

3553

2009-2010 Regular Sessions

I N S E N A T E

March 24, 2009

Introduced by Sens. BRESLIN, ESPADA, LARKIN -- (at request of the Thruway Authority) -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance

AN ACT to amend the insurance law, the public authorities law and the tax law, in relation to authorizing the New York state thruway authority to form a captive insurance company

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

1 Section 1. Subsections (e) and (g) of section 7002 of the insurance  
2 law, as amended by chapter 188 of the laws of 2003, are amended to read  
3 as follows:

4 (e) "Industrial insured" means an insured:

5 (1) whose net worth exceeds one hundred million dollars;

6 (2) who is a member of a holding company system whose net worth  
7 exceeds one hundred million dollars;

8 (3) who is the metropolitan transportation authority and its statutory  
9 subsidiaries. When filing an application to form a pure captive insur-  
10 ance company the metropolitan transportation authority shall submit  
11 written notice of such filing to the governor, the temporary president  
12 of the senate and the speaker of the assembly; [or]

13 (4) WHO IS THE THRUWAY AUTHORITY AND ITS STATUTORY SUBSIDIARIES. WHEN  
14 FILING AN APPLICATION TO FORM A PURE CAPTIVE INSURANCE COMPANY THE THRU-  
15 WAY AUTHORITY SHALL SUBMIT WRITTEN NOTICE OF SUCH FILING TO THE GOVER-  
16 NOR, THE TEMPORARY PRESIDENT OF THE SENATE AND THE SPEAKER OF THE ASSEM-  
17 BLY; OR

18 (5) who is a city with a population of one million or more. When  
19 filing an application to form a pure captive insurance company, a city  
20 with a population of one million or more shall submit written notice of  
21 such filing to the governor, the temporary president of the senate and  
22 the speaker of the assembly.

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

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1 (g) "Industrial insured group" means any group of unaffiliated indus-  
2 trial insureds that are engaged in similar or related businesses or  
3 activities, however, the metropolitan transportation authority OR STATU-  
4 TORY SUBSIDIARY, THE THRUWAY AUTHORITY OR STATUTORY SUBSIDIARY and  
5 cities with a population of one million or more shall not be a member of  
6 an industrial insured group, and that collectively:

7 (1) own, control or hold with power to vote all of the outstanding  
8 voting shares of stock of a group captive insurance company incorporated  
9 as a stock insurer; or

10 (2) represent one hundred percent of the voting members of a group  
11 captive insurance company organized as a mutual insurer.

12 S 2. Subdivision 15 of section 354 of the public authorities law is  
13 renumbered subdivision 16 and a new subdivision 15 is added to read as  
14 follows:

15 15. THE AUTHORITY MAY ESTABLISH A SUBSIDIARY CORPORATION FOR THE  
16 PURPOSE OF FORMING A PURE CAPTIVE INSURANCE COMPANY AS PROVIDED FOR IN  
17 SECTION SEVEN THOUSAND TWO OF THE INSURANCE LAW. THE MEMBERS OF SUCH  
18 SUBSIDIARY CORPORATION OF THE AUTHORITY SHALL BE THE SAME PERSONS HOLD-  
19 ING THE OFFICES OF MEMBERS OF THE AUTHORITY. SUCH SUBSIDIARY CORPO-  
20 RATION SHALL HAVE ALL OF THE PRIVILEGES, IMMUNITIES, TAX EXEMPTIONS AND  
21 OTHER EXEMPTIONS OF THE AUTHORITY AND OF THE AUTHORITY'S PROPERTY, FUNC-  
22 TIONS AND ACTIVITIES. THE SUBSIDIARY CORPORATION OF THE AUTHORITY SHALL  
23 BE SUBJECT TO SUIT IN ACCORDANCE WITH SECTION THREE HUNDRED SIXTY-ONE-B  
24 OF THIS TITLE. THE EMPLOYEES OF SUCH SUBSIDIARY CORPORATION, EXCEPT  
25 THOSE WHO ARE ALSO EMPLOYEES OF THE AUTHORITY, SHALL NOT BE DEEMED  
26 EMPLOYEES OF THE AUTHORITY.

27 IF THE AUTHORITY SHALL DETERMINE THAT A CAPTIVE INSURANCE COMPANY  
28 SHOULD BE IN THE FORM OF A PUBLIC BENEFIT CORPORATION, IT SHALL CREATE  
29 EACH SUCH PUBLIC BENEFIT CORPORATION BY EXECUTING AND FILING WITH THE  
30 SECRETARY OF STATE A CERTIFICATE OF INCORPORATION, WHICH MAY BE AMENDED  
31 FROM TIME TO TIME BY FILING, WHICH SHALL SET FORTH THE NAME OF SUCH  
32 PUBLIC BENEFIT SUBSIDIARY CORPORATION, ITS DURATION, THE LOCATION OF ITS  
33 PRINCIPAL OFFICE, AND ITS PURPOSES. SUCH PUBLIC BENEFIT SUBSIDIARY  
34 CORPORATION SHALL BE A BODY POLITIC AND CORPORATE AND SHALL HAVE ALL  
35 THOSE POWERS VESTED IN THE AUTHORITY BY THE PROVISIONS OF THIS TITLE  
36 WHICH THE AUTHORITY SHALL DETERMINE TO INCLUDE IN ITS CERTIFICATE OF  
37 INCORPORATION EXCEPT THE POWER TO CONTRACT INDEBTEDNESS.

