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

727

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. GANTT, ROBINSON, JACOBS, PHEFFER, MAISEL, COLTON, GALEF -- Multi-Sponsored by -- M. of A. BOYLAND, DINOWITZ, FINCH, GLICK, HOOPER, V. LOPEZ, McKEVITT, MILLMAN, NOLAN, PEOPLES-STOKES, RAIA, REILLY, SWEENEY, TITONE, TOWNS, WEISENBERG -- read once and referred to the Committee on Insurance

AN ACT to amend the insurance law, in relation to "the New York residential insurance providers disclosure act of 2011"

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

Section 1. This act shall be known and may be cited as "the New York residential insurance providers disclosure act of 2011".

S 2. Subsection (a) of section 2315 of the insurance law, as amended by chapter 398 of the laws of 1990, is amended to read as follows:

(a) [Every] WITH RESPECT TO RESIDENTIAL INSURANCE, EVERY AUTHORIZED INSURER SHALL BY MARCH THIRTY-FIRST OF EACH YEAR FILE WITH THE SUPERINTENDENT, OR WITH SUCH OTHER AGENCY AS THE SUPERINTENDENT MAY APPROVE, A "RESIDENTIAL INSURANCE RATE, EXPERIENCE AND STATISTICAL REPORT" AS DESCRIBED IN SUBSECTION (D) OF THIS SECTION, AND SHALL MAKE AVAILABLE IN AN ELECTRONIC DATABASE FORMAT THE STATISTICAL INFORMATION ON ITS RESIDENTIAL ACTIVITIES ACCORDING TO THE PROVISIONS OF SUBSECTION (D) OF THIS SECTION. WITH RESPECT TO NON-RESIDENTIAL AND ALL OTHER LINES OF INSURANCE, EVERY authorized insurer shall annually file with the rate service organization of which it is a member or subscriber, or with such other agency as the superintendent may approve, a statistical report showing a classification schedule of its premiums and losses on all kinds or types of insurance business subject to this article, and such other information as the superintendent may deem necessary or expedient for the administration of the provisions of this article. The superintendent from time to time may prescribe the form of the report including statistical data conforming to established classifications. The statistical

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

LBD03392-01-1

reports shall be consolidated in accordance with regulations prescribed by the superintendent. Such consolidations shall be made available, subject to reasonable rules promulgated by the superintendent, to insurers and rate service organizations. No insurer shall be required to record or report its loss experience on a classification basis that is inconsistent with the rating system filed by it, except that the superintendent may require each insurer writing private passenger automobile coverages to file annually with the superintendent (or a statistical agent designated by the superintendent for such purpose), in the form prescribed by the superintendent, a statistical report showing a schedule of its premiums, losses, and exposures classified by United States postal zip code. [No] EXCEPT AS PROVIDED FOR IN SUBSECTION (D) OF THIS SECTION, NO statistical report shall be issued or otherwise made available to any rate service organization (except in the capacity of designated statistical agent), insurers, or persons other than appropriate governmental entities, except on a consolidated manner, or in such aggregate form as to protect an individual insurer's schedule of premiums, losses and exposures for any specific zip code.

S 3. Subsections (d) and (e) of section 2315 of the insurance law are relettered (e) and (f) and a new subsection (d) is added to read as follows:

(D) (1) BEGINNING JANUARY FIRST, TWO THOUSAND TWELVE AND ANNUALLY THEREAFTER, THE SUPERINTENDENT SHALL REQUIRE EACH INSURER AUTHORIZED TO WRITE AND WRITING THE KINDS OF INSURANCE SPECIFIED IN PARAGRAPH FOUR OF SUBSECTION (A) OF SECTION ONE THOUSAND ONE HUNDRED THIRTEEN OF THIS CHAPTER, SUBPARAGRAPH (A) OF PARAGRAPH FIVE OF SUCH SUBSECTION, AND HOMEOWNERS INSURANCE, TO FILE A STATISTICAL REPORT OF ITS EXPERIENCE FOR THE PREVIOUS CALENDAR YEAR, FOR EACH FORM AND RATING CLASSIFICATION, AND TIER IN A MULTI-TIER PROGRAM, WHERE APPLICABLE, CLASSIFIED BY UNITED STATES CENSUS TRACT.

