

5811

2011-2012 Regular Sessions

I N S E N A T E

June 17, 2011

Introduced by Sen. SEWARD -- (at request of the New York State Insurance Department) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the insurance law, in relation to exempting insurers from certain rate and policy form approval requirements with respect to policies issued to large commercial insureds and from certain policy form filing and approval requirements with respect to certain inland marine insurance policies

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

1 Section 1. Subsections (a) and (b) of section 6301 of the insurance
2 law are amended to read as follows:
3 (a) Notwithstanding any provision of this chapter, the superintendent
4 shall, pursuant to regulations promulgated by [him] THE SUPERINTENDENT,
5 permit exemption from filing requirements only with respect to rates and
6 policy forms, where applicable, for any of the kinds of insurance
7 [authorized to be written in this state] SPECIFIED IN SUBSECTION (B) OF
8 THIS SECTION.
9 (b) [No] AN exemption pursuant to subsection (a) hereof shall be
10 permitted in relation to the kinds of insurance set forth in [paragraph
11 one, two, three, fifteen, eighteen or twenty-three] PARAGRAPHS FOUR
12 THROUGH FOURTEEN, SIXTEEN, SEVENTEEN, NINETEEN THROUGH TWENTY-TWO, TWEN-
13 TY-SEVEN AND TWENTY-NINE, of subsection (a) of section one thousand one
14 hundred thirteen of this chapter[, or to] AND SUCH INSURANCE AS THE
15 SUPERINTENDENT DEEMS TO BE SUBSTANTIALLY SIMILAR TO ONE OF THE FOREGOING
16 KINDS, EXCEPT NO EXEMPTION MAY BE PERMITTED FOR: (1) coverage for
17 personal lines to natural persons for non-business purposes; (2) INSUR-
18 ANCE SPECIFIED IN SUBSECTION (B) OF SECTION TWO THOUSAND THREE HUNDRED
19 FIVE OF THIS CHAPTER, EXCEPT MEDICAL MALPRACTICE INSURANCE, OR SECTION
20 TWO THOUSAND THREE HUNDRED TWENTY-EIGHT OF THIS CHAPTER; (3) INSURANCE
21 REQUIRED TO SATISFY ANY FINANCIAL RESPONSIBILITY REQUIREMENT OF THIS

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

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STATE; OR (4) A POLICY WRITTEN ON A GROUP BASIS. However, any risk pursuant to paragraph one, two or three of such subsection of such section of this chapter or personal lines risk (except [private passenger, non-fleet automobile] MOTOR VEHICLE insurance COVERAGE TO NATURAL PERSONS FOR NON-BUSINESS PURPOSES) shall be exempt pursuant to subsection (a) hereof if it is included by the superintendent on the list maintained by [him] THE SUPERINTENDENT pursuant to subsection (a) of section six thousand three hundred three of this article.

S 2. Section 6301 of the insurance law is amended by adding two new subsections (d) and (e) to read as follows:

(D) NOTHING IN THIS ARTICLE SHALL EXEMPT ANY INSURER, OR ANY POLICY ISSUED PURSUANT TO THIS ARTICLE, FROM ANY APPLICABLE PROVISION OR STANDARD IN THIS CHAPTER, REGULATIONS PROMULGATED THEREUNDER, OR OTHER REQUIREMENTS OF STATE LAW.

(E) IN THIS ARTICLE, "MEDICAL MALPRACTICE INSURANCE" HAS THE MEANING SET FORTH IN SUBSECTION (B) OF SECTION FIVE THOUSAND FIVE HUNDRED ONE OF THIS CHAPTER.

S 3. Section 6302 of the insurance law, paragraph 3 of subsection (c) as amended by chapter 534 of the laws of 1985, is amended to read as follows:

S 6302. Special license. (a) An authorized insurer, as a condition precedent to the obtaining of such exemption, shall obtain a special license from the superintendent.

(b) Before such special license shall be issued or renewed the prospective licensee shall file in the office of the superintendent an application in such form and supplements thereto as the superintendent prescribes. Such license shall be subject to annual renewal with an annual fee of [one] TWO thousand dollars.

(c) Such license may only be issued to:

(1) an authorized insurer [which] THAT maintains at all times a surplus to policyholders of at least [twice the minimum surplus to policyholders required to be maintained for the kinds of insurance which it is authorized to write in this state] TWO HUNDRED PERCENT OF THE AUTHORIZED CONTROL LEVEL AS SET FORTH IN ARTICLE THIRTEEN OF THIS CHAPTER, EXCEPT THAT WITH RESPECT TO A POLICY ISSUED PURSUANT TO PARAGRAPH THREE OF SUBSECTION (A) OF SECTION SIX THOUSAND THREE HUNDRED THREE OF THIS ARTICLE, AN AUTHORIZED INSURER THAT MAINTAINS AT ALL TIMES A SURPLUS TO POLICYHOLDERS OF AT LEAST TWO HUNDRED FIFTY PERCENT OF THE AUTHORIZED CONTROL LEVEL AS SET FORTH IN ARTICLE THIRTEEN OF THIS CHAPTER; OR

