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

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2011-2012 Regular Sessions

I N A S S E M B L Y

January 26, 2011

Introduced by M. of A. WEPRIN, WEISENBERG, ORTIZ -- Multi-Sponsored by -- M. of A. COOK, McENENY, NOLAN, PERRY -- read once and referred to the Committee on Insurance -- recommitted to the Committee on Insurance in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the insurance law, in relation to claims for loss or damage to real property, continuing education for licensed persons and qualifications for independent adjusters

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 2616 to read as follows:

S 2616. CLAIMS FOR LOSS OR DAMAGE TO REAL PROPERTY; REPAIRS. (A) WHENEVER AN INSURED SUFFERS A LOSS OR DAMAGE TO REAL PROPERTY, NO INSURER PROVIDING COVERAGE THEREFOR SHALL REQUIRE THAT REPAIRS BE COMPLETED BY A PARTICULAR ENTITY OR INDIVIDUAL.

(B) IN PROCESSING ANY SUCH CLAIM, THE INSURER SHALL NOT RECOMMEND OR SUGGEST REPAIRS BE MADE BY A PARTICULAR ENTITY OR INDIVIDUAL UNLESS EXPRESSLY REQUESTED BY THE INSURED, IN WHICH CASE THE INSURER SHALL DISCLOSE TO THE INSURED WHETHER THE INSURER HAS A CONTROLLING OR BUSINESS INTEREST IN ANY ENTITY OR INDIVIDUAL THAT THE INSURER RECOMMENDS OR SUGGESTS.

S 2. Subsection (a) of section 2108 of the insurance law is amended by adding two new paragraphs 5 and 6 to read as follows:

(5) NO PUBLIC OR INDEPENDENT ADJUSTER SHALL RECEIVE ANY COMPENSATION OR RECEIVE ANYTHING OF VALUE IN CONSIDERATION OF A DIRECT REFERRAL OF A CLIENT OR POTENTIAL CLIENT.

(6) AN INDEPENDENT OR PUBLIC ADJUSTER SHALL NOT RECOMMEND OR SUGGEST REPAIRS BE MADE BY A PARTICULAR ENTITY OR INDIVIDUAL UNLESS EXPRESSLY REQUESTED BY THE INSURED, IN WHICH CASE THE INDEPENDENT OR PUBLIC ADJUS-

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

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TER SHALL DISCLOSE TO THE INSURED WHETHER THE ADJUSTER HAS ANY CONTROLLING OR BUSINESS INTEREST IN ANY ENTITY OR INDIVIDUAL THAT THE ADJUSTER RECOMMENDS OR SUGGESTS.

S 3. Paragraph 1 of subsection (f) of section 2108 of the insurance law is amended to read as follows:

(1) The superintendent shall, in order to determine the trustworthiness and competency to act as an independent adjuster of each individual applicant for such license, and of each proposed sub-licensee, except in the case of a renewal license, require every such individual to take and pass, to the satisfaction of the superintendent, a personal written examination. AN INDIVIDUAL SHALL NOT BE DEEMED QUALIFIED TO TAKE THE EXAMINATION WITHOUT HAVING DEMONSTRATED BY EVIDENCE SATISFACTORY TO THE SUPERINTENDENT THAT: (A) THE INDIVIDUAL POSSESSES A MINIMUM OF ONE-YEAR'S EXPERIENCE IN THE INSURANCE BUSINESS, WITH INVOLVEMENT IN SALES, UNDERWRITING, CLAIMS, OR OTHER EXPERIENCE CONSIDERED SUFFICIENT BY THE SUPERINTENDENT; OR (B) THE INDIVIDUAL SUCCESSFULLY COMPLETED FORTY HOURS OF FORMAL TRAINING IN A COURSE, PROGRAM OF INSTRUCTION, OR SEMINARS APPROVED BY THE SUPERINTENDENT. The superintendent may prescribe the types of written examinations according to the kind or kinds of insurance claims [which] THAT the applicant is to be licensed to investigate and adjust.

S 4. Subsection (r) of section 2108 of the insurance law, as added by chapter 264 of the laws of 1998, is amended to read as follows:

(r) (1) The following continuing education requirements shall apply to resident and non-resident persons licensed as public OR INDEPENDENT adjusters.

(2) Resident and non-resident persons licensed as public OR INDEPENDENT adjusters and any person previously so licensed whose license was not in effect on the effective date of this subsection and who has subsequently been relicensed pursuant to the provisions of this article, shall biennially satisfactorily complete such courses or programs as may be approved by the superintendent, as follows:

(A) Any person holding a license as a public OR INDEPENDENT adjuster shall, during each full biennial licensing period, satisfactorily complete courses or programs of instruction or attend seminars as may be approved by the superintendent equivalent to fifteen credit hours of instruction.