FOR THE PURPOSES OF THIS SECTION, "HOMEOWNERS INSURANCE," INCLUDES MULTI-TIER INSURANCE PROGRAMS, AND MEANS A CONTRACT OF INSURANCE INSURING 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 CHAPTER AND WHICH IS A "COVERED POLICY" OF PERSONAL LINES INSURANCE AS DEFINED IN SUCH PARAGRAPH; PROVIDED, HOWEVER, THAT THE COVERAGES PROVIDED UNDER SUCH SUBPARAGRAPHS (B) AND (C) SHALL NOT APPLY WHERE A NATURAL PERSON DOES NOT HAVE AN INSURABLE INTEREST IN THE REAL PROPERTY, OR A PORTION THEREOF, OR THE RESIDENTIAL UNIT IN WHICH SUCH PERSON RESIDES.

(2) SUCH STATISTICAL REPORT SHALL BE IN A FORM PRESCRIBED BY THE SUPERINTENDENT AS IN EFFECT AT THE COMMENCEMENT OF THE CALENDAR YEAR REPORTED UPON, AND SHALL INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING INFORMATION:

(A) THE NUMBER OF POLICIES IN EFFECT, OR OTHER EXPOSURES INSURED. FOR THE PURPOSES OF THIS SUBSECTION, "POLICIES IN EFFECT" SHALL MEAN THE NUMBER OF POLICIES WRITTEN IN THE REPORTING YEAR, AND "OTHER EXPOSURES," IF ANY, SHALL MEAN ANY COVERAGE EXTENDED OTHER THAN POLICIES WRITTEN, AND SHALL BE DESCRIBED IN THE REPORT IN SUFFICIENT DETAIL TO IDENTIFY THE COVERAGE PROVIDED;

(B) THE NUMBER OF APPLICATIONS FOR COVERAGE;

(C) THE NUMBER OF APPLICATIONS FOR WHICH COVERAGE WAS NOT PROVIDED, CLASSIFIED ACCORDING TO APPLICATIONS WITHDRAWN, APPLICATIONS DENIED, AND APPLICATIONS STILL IN PROCESS;

(D) THE NUMBER OF POLICIES NOT RENEWED;

(E) THE NUMBER OF POLICIES CANCELLED OR TERMINATED;