38 S 3. Subdivision (a) of section 1500 of the tax law, as amended by  
39 chapter 188 of the laws of 2003, is amended to read as follows:

40 (a) The term "insurance corporation" includes a corporation, associ-  
41 ation, joint stock company or association, person, society, aggregation  
42 or partnership, by whatever name known, doing an insurance business,  
43 and, notwithstanding the provisions of section fifteen hundred twelve of  
44 this article, shall include (1) a risk retention group as defined in  
45 subsection (n) of section five thousand nine hundred two of the insur-  
46 ance law, (2) the state insurance fund and (3) a corporation, associ-  
47 ation, joint stock company or association, person, society, aggregation  
48 or partnership doing an insurance business as a member of the New York  
49 insurance exchange described in section six thousand two hundred one of  
50 the insurance law. The definition of the "state insurance fund"  
51 contained in this subdivision shall be limited in its effect to the  
52 provisions of this article and the related provisions of this chapter  
53 and shall have no force and effect other than with respect to such  
54 provisions. The term "insurance corporation" shall also include a  
55 captive insurance company doing a captive insurance business, as defined  
56 in subsections (c) and (b), respectively, of section seven thousand two

1 of the insurance law; provided, however, "insurance corporation" shall  
2 not include the metropolitan transportation authority OR STATUTORY  
3 SUBSIDIARY OR AFFILIATE, THE THRUWAY AUTHORITY OR STATUTORY SUBSIDIARY  
4 OR AFFILIATE, or a public benefit corporation or not-for-profit corpo-  
5 ration formed by a city with a population of one million or more pursu-  
6 ant to subsection (a) of section seven thousand five of the insurance  
7 law, [each of] which is expressly exempt from the payment of fees, taxes  
8 or assessments, whether state or local. The term "insurance corporation"  
9 shall also include an unauthorized insurer operating from an office  
10 within the state, pursuant to paragraph five of subsection (b) of  
11 section one thousand one hundred one and subsection (i) of section two  
12 thousand one hundred seventeen of the insurance law.

13 S 4. Subdivision (a) of section 1502-b of the tax law, as separately  
14 amended by section 3 of part H3 of chapter 62 and chapter 188 of the  
15 laws of 2003, is amended to read as follows:

16 (a) In lieu of the taxes and tax surcharge imposed by sections fifteen  
17 hundred one, fifteen hundred two-a, fifteen hundred five-a, and fifteen  
18 hundred ten of this article, every captive insurance company licensed by  
19 the superintendent of insurance pursuant to the provisions of article  
20 seventy of the insurance law, other than the metropolitan transportation  
21 authority OR STATUTORY SUBSIDIARY OR AFFILIATE, THE THRUWAY AUTHORITY OR  
22 STATUTORY SUBSIDIARY OR AFFILIATE and a public benefit corporation or  
23 not-for-profit corporation formed by a city with a population of one  
24 million or more pursuant to subsection (a) of section seven thousand  
25 five of the insurance law, [each of] which is expressly exempt from the  
26 payment of fees, taxes or assessments whether state or local, shall, for  
27 the privilege of exercising its corporate franchise, pay a tax on (1)  
28 all gross direct premiums, less return premiums thereon, written on  
29 risks located or resident in this state and (2) all assumed reinsurance  
30 premiums, less return premiums thereon, written on risks located or  
31 resident in this state. The rate of the tax imposed on gross direct  
32 premiums shall be four-tenths of one percent on all or any part of the  
33 first twenty million dollars of premiums, three-tenths of one percent on  
34 all or any part of the second twenty million dollars of premiums, two-  
35 tenths of one percent on all or any part of the third twenty million  
36 dollars of premiums, and seventy-five thousandths of one percent on each  
37 dollar of premiums thereafter. The rate of the tax on assumed reinsur-  
38 ance premiums shall be two hundred twenty-five thousandths of one  
39 percent on all or any part of the first twenty million dollars of premi-  
40 ums, one hundred and fifty thousandths of one percent on all or any part  
41 of the second twenty million dollars of premiums, fifty thousandths of  
42 one percent on all or any part of the third twenty million dollars of  
43 premiums and twenty-five thousandths of one percent on each dollar of  
44 premiums thereafter. The tax imposed by this section shall be equal to  
45 the greater of (i) the sum of the tax imposed on gross direct premiums  
46 and the tax imposed on assumed reinsurance premiums or (ii) five thou-  
47 sand dollars.

48 S 5. This act shall take effect immediately.