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

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:

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

(e) "Industrial insured" means an insured:

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

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

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

(4) WHO IS THE THRUWAY AUTHORITY AND ITS STATUTORY SUBSIDIARIES. WHEN FILING AN APPLICATION TO FORM A PURE CAPTIVE INSURANCE COMPANY THE THRUWAY AUTHORITY SHALL SUBMIT WRITTEN NOTICE OF SUCH FILING TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE AND THE SPEAKER OF THE ASSEMBLY; OR

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

(g) "Industrial insured group" means any group of unaffiliated industrial 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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activities, however, the metropolitan transportation authority OR STATUTORY SUBSIDIARY, THE THRUWAY AUTHORITY OR STATUTORY SUBSIDIARY and cities with a population of one million or more shall not be a member of an industrial insured group, and that collectively:

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

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

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

15. THE AUTHORITY MAY ESTABLISH A SUBSIDIARY CORPORATION FOR THE PURPOSE OF FORMING A PURE CAPTIVE INSURANCE COMPANY AS PROVIDED FOR IN SECTION SEVEN THOUSAND TWO OF THE INSURANCE LAW. THE MEMBERS OF SUCH SUBSIDIARY CORPORATION OF THE AUTHORITY SHALL BE THE SAME PERSONS HOLDING THE OFFICES OF MEMBERS OF THE AUTHORITY. SUCH SUBSIDIARY CORPORATION SHALL HAVE ALL OF THE PRIVILEGES, IMMUNITIES, TAX EXEMPTIONS AND OTHER EXEMPTIONS OF THE AUTHORITY AND OF THE AUTHORITY'S PROPERTY, FUNCTIONS AND ACTIVITIES. THE SUBSIDIARY CORPORATION OF THE AUTHORITY SHALL BE SUBJECT TO SUIT IN ACCORDANCE WITH SECTION THREE HUNDRED SIXTY-ONE-B OF THIS TITLE. THE EMPLOYEES OF SUCH SUBSIDIARY CORPORATION, EXCEPT THOSE WHO ARE ALSO EMPLOYEES OF THE AUTHORITY, SHALL NOT BE DEEMED EMPLOYEES OF THE AUTHORITY.

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

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

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

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

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

(a) In lieu of the taxes and tax surcharge imposed by sections fifteen hundred one, fifteen hundred two-a, fifteen hundred five-a, and fifteen hundred ten of this article, every captive insurance company licensed by the superintendent of insurance pursuant to the provisions of article seventy of the insurance law, other than the metropolitan transportation authority OR STATUTORY SUBSIDIARY OR AFFILIATE, THE THRUWAY AUTHORITY OR STATUTORY SUBSIDIARY OR AFFILIATE and a public benefit corporation or not-for-profit corporation formed by a city with a population of one million or more pursuant to subsection (a) of section seven thousand five of the insurance law, each of which is expressly exempt from the payment of fees, taxes or assessments whether state or local, and other than an overcapitalized captive insurance company, shall, for the privilege of exercising its corporate franchise, pay a tax on (1) all gross direct premiums, less return premiums thereon, written on risks located or resident in this state and (2) all assumed reinsurance premiums, less return premiums thereon, written on risks located or resident in this state. The rate of the tax imposed on gross direct premiums shall be four-tenths of one percent on all or any part of the first twenty million dollars of premiums, three-tenths of one percent on all or any part of the second twenty million dollars of premiums, two-tenths of one percent on all or any part of the third twenty million dollars of premiums, and seventy-five thousandths of one percent on each dollar of premiums thereafter. The rate of the tax on assumed reinsurance premiums shall be two hundred twenty-five thousandths of one percent on all or any part of the first twenty million dollars of premiums, one hundred and fifty thousandths of one percent on all or any part of the second twenty million dollars of premiums, fifty thousandths of one percent on all or any part of the third twenty million dollars of premiums and twenty-five thousandths of one percent on each dollar of premiums thereafter. The tax imposed by this section shall be equal to the greater of (i) the sum of the tax imposed on gross direct premiums and the tax imposed on assumed reinsurance premiums or (ii) five thousand dollars.

S 5. This act shall take effect immediately.