(F) THE NUMBER OF CLAIMS FILED;
(G) THE NUMBER OF CLAIMS APPROVED, IN WHOLE OR IN PART;
(H) THE NUMBER OF CLAIMS DENIED, IN WHOLE OR IN PART;
(I) THE AMOUNTS OF THE LOSSES INCURRED;
(J) THE AMOUNTS OF THE LOSSES PAID;
(K) FOR INSURERS DISTRIBUTING THROUGH DIRECT SOLICITATION, THE NUMBER OF DIRECT MAIL OR TELEPHONE SOLICITATIONS;
(L) THE NUMBER OF AGENTS APPOINTED BY THE INSURER;
(M) THE STREET ADDRESSES OF ALL OFFICES ISSUING OR SERVICING POLICIES;
(N) LANGUAGES SPOKEN, OTHER THAN ENGLISH, WITH SUFFICIENT FLUENCY TO CONDUCT BUSINESS IN THAT LANGUAGE BY PERSONNEL WITHIN EACH OFFICE;
(O) WHETHER THE INSURER ISSUES POLICIES IN A LANGUAGE OTHER THAN ENGLISH, AND IF SO, IDENTIFYING THE LANGUAGES IN WHICH POLICIES ARE ISSUED AND THE NUMBER OF POLICIES ISSUED IN EACH LANGUAGE;
(P) FOR EACH OF THE CATEGORIES OF INFORMATION DESCRIBED IN SUBPARAGRAPHS (A) THROUGH (J) OF THIS PARAGRAPH, FURTHER CLASSIFICATIONS ACCORDING TO RACE, NATIONAL ORIGIN, ETHNICITY, HOUSEHOLD INCOME, AND GENDER OF THE INSUREDS OR APPLICANTS, PURSUANT TO CODES ESTABLISHED BY THE SUPERINTENDENT, IN ADDITION, WHERE AN INSURER APPLIES ANY OTHER CLASSIFICATION WHICH AFFECTS THE PREMIUM RATE AT WHICH THE POLICY IS ISSUED, THE INSURER SHALL PROVIDE TOTALS BY RACE, NATIONAL ORIGIN, ETHNICITY, HOUSEHOLD INCOME AND GENDER FOR EACH SUCH CLASSIFICATION; AND
(Q) APPLICABLE RATES, WITHIN TERRITORIES SERVED BY AN INSURER, FOR EACH FORM AND RATING CLASSIFICATION, INCLUDING RATES BY TIER IN MULTI-TIER PROGRAMS, AND DIFFERENTIATING BETWEEN POLICIES WITH VARYING TYPES OF BENEFITS, INCLUDING BUT NOT LIMITED TO GUARANTEED REPLACEMENT COST, STANDARD OR LIMITED REPLACEMENT COST, MARKET VALUE OR ACTUAL CASH VALUE, AND DIFFERENTIATING AMONG POLICIES ISSUED FOR SINGLE-FAMILY HOMES, MULTI-FAMILY HOMES, CONDOMINIUM OR COOPERATIVE UNITS AND RENTERS; AND
(R) ALL OF THE INFORMATION UPON WHICH AN INSURER, RATE SERVICE ORGANIZATION, GROUP OF INSURERS FILED WITH THE SUPERINTENDENT IN SUPPORT OF THE RATES AS REQUIRED TO BE FILED WITH THE SUPERINTENDENT BY SUBSECTION (B) OF SECTION TWO THOUSAND THREE HUNDRED FOUR AND SUBSECTION (C) OF SECTION TWO THOUSAND THREE HUNDRED FIVE OF THIS ARTICLE. AN INSURER OR GROUP OF INSURERS WHICH ARE MEMBERS OR SUBSCRIBERS OF A RATE SERVICE ORGANIZATION WHICH MAKES OR FILES RATES ON ITS BEHALF SHALL BE RESPONSIBLE FOR FILING OF THE INFORMATION AS PART OF THE REPORT REQUIRED BY THIS SUBSECTION. IN LIEU OF INCLUDING THE INFORMATION REQUIRED BY THIS PARAGRAPH AS PART OF THE STATISTICAL REPORT, AN INSURER OR GROUP OF INSURERS MAY POST THE INFORMATION ON A WEBSITE MAINTAINED BY THE INSURER OR PROVIDE IT TO THE PUBLIC WITHOUT CHARGE WITHIN FIFTEEN DAYS OF RECEIPT OF A WRITTEN REQUEST FOR SUCH INFORMATION.
(3) THE SUPERINTENDENT MAY APPOINT ONE OR MORE STATISTICAL AGENTS TO ASSIST IN THE COLLECTION AND ORGANIZATION OF SUCH REPORT, AND MAY APPROVE ONE OR MORE STATISTICAL AGENTS UPON APPLICATION BY AN INSURER TO ASSIST IN OR MAKE THE FILING OF THE REPORT REQUIRED BY THIS SUBSECTION.
(4) NOTWITHSTANDING THE PROVISIONS OF ANY OTHER LAW, THE SUPERINTENDENT SHALL BY JULY FIRST OF EACH YEAR MAKE AVAILABLE TO THE PUBLIC ON REQUEST, AS WELL AS MAKING AVAILABLE FOR INSPECTION AT THE OFFICE OF THE SUPERINTENDENT, THE FULL TEXT OF THE REPORTS FILED UNDER THIS SUBSECTION. SUCH REPORTS SHALL BE MADE AVAILABLE IN BOTH PRINTED AND ELECTRONIC FORMAT, INCLUDING ACCESS THROUGH THE WEBSITE OF THE DEPARTMENT, AT NO CHARGE TO THE REQUESTING PARTY, EXCEPT THAT WITH RESPECT TO PRINTED COPIES OR PHOTOCOPIES SUCH REPORTS SHALL BE AVAILABLE FOR A REASONABLE FEE, NOT TO EXCEED FIVE CENTS PER PAGE OR THE ACTUAL COST OF

DUPLICATION, WHICHEVER IS LESS. DATA PRESENTED IN ELECTRONIC FORMAT SHALL BE MADE AVAILABLE IN A DATABASE FILE FORMAT OF THE TYPE IN GENERAL USAGE BY THE PUBLIC.

