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

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Cal. No. 755

I N S E N A T E

May 7, 2010

Introduced by Sen. BRESLIN -- 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, amended on second report, ordered to a third reading, and to be reprinted as amended, retaining its place in the order of third reading

AN ACT to amend the insurance law, in relation to sponsored group personal excess insurance

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

Section 1. Section 3445 of the insurance law, as added by chapter 528 of the laws of 1998, is renumbered section 3453 and paragraphs 3, 6 and 7 of subsection (a) and subsections (c) and (d) of such section are amended to read as follows:

(3) "Employee" means A DIRECTOR OF THE EMPLOYER, OR an individual or partner who receives or has received income, wages or salaries from the employer.

(6) "Group member" means a designated ACTIVE OR RETIRED employee insured under this section AND ALSO MAY INCLUDE THE EMPLOYEE'S DOMESTIC PARTNER OR ANY PERSON RELATED TO THE EMPLOYEE BY BLOOD, MARRIAGE, ADOPTION, OR OPERATION OF LAW, WHO RESIDES IN THE SAME HOUSEHOLD (INCLUDING A WARD OR FOSTER CHILD) OR WHO IS A DEPENDENT CHILD AWAY AT SCHOOL.

(7) "Group policy" means employer sponsored group personal excess insurance written for the designated employees of an employer OR OTHER GROUP MEMBERS AS DEFINED IN THIS SECTION.

(c) The premium for the group policy may be paid by the employer from funds contributed:

(1) wholly by the employer;

(2) wholly by the employees OR GROUP MEMBERS; or

(3) jointly by the employer and employees OR GROUP MEMBERS.

(d) An employee OR GROUP MEMBER shall have the right to refuse coverage offered by an employer under this section.

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

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S 2. The insurance law is amended by adding a new section 3454 to read as follows:

S 3454. SPONSORED GROUP PERSONAL INSURANCE. (A) FOR PURPOSES OF THIS SECTION, THE FOLLOWING DEFINITIONS SHALL APPLY:

(1) "CERTIFICATE" OR "CERTIFICATE OF INSURANCE" MEANS ANY POLICY, CONTRACT OR OTHER EVIDENCE OF INSURANCE, OR RIDER OR ENDORSEMENT THERETO, ISSUED TO A GROUP MEMBER UNDER A GROUP POLICY.

(2) "CONDITIONAL RENEWAL" MEANS ANY CHANGE OF LIMITS, CHANGE IN TYPE OF COVERAGE, REDUCTION OR ELIMINATION OF COVERAGE, INCREASED DEDUCTIBLE OR ADDITION OF EXCLUSION, OR INCREASED PREMIUMS IN EXCESS OF TEN PERCENT (EXCLUSIVE OF ANY PREMIUM INCREASE GENERATED AS A RESULT OF EXPERIENCE RATING, LOSS RATING OR RETROSPECTIVE RATING).

(3) "PERSONAL EXCESS INSURANCE" MEANS INSURANCE AS DEFINED IN PARAGRAPH THIRTEEN OR FOURTEEN OF SUBSECTION (A) OF SECTION ONE THOUSAND ONE HUNDRED THIRTEEN OF THIS CHAPTER, WRITTEN AS AN EXCESS INSURANCE POLICY.

(4) "PERSONAL PROPERTY FLOATER INSURANCE" MEANS INSURANCE AS DEFINED IN SUBPARAGRAPH (C) OF PARAGRAPH SEVEN OF SUBSECTION (A) OF SECTION ONE THOUSAND ONE HUNDRED THIRTEEN OF THIS CHAPTER.

(5) "GROUP POLICY" MEANS A GROUP INSURANCE POLICY PROVIDING PERSONAL EXCESS INSURANCE, PERSONAL PROPERTY FLOATER INSURANCE, RENTERS' INSURANCE, AND VINTAGE VEHICLE INSURANCE, OR ANY COMBINATION THEREOF, INSURING SPONSOR GROUP MEMBERS.

(6) "GROUP POLICYHOLDER" MEANS A SPONSOR.

