

4706

2011-2012 Regular Sessions

I N A S S E M B L Y

February 7, 2011

Introduced by M. of A. MORELLE, SPANO -- Multi-Sponsored by -- M. of A. GALEF -- read once and referred 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.
23 (g) "Industrial insured group" means any group of unaffiliated indus-
24 trial insureds that are engaged in similar or related businesses or

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

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1 activities, however, the metropolitan transportation authority OR STATU-
2 TORY SUBSIDIARY, THE THRUWAY AUTHORITY OR STATUTORY SUBSIDIARY and
3 cities with a population of one million or more shall not be a member of
4 an industrial insured group, and that collectively:

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

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

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

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

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

36 S 3. Subdivision (a) of section 1500 of the tax law, as separately
37 amended by section 8 of part E-1 and section 1 of part B-1 of chapter 57
38 of the laws of 2009, is amended to read as follows:

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

1 not include the metropolitan transportation authority[,] OR STATUTORY
2 SUBSIDIARY OR AFFILIATE, THE THRUWAY AUTHORITY OR STATUTORY SUBSIDIARY
3 OR AFFILIATE or a public benefit corporation or not-for-profit corpo-
4 ration formed by a city with a population of one million or more pursu-
5 ant to subsection (a) of section seven thousand five of the insurance
6 law, [each of] which is expressly exempt from the payment of fees, taxes
7 or assessments, whether state or local; and provided further "insurance
8 corporation" does not include any overcapitalized captive insurance
9 company. The term "insurance corporation" shall also include an unau-
10 thorized insurer operating from an office within the state, pursuant to
11 paragraph five of subsection (b) of section one thousand one hundred one
12 and subsection (i) of section two thousand one hundred seventeen of the
13 insurance law. The term "insurance corporation" also includes a health
14 maintenance organization required to obtain a certificate of authority
15 under article forty-four of the public health law.

16 S 4. Subdivision (a) of section 1502-b of the tax law, as amended by
17 section 9 of part E-1 of chapter 57 of the laws of 2009, is amended to
18 read as follows:

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

51 S 5. This act shall take effect immediately.