(5) IN ADDITION TO CUMULATIVE DATA REQUIRED TO BE REPORTED UNDER THIS SUBSECTION, EACH INSURER SHALL FILE WITH THE SUPERINTENDENT, AND MAKE AVAILABLE TO THE PUBLIC, THE INDIVIDUAL RECORD DATA FROM WHICH THE REPORT SUMMARIES WERE TABULATED. SUCH DATA SHALL BE PROVIDED IN AN ELECTRONIC DATABASE FORMAT PRESCRIBED BY THE SUPERINTENDENT, AND THE SUPERINTENDENT SHALL MAKE SUCH DATABASE FILES AVAILABLE DIRECTLY TO THE PUBLIC IN ACCORDANCE WITH THE PROCEDURES AND TIME REQUIREMENTS SET FORTH IN PARAGRAPH FOUR OF THIS SUBSECTION. THE SUPERINTENDENT SHALL REQUIRE THAT ALL INFORMATION WHICH WOULD PERSONALLY IDENTIFY ANY INDIVIDUAL APPLICANT OR POLICYHOLDER BE DELETED. THE CATEGORIES OF DATA TO BE MADE AVAILABLE FOR EACH INDIVIDUAL RECORD SHALL INCLUDE ALL OF THE SAME CATEGORIES OF INFORMATION CONTAINED IN THE CUMULATIVE REPORT AND SHALL BE PRESENTED IN ACCORDANCE WITH STANDARDIZED CLASSIFICATION CODES TO BE ESTABLISHED BY THE SUPERINTENDENT.

(6) AN INSURER WHO DOES NOT SUBMIT THE STATISTICAL REPORT OR OTHER INFORMATION REQUIRED BY THIS SUBSECTION AS OF THE DATE REQUIRED SHALL, UPON NOTICE AND OPPORTUNITY TO BE HEARD, BE SUBJECT TO A PENALTY NOT TO EXCEED ONE THOUSAND DOLLARS PER DAY FOR EACH DAY BEYOND THE DATE THE REPORT OR INFORMATION IS REQUIRED, BUT IN NO EVENT SHALL SUCH PENALTY EXCEED FIFTEEN THOUSAND DOLLARS IN THE AGGREGATE; PROVIDED, HOWEVER, THAT THE SUPERINTENDENT MAY WAIVE SUCH A PENALTY UPON A WRITTEN FINDING THAT THE REPORT OR OTHER INFORMATION SUBMITTED BY SUCH INSURER ON THE DATE REQUIRED WAS SUBSTANTIALLY COMPLETE, AND THE INSURER HAS CORRECTED ANY DEFICIENCIES WITHIN A DATE SET BY THE SUPERINTENDENT. AN INSURER REQUIRED BY THIS SUBSECTION TO SUBMIT A STATISTICAL REPORT OR OTHER INFORMATION WHO WILLFULLY FAILS TO FILE SUCH STATISTICAL REPORT OR OTHER INFORMATION SHALL, IN ADDITION TO ANY OTHER PENALTIES PROVIDED FOR BY THIS CHAPTER, UPON NOTICE AND AN OPPORTUNITY TO BE HEARD, BE SUBJECT TO A PENALTY OF UP TO FIVE HUNDRED DOLLARS PER DAY OF DELAY, NOT TO EXCEED FIFTY THOUSAND DOLLARS IN THE AGGREGATE. WHERE AN INSURER HAS FAILED TO COMPLY WITH THE REQUIREMENTS OF THIS SECTION, AN AGGRIEVED INDIVIDUAL, INCLUDING ANY PERSON OR AGENCY ATTEMPTING TO ANALYZE THE PERFORMANCE OF ANY INSURER SUBJECT TO THIS SECTION, SHALL HAVE A CAUSE OF ACTION IN ANY COURT OF COMPETENT JURISDICTION FOR DECLARATORY AND INJUNCTIVE RELIEF. IN ANY ACTION OR PROCEEDING BROUGHT PURSUANT TO THIS SECTION, COSTS AND REASONABLE ATTORNEY FEES MAY BE AWARDED BY THE COURT, IN ITS DISCRETION, TO THE SUCCESSFUL PARTY.

(7) UPON AN APPLICATION BY AN INSURER REQUIRED BY THIS SUBSECTION TO SUBMIT A STATISTICAL REPORT OR OTHER INFORMATION FOR THE CALENDAR YEAR TWO THOUSAND ELEVEN, THE SUPERINTENDENT MAY PERMIT SUCH INSURER TO CLASSIFY THE DATA BY UNITED STATES POSTAL ZIP CODE, RATHER THAN CENSUS TRACT DESIGNATION, FOR THE REPORT DUE IN CALENDAR YEAR TWO THOUSAND TWELVE.

S 4. This act shall take effect immediately.