(7) "RENTERS' INSURANCE" MEANS INSURANCE INSURING RESIDENTIAL PROPERTY TENANTS, HOUSING COOPERATIVE SHAREHOLDERS, OR CONDOMINIUM OWNERS AGAINST THE CONTINGENCIES DESCRIBED IN SUBPARAGRAPHS (A), (B) AND (C), OR (B) AND (C) OF PARAGRAPH TWO OF SUBSECTION (A) OF SECTION THREE THOUSAND FOUR HUNDRED TWENTY-FIVE OF THIS ARTICLE.

(8) "VINTAGE VEHICLE INSURANCE" MEANS INSURANCE INSURING AGAINST LOSSES OR LIABILITIES ARISING OUT OF THE OWNERSHIP, OPERATION, OR USE OF A MOTOR VEHICLE, AND COVERING A MOTOR VEHICLE THAT IS ANTIQUE, CLASSIC, OR MADE FROM A KIT. FOR THE PURPOSES OF THIS PARAGRAPH:

(A) AN "ANTIQUE" MOTOR VEHICLE MEANS A PRIVATE PASSENGER MOTOR VEHICLE THAT IS AT LEAST TWENTY-FIVE YEARS OLD, AND IS MAINTAINED PRIMARILY FOR USE IN EXHIBITIONS, CLUB ACTIVITIES, PARADES, OR OTHER FUNCTIONS OF PUBLIC INTEREST, AND OCCASIONALLY USED FOR OTHER PURPOSES; AND

(B) A "CLASSIC" MOTOR VEHICLE IS A PRIVATE PASSENGER MOTOR VEHICLE THAT IS AT LEAST TEN YEARS OLD, MAY BE USED ON A REGULAR BASIS, AND THE MOTOR VEHICLE'S VALUE IS SIGNIFICANTLY HIGHER THAN THE AVERAGE VALUE OF OTHER MOTOR VEHICLES OF THE SAME MAKE AND MODEL YEAR.

(9) "SPONSOR" MEANS:

(A) AN ASSOCIATION, ORGANIZATION, LABOR UNION, FEDERATION, FRATERNITY, CLUB OR SIMILAR ENTITY:

(I) IN WHICH THE MEMBERS ARE ENGAGED IN A COMMON PURSUIT OR ENTERPRISE;

(II) THAT WAS FORMED FOR PURPOSES OTHER THAN OBTAINING INSURANCE;

(III) THAT HAS BEEN IN EXISTENCE FOR MORE THAN THREE YEARS;

(IV) THAT HAS TWENTY-FIVE OR MORE MEMBERS; AND

(V) THAT HAS ADOPTED BY-LAWS OR SIMILAR GOVERNANCE RULES, AND A METHOD TO ENROLL OR REGISTER MEMBERS; OR

(B) A BANK, CORPORATION, PARTNERSHIP, TRUST COMPANY, OR TRUSTEE OF A TRUST THAT OWNS TWENTY-FIVE OR MORE RESIDENTIAL PROPERTIES OR LIVING UNITS OR A TENANTS' ASSOCIATION, CONDOMINIUM ASSOCIATION, OR SIMILAR ORGANIZATION, WITH RESPECT TO RENTERS' INSURANCE SOLD TO LESSEES OR OCCUPANTS OF RESIDENTIAL PROPERTIES OR LIVING UNITS OWNED BY THE BANK,

CORPORATION, PARTNERSHIP OR TRUST, OR WHO ARE MEMBERS OF THE TENANTS' ASSOCIATION, CONDOMINIUM ASSOCIATION, OR SIMILAR ORGANIZATION.

(10) "SPONSOR GROUP MEMBER" MEANS:

(A) AN ENROLLED MEMBER, OFFICER, OR DIRECTOR OF A SPONSOR;

(B) ANY DOMESTIC PARTNER OF THE ENROLLED MEMBER, OFFICER, OR DIRECTOR;

(C) ANY PERSON RELATED TO THE ENROLLED MEMBER, OFFICER, OR DIRECTOR BY BLOOD, MARRIAGE, ADOPTION, OR OPERATION OF LAW, WHO RESIDES IN THE SAME HOUSEHOLD (INCLUDING A WARD OR FOSTER CHILD) OR WHO IS A DEPENDENT CHILD AWAY AT SCHOOL; OR

(D) A LESSEE OR OCCUPANT OF A RESIDENTIAL PROPERTY OR LIVING UNIT OWNED BY A BANK, CORPORATION, PARTNERSHIP OR TRUST WHEN THE BANK, CORPORATION, PARTNERSHIP, TRUST COMPANY, OR TRUSTEE OF THE TRUST IS THE SPONSOR, OR WHEN THE SPONSOR IS A TENANTS' ASSOCIATION, CONDOMINIUM ASSOCIATION, OR SIMILAR ORGANIZATION.

