS SECURITY, OR OTHERWISE ENCUMBER THE PROVIDER'S FUNDED RESERVE ACCOUNT OR FINANCIAL SECURITY DEPOSIT.

S 10. Section 7904 of the insurance law, as added by chapter 614 of the laws of 1997, is amended to read as follows:

S 7904. [Required disclosures; service contract reimbursement insurance policy] SERVICE CONTRACT REIMBURSEMENT INSURANCE.

(A) Service contract reimbursement insurance policies insuring service contracts issued, sold or offered for sale in this state shall state that, upon failure of the provider to perform under the service contract, including failure to return the unearned provider fee thereunder, the insurer that issued the service contract reimbursement insurance policy shall pay on behalf of the provider any sums the provider is legally obligated to pay under the service contract or shall perform the service which the provider is legally obligated to perform according to the provider's contractual obligations under the service contracts issued or sold by the provider.

(B)(1) AN AUTHORIZED INSURER THAT ISSUES SERVICE CONTRACT REIMBURSEMENT INSURANCE POLICIES IN THIS STATE SHALL ESTABLISH A CONTINGENCY RESERVE FUND INTO WHICH IT SHALL DEPOSIT FORTY PERCENT OF NET PREMIUMS

RECEIVED FOR ITS SERVICE CONTRACT REIMBURSEMENT INSURANCE POLICIES LESS DEPOSITS IN THE UNEARNED PREMIUM RESERVE FUND ESTABLISHED UNDER SECTION ONE THOUSAND THREE HUNDRED FIVE OF THIS CHAPTER.

(2) AN INSURER MAY MAKE A WITHDRAWAL FROM THE SERVICE CONTRACT CONTINGENCY RESERVE FUND ONLY WITH THE PRIOR APPROVAL OF THE SUPERINTENDENT. THE SUPERINTENDENT SHALL GRANT APPROVAL FOR A WITHDRAWAL FROM THE FUND ONLY TO THE EXTENT THAT THE INSURER'S TOTAL EXPOSURE HAS BEEN REDUCED DUE TO THE EXPIRATION OR OTHER TERMINATION OF SERVICE CONTRACTS THAT IT INSURES.

S 11. Subsections (b), (d), (k) and (n) of section 7905 of the insurance law, as added by chapter 614 of the laws of 1997, are amended to read as follows:

(b) Service contracts insured under a service contract reimbursement insurance policy pursuant to [paragarph] PARAGRAPH one of subsection (c) of section seven thousand nine hundred three of this article shall contain a statement in substantially the following form: "Obligations of the provider under this service contract are insured under a service contract reimbursement insurance policy. If the provider fails to pay or provide service on a claim within sixty days after proof of loss has been filed, the SERVICE contract holder is entitled to make a claim directly against the insurer under the service contract reimbursement insurance policy." The service contract shall also state the name and address and a toll-free telephone number of the insurer under the related service contract reimbursement insurance policy.

(d) Service contracts shall identify [any administrator if different from] the provider [or seller, the provider], ADMINISTRATOR and [the service contract] seller. The identities of such parties [are] SHALL not BE required to be preprinted on the service contract and may be added to the service contract at the time of sale. Service contracts shall clearly state the procedure that the service contract holder must [take] FOLLOW to [obtain service under the terms and conditions of the service contract] FILE A SERVICE CONTRACT CLAIM.

(k) Service contracts shall state the terms, restrictions or conditions governing termination of the service contract by the parties [to the service contract]. [The] A SERVICE CONTRACT THAT AFFORDS THE SERVICE CONTRACT HOLDER A RIGHT TO TERMINATE THE SERVICE CONTRACT SHALL INCLUDE THE METHOD FOR CALCULATING THE REFUND DUE TO THE SERVICE CONTRACT HOLDER. A provider [of the service contract] WHO TERMINATES A SERVICE CONTRACT shall mail a written notice OF TERMINATION to the service contract holder at the last known address of the service contract holder contained in the records of the provider at least fifteen days prior to [cancellation] TERMINATION by the provider. The notice shall state the effective date of the [cancellation] TERMINATION and the reason for the [cancellation] TERMINATION. [Written notice is not required if the reason for cancellation is nonpayment of the provider fee, a material misrepresentation, or a substantial breach of duties by the service contract holder relating to the covered property or its use.]