(B) During the same calendar year biennial licensing period, a licensee may use accumulated continuing education credits to meet the requirements of similar classes of licenses including those authorized by subsection (b) of section two thousand one hundred three, section two thousand one hundred four, section two thousand one hundred seven of this article with respect to general insurance consultants, and THIS section [two thousand one hundred eight of this article] with respect to public AND INDEPENDENT adjusters.

(C) Excess credit hours accumulated during any biennial licensing period shall not carry forward to the next biennial licensing period for that same class of license.

(3) (A) The courses or programs of instruction successfully completed, which shall be deemed to meet the superintendent's standards for continuing education shall be:

(i) Courses, programs of instruction or seminars, approved as to method and content by the superintendent, covering portions of the principal branches of insurance related to the kinds of insurance covered by the public OR INDEPENDENT adjusting license, and given by a degree conferring college or university whose curriculum is registered with the state education department at the time the person takes the course, whether such course be given as part of such curriculum or separately, or by any other institution, association, trade association or insurer, which maintains equivalent standards of instruction and which shall have been approved for such purpose by the superintendent.

(ii) Continuing education as required by the state in which a non-resident licensee resides and maintains an office, provided the superintendent deems them equivalent to New York continuing education requirements. If the state in which the non-resident licensee resides and maintains an office has no continuing education requirements, or the superintendent does not deem them equivalent, the licensee must satisfy New York continuing education requirements.

(B) The number of credit hours assigned to each of the courses or programs of instruction set forth in paragraph one of this subsection shall be determined by the superintendent.

(4) A person who teaches any approved course of instruction or who lectures at any approved seminar, and who is subject to these continuing education requirements shall be granted the same number of credit hours as would be granted to a person taking and successfully completing such course, seminar or program, provided that such credit hours shall be credited only once per approved course during any biennial licensing period.

(5) Every person subject to these continuing education requirements shall furnish, in a form satisfactory to the superintendent, written certification attesting to the course or programs of instruction taken and successfully completed by such person, and executed by the sponsoring organization or its authorizing representative.

(6) (A) Any person failing to meet applicable continuing education requirements shall not be eligible to renew the license.

(B) Any person whose license was not renewed shall not be eligible to become relicensed during the next biennial licensing period until that person has demonstrated to the satisfaction of the superintendent that continuing education requirements for the last biennial licensing period were met.

(C) Any person whose license was not renewed pursuant to subparagraph (A) of this paragraph, who accumulates sufficient credit hours for the prior licensing period to qualify for relicensing in the biennial period following such non-renewal, may not apply those same credit hours toward the continuing education requirements for the current biennial licensing period.

(7) (A) Any entity eligible to provide continuing education courses, programs of instruction, or seminars shall file for approval by the superintendent on a biennial basis, to conform with its areas of instruction, a provider organization application and a course submission application for each course, program, and seminar.

(B) The provider organization application shall include the names of all instructors to be used during the contract period, and instructors may be added during the period by notifying the superintendent and paying the appropriate filing fee.

(C) The completed applications shall be returned in a timely manner, as specified by the superintendent with a non-refundable filing fee of two hundred dollars per organization, fifty dollars per course, program, and seminar, and fifty dollars per instructor.

(D) Approval of the application shall be at the discretion of the superintendent.

(8) Each licensee shall pay a biennial fee of ten dollars per license, for continuing education certificate filing and recording charges, to the superintendent, or, at the direction of the superintendent, directly to an organization under contract to provide continuing education administrative services.

S 5. The opening paragraph of subsection (a) of section 2110 of the insurance law, as amended by chapter 499 of the laws of 2009, is amended to read as follows:

The superintendent may refuse to renew, revoke, or may suspend for a period the superintendent determines the license of any insurance producer, insurance consultant, PUBLIC OR INDEPENDENT adjuster or life settlement broker, if, after notice and hearing, the superintendent determines that the licensee or any sub-licensee has:

S 6. Paragraph 2 of subsection (c) of section 2132 of the insurance law, as amended by chapter 264 of the laws of 1998, is amended to read as follows:

(2) During the same calendar year biennial licensing period, a licensee may use accumulated continuing education credits to meet the requirements of similar classes of licenses, as follows: (A) subsection (a) of section two thousand one hundred three and section two thousand one hundred seven of this article with respect to life insurance consultants; or (B) subsection (b) of section two thousand one hundred three, section two thousand one hundred four, section two thousand one hundred seven of this article with respect to general insurance consultants, and section two thousand one hundred eight of this article with respect to public AND INDEPENDENT adjusters.

S 7. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.