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

(C) THE PREMIUM FOR THE GROUP POLICY, INCLUDING CERTIFICATES, SHALL BE PAID BY THE SPONSOR GROUP MEMBERS. AN INSURER SHALL NOT PROVIDE COVERAGE IN REGARD TO A GROUP POLICY THAT REQUIRES THE PURCHASE OF INSURANCE AS A CONDITION OF SPONSOR GROUP MEMBERSHIP OR IMPOSES ANY PENALTY UPON A SPONSOR GROUP MEMBER IF THE SPONSOR GROUP MEMBER DOES NOT PURCHASE INSURANCE. IF SO AUTHORIZED BY THE INSURER, THE SPONSOR GROUP MAY AGGREGATE THE GROUP MEMBERS' PREMIUMS AND REMIT THEM TO THE INSURER OR TO THE LICENSED INSURANCE AGENT OR BROKER REPRESENTING THE SPONSOR GROUP. IF AN INSURER AUTHORIZES A SPONSOR GROUP TO AGGREGATE AND REMIT THE PREMIUMS OF SPONSOR GROUP MEMBERS, THEN PAYMENT TO THE SPONSOR GROUP BY A SPONSOR GROUP MEMBER SHALL BE DEEMED TO BE PAYMENT TO THE INSURER.

(D) (1) ANY POLICY DIVIDEND, RETROSPECTIVE PREMIUM CREDIT, OR RETROSPECTIVE PREMIUM REFUND NOT DISTRIBUTED SHALL BE:

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

(B) PAID OR REFUNDED TO THOSE SPONSOR 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 SPONSOR 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.

(2) NOTWITHSTANDING PARAGRAPH ONE OF THIS SUBSECTION, IF A DIVIDEND ACCRUES UPON TERMINATION OF COVERAGE UNDER A GROUP POLICY, THEN THE GROUP POLICYHOLDER SHALL PAY OR REFUND THE DIVIDEND TO THE SPONSOR GROUP MEMBERS INSURED ON THE DATE THE PAYMENT OR REFUND IS MADE TO THE GROUP POLICYHOLDER.

(E) THE INSURER SHALL TREAT IN LIKE MANNER ALL ELIGIBLE SPONSOR GROUP MEMBERS OF THE SAME CLASS AND SPONSOR STATUS.

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

(G) A GROUP POLICY WRITTEN PURSUANT TO THIS SECTION SHALL PROVIDE SEPARATE LIMITS OF COVERAGE UNDER THE CERTIFICATE ISSUED TO A SPONSOR GROUP MEMBER.

(H)(1) THE INSURER SHALL BE RESPONSIBLE FOR THE MAILING OR DELIVERY OF A CERTIFICATE OF INSURANCE TO EACH SPONSOR GROUP MEMBER INSURED UNDER THE GROUP POLICY. THE INSURER ALSO SHALL BE RESPONSIBLE FOR THE MAILING OR DELIVERY TO EACH SPONSOR GROUP MEMBER OF ANY 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 AN EXCLUSION, UNDER THE GROUP POLICY OR CERTIFICATE. IF SO AUTHORIZED BY THE INSURER, THE SPONSOR GROUP MAY MAIL OR DELIVER CERTIFICATES, ENDORSEMENTS AND OTHER COVERAGE NOTICES TO THE SPONSOR GROUP MEMBERS ON BEHALF OF THE INSURER.

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

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

(I) 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 INSURANCE PRODUCER, IN ANY ADVERTISEMENT, SIGN, PAMPHLET, CIRCULAR, CARD, OR OTHER PUBLIC ANNOUNCEMENT REFERRING TO COVERAGE UNDER A GROUP POLICY OR CERTIFICATE.