(n) [Service contracts] (1) A SERVICE CONTRACT shall [contain a statement of the service contract holder's right to return the contract] STATE THAT THE SERVICE CONTRACT HOLDER MAY RESCIND THE SERVICE CONTRACT BY PROVIDING WRITTEN NOTICE THEREOF TO THE PROVIDER within at least twenty days of the date of mailing of the service contract or within at least ten days if the service contract is delivered TO THE SERVICE CONTRACT HOLDER at the time of the sale [or within a longer time period permitted under the contract. If no claim has been made under the

contract, the contract shall be void and the provider shall refund to the contract holder the full purchase price of the contract].

(2) THE SERVICE CONTRACT SHALL ALSO STATE THAT THE PROVIDER WILL REFUND THE FULL PURCHASE PRICE, LESS THE COST OF ANY CLAIM PAID, TO A SERVICE CONTRACT HOLDER WHO RESCINDS THE SERVICE CONTRACT PURSUANT TO PARAGRAPH ONE OF THIS SUBSECTION.

(3) THE SERVICE CONTRACT SHALL SPECIFY THE ADDRESS TO WHICH THE SERVICE CONTRACT HOLDER SHALL SEND THE WRITTEN NOTICE OF RESCISSION.

(4) The service contract shall [also] contain a statement that a ten percent penalty per month shall be added to a refund that is not made within thirty days of [return] THE DATE THAT THE SERVICE CONTRACT HOLDER GIVES THE PROVIDER WRITTEN NOTICE OF RESCISSION of the SERVICE contract [to the provider].

S 12. Subsection (b) of section 7906 of the insurance law, as added by chapter 614 of the laws of 1997, is amended to read as follows:

(b) A provider shall not [in its service contracts or literature] make, permit or cause to be made any false or misleading statement, or deliberately omit any material statement [that would make the service contracts or literature misleading if omitted], in THE SERVICE CONTRACT OR IN connection with the sale, offer to sell, or advertisement of a service contract.

S 13. Subsections (b) and (e) of section 7907 of the insurance law, as added by chapter 614 of the laws of 1997, are amended to read as follows:

(b) The registration application shall be accompanied by a fee of [two hundred fifty] ONE THOUSAND dollars for each year or fraction of a year in which the registration shall be in effect.

(e) The PROVIDER'S registration shall continue in force until SUCH TIME AS THE REGISTRATION IS suspended or revoked by the superintendent [on the grounds that the provider is not trustworthy or has violated any provision of this chapter or has given cause for the revocation or suspension of such registration or the provider has failed to comply with any prerequisite for the issuance of such registration approved,] or terminated at the request of the provider, subject, however, to the biennial renewal of the registration[, by filing a renewal application and payment, prior to March first of each odd numbered year following that in which its original registration application is filed, of a fee of five hundred dollars] PURSUANT TO SUBSECTION (G) OF THIS SECTION.

S 14. Subsection (f) of section 7907 of the insurance law, as added by chapter 614 of the laws of 1997, is amended to read as follows:

(f) Except for the registration requirement in this section, [providers and administrators] A PROVIDER OR ADMINISTRATOR of service contracts [are], AS TO ITS SERVICE CONTRACT BUSINESS, SHALL BE exempt from any licensing requirements UNDER THIS CHAPTER.

S 15. Subsection (g) of section 7907 of the insurance law, as added by chapter 614 of the laws of 1997, is amended to read as follows:

(g) A PROVIDER SHALL FILE A BIENNIAL RENEWAL APPLICATION AND PAY A FEE OF ONE THOUSAND DOLLARS TO THE SUPERINTENDENT, PRIOR TO MARCH FIRST OF EACH ODD NUMBERED YEAR FOLLOWING THAT YEAR IN WHICH THE PROVIDER FILED ITS ORIGINAL REGISTRATION APPLICATION AS LONG AS THE PROVIDER HAS OUTSTANDING SERVICE CONTRACT OBLIGATIONS. The biennial renewal application shall contain such information as required by the superintendent including, but not limited to information to demonstrate that the applicant continues to satisfy all requirements of section seven thousand nine hundred three of this article.

