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

May 11, 2011

Introduced by M. of A. WEISENBERG -- (at request of the State Comptroller) -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the navigation law, in relation to claims against insurers for petroleum spills

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

Section 1. Section 190 of the navigation law, as added by chapter 845 of the laws of 1977, is amended to read as follows:

S 190. Claims against insurers. 1. Any claims for costs of cleanup and removal, civil penalties or damages by the state and any claim for damages by any injured person, may be brought directly against the bond, the insurer, or any other person providing evidence of financial responsibility.

2. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, ALL HOMEOWNERS' POLICIES OF INSURANCE IN THIS STATE WHICH SHALL INSURE AGAINST DAMAGE TO PROPERTY SHALL CLEARLY PROVIDE THAT CLEANUP AND REMOVAL COSTS AND ALL DIRECT AND INDIRECT DAMAGES RELATING TO A DISCHARGE OF PETROLEUM SHALL CONSTITUTE PROPERTY DAMAGE AND SHALL BE INSURABLE WITHIN THE MEANING OF THE GENERAL LIABILITY PORTIONS OF SUCH INSURANCE POLICY. THE RISK OF DAMAGES CAUSED BY SUCH DISCHARGES MAY NOT BE AN EXCLUSION IN ANY SUCH POLICY ISSUED IN THE STATE.

3. IN ANY CLAIM FOR COVERAGE OF THE COSTS AND DAMAGES RELATING TO A DISCHARGE OF PETROLEUM, THE INSURER MAY RAISE THE AFFIRMATIVE DEFENSE THAT THE INSURED HAD ACTUAL KNOWLEDGE OF A CONDITION WHICH A REASONABLE PERSON WOULD HAVE UNDERSTOOD TO POSE AN IMMINENT RISK OF A DISCHARGE OF PETROLEUM AND THAT THE INSURED FAILED TO TAKE REASONABLE STEPS TO PREVENT THE DISCHARGE.

4. INSURERS SHALL PROVIDE THE FOLLOWING NOTICE IN BOLD LETTERING OF AT LEAST TWELVE POINT TYPE FONT IN EVERY HOMEOWNER'S POLICY, NEWLY ISSUED OR RENEWED WHICH INSURES AGAINST DAMAGE TO PROPERTY:

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

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YOU HAVE A RESPONSIBILITY TO PREVENT A DISCHARGE FROM YOUR PETROLEUM (OIL, KEROSENE, ETC.) TANKS AND ASSOCIATED PIPELINES. IF YOU KNOW OF A CONDITION WHICH COULD RESULT IN A DISCHARGE, YOUR FAILURE TO TAKE REASONABLE STEPS TO PREVENT THE DISCHARGE COULD VOID THE COVERAGE PROVIDED BY THIS POLICY.

5. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO LIMIT ANY PRE-EXISTING RIGHT, WHETHER ACTUAL OR IMPLIED, IN WHICH THE INSURED MAY HAVE HAD COMPENSATION FROM THE INSURER FOR CLEANUP AND REMOVAL COSTS AND ALL DIRECT AND INDIRECT DAMAGES RELATING TO A DISCHARGE OF PETROLEUM.

S 2. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.