(J) 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) AN INSURER MAY CANCEL A GROUP POLICY OR CERTIFICATE ONLY IF CANCELLATION IS BASED ON ONE OR MORE OF THE REASONS SET FORTH IN 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 SPONSOR GROUP MEMBER THAT WOULD CONSTITUTE THE BASIS FOR CANCELLATION OF AN INDIVIDUAL CERTIFICATE SHALL NOT CONSTITUTE THE BASIS FOR CANCELLATION OF THE GROUP POLICY.

(2)(A) AN INSURER'S CANCELLATION OF A GROUP POLICY, INCLUDING ALL CERTIFICATES, SHALL NOT BECOME EFFECTIVE UNTIL FORTY-FIVE DAYS, OR TWENTY DAYS IF BASED UPON NON-PAYMENT OF PREMIUM, AFTER THE INSURER MAILS OR DELIVERS WRITTEN NOTICE OF CANCELLATION TO THE GROUP POLICYHOLDER AT THE MAILING ADDRESS SHOWN IN THE POLICY, AND TO THE SPONSOR GROUP MEMBER AT THE SPONSOR GROUP MEMBER'S MAILING ADDRESS.

(B) AN INSURER'S CANCELLATION OF AN INDIVIDUAL CERTIFICATE SHALL NOT BECOME EFFECTIVE UNTIL FORTY-FIVE DAYS AFTER THE INSURER MAILS OR DELIVERS WRITTEN NOTICE OF CANCELLATION TO THE SPONSOR GROUP MEMBER AT THE SPONSOR 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 NINETY DAYS WRITTEN NOTICE TO THE INSURER AND EACH SPONSOR GROUP MEMBER.

(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

SPONSOR GROUP MEMBER'S MAILING ADDRESS AT LEAST NINETY DAYS PRIOR TO THE EFFECTIVE DATE OF THE CANCELLATION.

(3)(A) UNLESS THE 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 SPONSOR GROUP MEMBER SHALL BE ENTITLED TO RENEW THE CERTIFICATE UPON TIMELY PAYMENT OF THE PREMIUM BILLED TO THE SPONSOR GROUP MEMBER FOR THE RENEWAL, UNLESS:

(I) THE INSURER MAILS OR DELIVERS TO THE SPONSOR GROUP MEMBER WRITTEN NOTICE OF NONRENEWAL OR CONDITIONAL RENEWAL; AND

(II) THE INSURER MAILS OR DELIVERS WRITTEN NOTICE AT LEAST NINETY, BUT NOT MORE THAN TWO HUNDRED FORTY DAYS PRIOR TO THE EXPIRATION DATE SPECIFIED IN THE POLICY OR, IF THE POLICY DOES NOT SPECIFY A DATE, THEN 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 SPONSOR GROUP MEMBER ADVISING THE SPONSOR GROUP MEMBER OF NONRENEWAL OF THE GROUP POLICY AND THE EFFECTIVE DATE OF NONRENEWAL. THE GROUP POLICY HOLDER SHALL MAIL OR DELIVER THE WRITTEN NOTICE AT LEAST NINETY DAYS PRIOR TO THE NONRENEWAL.

(5) EVERY NOTICE OF CANCELLATION, NONRENEWAL, OR CONDITIONAL RENEWAL SHALL CONTAIN 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 SPONSOR 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 SPONSOR GROUP MEMBER IF SUBSTANTIALLY SIMILAR COVERAGE HAS BEEN OBTAINED FROM ANOTHER INSURER WITHOUT LAPSE OF COVERAGE.

(K) IF AN INSURER CANCELS OR NONRENEWS A RENTERS' INSURANCE GROUP POLICY, THEN THE INSURER SHALL OFFER TO CONVERT A CERTIFICATE TO AN INDIVIDUAL INSURANCE POLICY, USING THE INSURER'S FILED RATES AND FORMS FOR INDIVIDUAL POLICIES, FOR ANY REMAINING PART OF THE REQUIRED POLICY PERIOD SET FORTH IN SECTION THREE THOUSAND FOUR HUNDRED TWENTY-FIVE OF THIS ARTICLE.

S 3. This act shall take effect immediately.