S 16. Paragraph 2 of subsection (a) of section 7908 of the insurance law, as added by chapter 614 of the laws of 1997, is amended to read as follows:

(2) A provider's or its administrator's accounts, books and records shall include:

(A) copies of each type of service contract issued;

(B) the name and address of each service contract holder to the extent that the name and address have been furnished by the service contract holder to the provider;

(C) a list of the provider locations where service contracts are marketed, sold, offered for sale, issued, made or proposed to be made or administered; [and]

(D) [written] DOCUMENTATION FOR ALL claims filed, which shall contain at least the dates and description of all claims related to the service contracts; AND

(E) SUCH OTHER INFORMATION AS THE SUPERINTENDENT MAY REQUIRE.

S 17. Section 7910 of the insurance law, as added by chapter 614 of the laws of 1997, is amended to read as follows:

S 7910. Enforcement provisions. (a) The superintendent may conduct investigations or examinations of providers, administrators, insurers or other persons to enforce the provisions of this article and protect service contract holders [in this state]. Upon request of the superintendent, the provider shall make all accounts, books and records concerning service contracts sold in this state by the provider available to the superintendent [which] THAT are necessary to enable the superintendent to [reasonably] determine compliance [or noncompliance] with this article.

(b) The superintendent may take action [which] THAT is necessary or appropriate to enforce the provisions of this article and the superintendent's regulations and orders, and to protect service contract holders [in this state].

[(1) If the provider has violated this article or the superintendent's regulations or orders, the] (C) THE superintendent may REVOKE, OR SUSPEND A PROVIDER'S REGISTRATION, OR MAY order a service contract provider to cease and desist from committing violations of this article or the superintendent's regulations or orders, OR may issue an order [suspending a provider's registration under this article or] prohibiting a service contract provider from marketing, selling, offering for sale, issuing, making or proposing to make service contracts, or may issue an order imposing a civil penalty, or any combination of [these] THE FOREGOING, IF THE PROVIDER, OR THE PROVIDER'S EXECUTIVE OFFICER OR OFFICERS DIRECTLY RESPONSIBLE FOR THE PROVIDER'S SERVICE CONTRACT BUSINESS, HAS:

(1) VIOLATED ANY PROVISION OF THE INSURANCE LAW TO WHICH THE PROVIDER IS SUBJECT, OR ANY REGULATION, OR SUBPOENA OR ORDER OF THE SUPERINTENDENT OR OF ANOTHER STATE'S INSURANCE COMMISSIONER OR SERVICE CONTRACT REGULATOR, OR ANY OTHER LAW IN THE COURSE OF THE REGISTRANT'S DEALINGS IN SUCH CAPACITY;

(2) PROVIDED MATERIALLY INCORRECT, MATERIALLY MISLEADING, MATERIALLY INCOMPLETE OR MATERIALLY UNTRUE INFORMATION IN ITS REGISTRATION APPLICATION OR BIENNIAL RENEWAL APPLICATION;

(3) OBTAINED OR ATTEMPTED TO OBTAIN A REGISTRATION 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 SERVICE CONTRACT BUSINESS IN THIS STATE OR ELSEWHERE;

(5) BEEN CONVICTED OF A FELONY, OR HAS BEEN GUILTY OF FRAUDULENT OR DISHONEST PRACTICES OR OTHER MISCONDUCT OR MALFEASANCE;

(6) ENGAGED IN ANY UNFAIR TRADE OR CLAIMS PRACTICE IN THE COURSE OF THE PROVIDER'S SERVICE CONTRACT BUSINESS;

(7) HAD A SERVICE CONTRACT PROVIDER LICENSE OR REGISTRATION, OR THE EQUIVALENT DENIED, SUSPENDED OR REVOKED IN ANY OTHER STATE, PROVINCE, DISTRICT OR TERRITORY;

(8) FAILED TO HONOR ITS CONTRACTUAL OBLIGATIONS SET OUT IN A SERVICE CONTRACT; OR

(9) FAILED TO PAY STATE INCOME TAX OR COMPLY WITH ANY ADMINISTRATIVE OR COURT ORDER DIRECTING PAYMENT OF STATE INCOME TAX.

