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

5374

2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

Introduced by Sen. KLEIN -- 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 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:

Section 1. Subsection (a) of section 1301 of the insurance law is amended by adding two new paragraphs 19 and 20 to read as follows:

(19) FOR THOSE STOCK AND NON-STOCK COMPANIES TO WHICH SUBPARAGRAPH (B) OF PARAGRAPH TWO OF SUBSECTION (B) OF SECTION ONE THOUSAND THREE HUNDRED TWENTY-FOUR OF THIS ARTICLE APPLY, THE AMOUNT OF THE SURCHARGE ON PREMIUMS TO SATISFY A PROJECTED DEFICIENCY THAT IS ATTRIBUTABLE TO THE PREMIUM LEVELS ESTABLISHED PURSUANT TO SECTION FORTY OF CHAPTER TWO HUNDRED SIXTY-SIX OF THE LAWS OF NINETEEN HUNDRED EIGHTY-SIX, AS SUCH SURCHARGE IS PROVIDED IN SUCH CHAPTER, WHETHER OR NOT SUCH SURCHARGE IS ACTUALLY IMPOSED BY THE SUPERINTENDENT.

(20) FOR RECIPROCAL INSURERS ORGANIZED AND LICENSED PURSUANT TO ARTICLE SIXTY-ONE OF THIS CHAPTER TO WRITE MEDICAL MALPRACTICE INSURANCE AS THAT TERM IS DEFINED IN SUBSECTION (B) OF SECTION FIVE THOUSAND FIVE HUNDRED ONE OF THIS CHAPTER, THE AMOUNT OF ANY ASSESSMENT AUTHORIZED BY SUBSECTIONS (A) AND (B) OF SECTION SIX THOUSAND ONE HUNDRED EIGHT OF THIS CHAPTER.

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

(E) IN DETERMINING THE TOTAL ADMITTED ASSETS OF AN INSURER THE SUPERINTENDENT SHALL INCLUDE IN SUCH DETERMINATION ALL ASSETS ALLOWED AS ADMITTED ASSETS PURSUANT TO SUBSECTION (A) OF SECTION ONE THOUSAND THREE HUNDRED ONE OF THIS ARTICLE.

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

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 Section 1325 of the insurance law is REPEALED and a new section 1325 is added to read as follows:

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

(B) THE SUPERINTENDENT SHALL NO LATER THAN JUNE THIRTIETH, TWO THOUSAND ELEVEN PROMULGATE, FOR APPLICATION DURING THE NEXT SUCCEEDING CALENDAR YEAR, AND AFTER CONSULTATION WITH THE COMMISSIONER OF HEALTH AND DOMESTIC MEDICAL MALPRACTICE INSURERS WRITING MEDICAL MALPRACTICE INSURANCE IN THIS STATE, A REGULATION WHICH PROVIDES A SEPARATE FINANCIAL SECURITY STANDARD AND RATE APPROVAL PROCESS FOR THOSE STOCK AND NON-STOCK INSURANCE COMPANIES TO WHICH SUBPARAGRAPH (B) OF PARAGRAPH TWO OF SUBSECTION (B) OF SECTION ONE THOUSAND THREE HUNDRED TWENTY-FOUR OF THIS CHAPTER APPLY. SUCH STANDARD SHALL TAKE INTO ACCOUNT THE SPECIALIZED NATURE OF THE COVERAGE PROVIDED BY SUCH COMPANIES AND THE UNIQUE OBLIGATIONS IMPOSED ON SUCH COMPANIES BY STATUE AND REGULATION, AND SHALL BE BASED UPON THE CASH FLOW CONDITION OF THE INSURER AND ITS ABILITY TO PAY CLAIMS BASED UPON CLAIMS RESERVE ANALYSES. FURTHER, THE REGULATION SHALL INCLUDE NEW STATUTORY FINANCIAL STATEMENT BLANKS AND EXAMINATION PROTOCOLS CONSISTENT WITH THE NEW STANDARD.

(C) UNTIL SUCH TIME AS THE SUPERINTENDENT PROMULGATES REGULATIONS IN ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION, THOSE STOCK AND NON-STOCK INSURANCE COMPANIES TO WHICH SUBPARAGRAPH (B) OF PARAGRAPH TWO OF SUBSECTION (B) OF SECTION ONE THOUSAND THREE HUNDRED TWENTY-FOUR OF THIS CHAPTER APPLIED, AND NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, MAY FILE FOR AND USE A RATE INCREASE OR DECREASE NOT TO EXCEED FIVE PERCENT UPON A FILING WITH THE SUPERINTENDENT, EFFECTIVE THE NEXT JULY FIRST, IF SUCH SUBMISSION IS FILED WITH THE SUPERINTENDENT NO LATER THAN MARCH FIRST. IF A CARRIER DOES NOT FILE SUCH RATE ADJUSTMENT WITHIN SUCH TIME FRAME, THEN SUCH INSURER SHALL BE SUBJECT TO THE RATE APPROVAL PROCESS IN PLACE AT THE TIME THIS SECTION SHALL TAKE EFFECT. THE SUPERINTENDENT MAY, UPON A REVIEW OF SUCH FILING MADE BY AN INSURER, REJECT SUCH A FILING UPON WRITTEN NOTICE TO THE CARRIER NOT LESS THAN THIRTY DAYS PRIOR TO SUCH TIME THAT THE FILED RATES ARE TO TAKE EFFECT, AT WHICH TIME THE SUBJECT INSURER SHALL FILE FOR USE AN ALTERNATIVE RATING PLAN.

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

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

S 5. Subsection (b) of section 6108 of the insurance law is amended to read as follows:

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

S 6. Subsection (c) of section 6111 of the insurance law is amended to read as follows:

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

S 7. This act shall take effect immediately.