(D) An order issued under [this paragraph may] SUBSECTION (C) OF THIS SECTION SHALL be delivered to the provider OR TO ITS DESIGNATED AGENT FOR SERVICE OF PROCESS at [its principal office or to the provider's designated agent for service of process indicated in the provider's registration materials pursuant to paragraph two of subsection (a) of section seven thousand nine hundred seven of this article] THE ADDRESS CONTAINED IN THE PROVIDER'S MOST RECENT REGISTRATION APPLICATION.

[(A)] (E) (1) A person aggrieved by an order issued under [this paragraph] SUBSECTION (C) OF THIS SECTION may request a hearing before the superintendent. The hearing request shall be filed with the superintendent within twenty days of the date the superintendent's order is effective;

[(B)] (2) If a hearing is requested, [an] THEN THE order issued under [this paragraph] SUBSECTION (C) OF THIS SECTION shall be suspended from the original effective date of the order until completion of the hearing and delivery of the final decision thereon TO THE PROVIDER by the superintendent, except that where the [provider has demonstrated a consistent pattern or practice of gross misconduct in connection with the marketing, sale, offering for sale, issuance, making or proposing to make of service contracts] ORDER CONTAINS A FINDING BY THE SUPERINTENDENT THAT THE PUBLIC HEALTH, SAFETY OR WELFARE IMPERATIVELY REQUIRES EMERGENCY ACTION, the effective date of the order shall not be suspended pending the hearing and decision by the superintendent; and

[(C)] (3) At the hearing, the burden shall be on the superintendent to show why the order issued pursuant to this paragraph is justified. The provisions of section three hundred four of this chapter shall apply to a hearing requested under this [paragraph] SUBSECTION.

[(2)] (F) The superintendent may bring an action in any court of competent jurisdiction for an injunction or other appropriate relief to enjoin threatened or existing violations of this article or of the superintendent's orders or regulations. [An] THE SUPERINTENDENT, IN AN action filed under this [paragraph] SUBSECTION may also seek restitution on behalf of persons aggrieved by a violation of this article or orders or regulations of the superintendent.

[(3)] (G)(1) A person in violation of this article may be subject to a monetary penalty of not more than five hundred dollars per violation. [If the violation is not willful, such person may in lieu of paying such monetary penalty, provide restitution to the persons aggrieved by the violation or otherwise remedy the violation within sixty days after becoming aware of the violation.]

(2) THE SUPERINTENDENT MAY ALSO REQUIRE THE PROVIDER TO PAY RESTITUTION TO THE PERSONS AGGRIEVED BY THE VIOLATION OR TAKE SUCH OTHER ACTION TO REMEDY OR AMELIORATE THE VIOLATION.

[(c)] (H) The authority of the superintendent under this section is in addition to any other authority of the superintendent.

S 18. Section 7912 of the insurance law, as added by chapter 614 of the laws of 1997, is amended to read as follows:

S 7912. [Transition. Providers who have submitted an application for approval of registration pursuant to section seven thousand nine hundred seven of this article who have been previously engaged in New York state, for not less than two years immediately prior to the effective date of this section in the business of marketing, selling, offering for sale, issuing, making, proposing or administering a service contract which otherwise was in compliance with all applicable laws of the state of New York immediately prior to the effective date of this section, may engage in such business in the state of New York until such time as the superintendent has issued a determination on such application for approval of registration provided that such application is received by the superintendent within sixty days of the effective date of this section.] PROVIDER RESPONSIBILITIES. A PROVIDER SHALL BE RESPONSIBLE FOR ALL ASPECTS OF THE SERVICE CONTRACT BUSINESS THAT IT CONDUCTS IN THIS STATE, IRRESPECTIVE OF WHETHER THE PROVIDER DESIGNATES AN ADMINISTRATOR OR ALLOWS ANOTHER PERSON TO MARKET OR SELL ITS SERVICE CONTRACTS.

S 19. Section 7913 of the insurance law is renumbered section 7914 and a new section 7913 is added to read as follows:

S 7913. CEASING TO MAINTAIN REGISTRATION. (A)(1) A REGISTERED PROVIDER THAT: INTENDS TO WITHDRAW FROM THE SERVICE CONTRACT MARKET IN THIS STATE; FAILS TO MAINTAIN ITS PROVIDER REGISTRATION; OR WHOSE REGISTRATION THE SUPERINTENDENT HAS REVOKED OR SUSPENDED, SHALL SUBMIT TO THE SUPERINTENDENT FOR APPROVAL A PLAN TO EFFECTUATE A WITHDRAWAL FROM THE SERVICE CONTRACT MARKET IN THIS STATE.

(2) THE PROVIDER SHALL SUBMIT THE PROPOSED PLAN:

(A) AT LEAST FORTY-FIVE DAYS PRIOR TO THE PROVIDER'S INTENDED WITHDRAWAL FROM THE SERVICE CONTRACT MARKET; OR

(B) NOT LATER THAN THIRTY DAYS AFTER THE: (I) PROVIDER'S REGISTRATION EXPIRES, OR (II) AFTER THE EFFECTIVE DATE OF AN ORDER ISSUED BY THE SUPERINTENDENT THAT REVOKES OR SUSPENDS THE PROVIDER'S REGISTRATION.

(3) THE PLAN SHALL SET FORTH PROCEDURES BY WHICH THE PROVIDER SHALL MEET ITS CONTRACTUAL OBLIGATIONS UNDER ITS SERVICE CONTRACTS AND ANY APPLICABLE STATUTORY OBLIGATIONS OF THE PROVIDER; AND SUCH OTHER INFORMATION AS THE SUPERINTENDENT MAY REQUIRE.

(4) TO PROTECT THE INTERESTS OF THE PROVIDER'S SERVICE CONTRACT HOLDERS, THE SUPERINTENDENT MAY REQUIRE THAT A PROVIDER, WHICH HAS DEMONSTRATED ITS FINANCIAL RESPONSIBILITY BY ONE OF THE METHODS SPECIFIED IN PARAGRAPH TWO OR THREE OF SUBSECTION (C) OF SECTION SEVEN THOUSAND NINE HUNDRED THREE OF THIS ARTICLE, DEPOSIT IN TRUST, IN THE NAME OF THE SUPERINTENDENT, AN AMOUNT EQUAL TO THE MINIMUM FUNDED RESERVE ACCOUNT CALCULATED BASED UPON THE PROVIDER'S OUTSTANDING SERVICE CONTRACTS.

(5) A PROVIDER WHO FAILS TO SUBMIT A PROPOSED PLAN WITHIN THE TIME FRAMES SPECIFIED IN THIS SECTION, OR WITHDRAWS FROM THE SERVICE CONTRACT MARKET IN THIS STATE WITHOUT HAVING A PLAN APPROVED BY THE SUPERINTENDENT, SHALL BE SUBJECT TO A MONETARY PENALTY OF NOT MORE THAN FIVE HUNDRED DOLLARS PER DAY FOR FAILURE TO FILE A PLAN.

(B) THE SUPERINTENDENT MAY CONTINUE TO ENFORCE THE PROVISIONS OF THIS ARTICLE AS TO A PROVIDER AS LONG AS THE PROVIDER HAS OUTSTANDING SERVICE CONTRACT OBLIGATIONS, NOTWITHSTANDING: (1) A PROVIDER'S FAILURE TO MAINTAIN ITS REGISTRATION; (2) AN ORDER BY THE SUPERINTENDENT REVOKING OR SUSPENDING THE PROVIDER'S REGISTRATION; OR (3) THE SUPERINTENDENT'S APPROVAL OF A PLAN TO EFFECTUATE A WITHDRAWAL PURSUANT TO THIS SECTION.

S 20. This act shall take effect on the one hundred eightieth day after it shall have become a law, provided however, that if section 1 of chapter 499 of the laws of 2009 is not in effect on such date, then the amendments made by section one-a of this act shall take effect on the same date and in the same manner as section 1 of chapter 499 of the laws of 2009 takes effect, except that any rule or regulation necessary for the timely implementation of this act on its effective date may be promulgated on or before such date.