(2) a United States branch [which] THAT maintains at all times a trusted surplus of at least [twice the minimum trusted surplus required to be maintained for the kinds of insurance which it is authorized to write in this state] TWO HUNDRED PERCENT OF THE AUTHORIZED CONTROL LEVEL AS SET FORTH IN ARTICLE THIRTEEN OF THIS CHAPTER, EXCEPT THAT WITH RESPECT TO A POLICY ISSUED PURSUANT TO PARAGRAPH THREE OF SUBSECTION (A) OF SECTION SIX THOUSAND THREE HUNDRED THREE OF THIS ARTICLE, A UNITED STATES BRANCH THAT MAINTAINS AT ALL TIMES A TRUSTEED SURPLUS OF AT LEAST TWO HUNDRED FIFTY PERCENT OF THE AUTHORIZED CONTROL LEVEL AS SET FORTH IN ARTICLE THIRTEEN OF THIS CHAPTER; or

(3) [an insurer initially licensed on or after July first, nineteen hundred eighty-two pursuant to article forty-one of this chapter, or pursuant to article forty-two of this chapter as an accident and health insurer, or pursuant to article sixty-one of this chapter as a reciprocal insurer, if such insurer is at least meeting the minimum surplus to policyholders requirement or the minimum trusted surplus requirement imposed upon such insurer by the provisions of the article pursuant to

1 which it was initially licensed] UNTIL JUNE THIRTIETH, TWO THOUSAND
2 FOURTEEN, A DOMESTIC PROPERTY/CASUALTY INSURANCE COMPANY THAT MAINTAINS
3 AT ALL TIMES A SURPLUS TO POLICYHOLDERS OF AT LEAST TWICE THE MINIMUM
4 SURPLUS TO POLICYHOLDERS REQUIRED TO BE MAINTAINED FOR THE KINDS OF
5 INSURANCE THAT IT IS AUTHORIZED TO WRITE IN THIS STATE, OR AN INSURER
6 LICENSED PURSUANT TO ARTICLE SIXTY-ONE OF THIS CHAPTER AS A RECIPROCAL
7 INSURER THAT MAINTAINS AT ALL TIMES A SURPLUS TO POLICYHOLDERS OF AT
8 LEAST THE MINIMUM SURPLUS TO POLICYHOLDERS REQUIRED TO BE MAINTAINED FOR
9 THE KINDS OF INSURANCE THAT IT IS AUTHORIZED TO WRITE IN THIS STATE,
10 PROVIDED THAT THE DOMESTIC PROPERTY/CASUALTY INSURANCE COMPANY OR RECIP-
11 ROCAL INSURER: (A) HAS TOTAL DIRECT PREMIUMS COMPRISED OF AT LEAST NINE-
12 TY PERCENT MEDICAL MALPRACTICE INSURANCE; (B) ASSUMES REINSURANCE PREMI-
13 UMS IN AN AMOUNT THAT IS LESS THAN FIVE PERCENT OF TOTAL DIRECT PREMIUMS
14 WRITTEN; AND (C) WRITES NINETY PERCENT OF ITS TOTAL DIRECT PREMIUMS IN
15 THIS STATE.

16 (d) The superintendent may revoke, suspend, or refuse to renew such
17 license if, after notice and a hearing, [he] THE SUPERINTENDENT finds
18 that such action will protect the best interests of the people of this
19 state.

20 S 4. Section 6303 of the insurance law is amended to read as follows:

21 S 6303. Limitations. (a) The exemption [which] THAT may be granted
22 pursuant to this article shall apply only if the business is underwrit-
23 ten and transacted from an office within this state; and [(i)]:

24 (1) the risk, as defined in regulations of the superintendent, produc-
25 es a minimum annual premium in excess of one hundred thousand dollars or
26 such higher amount as the superintendent may prescribe by regulation;
27 [or (ii)]

28 (2) the coverage is for a risk or class of risks which is of an unusu-
29 al nature, a high loss hazard, or difficult to place, pursuant to a list
30 promulgated or amended by the superintendent; OR

31 (3) UNTIL JUNE THIRTIETH, TWO THOUSAND THIRTEEN, THE POLICY, OTHER
32 THAN A MEDICAL MALPRACTICE INSURANCE POLICY, IS ISSUED TO A LARGE
33 COMMERCIAL INSURED THAT EMPLOYS OR RETAINS A SPECIAL RISK MANAGER TO
34 ASSIST IN THE NEGOTIATION AND PURCHASE OF A POLICY EXEMPTED UNDER THIS
35 ARTICLE, PROVIDED, HOWEVER, THAT:

36 (A)(I) THE SPECIAL RISK MANAGER IS NOT EMPLOYED BY THE INSURER ISSUING
37 THE POLICY OR ANY PERSON IN THE INSURER'S HOLDING COMPANY SYSTEM; AND

38 (II) THE SPECIAL RISK MANAGER IS LICENSED AS AN INSURANCE PRODUCER IN
39 THIS STATE PURSUANT TO ARTICLE TWENTY-ONE OF THIS CHAPTER, UNLESS
40 EXEMPTED FROM LICENSING THEREIN;

41 (B) THE INSURER SHALL FILE WITH THE SUPERINTENDENT A CERTIFICATE OF
42 INSURANCE EVIDENCING THE EXISTENCE AND TERMS OF THE POLICY WITHIN ONE
43 BUSINESS DAY OF BINDING THE INSURANCE COVERAGE; AND

44 (C) A POLICY FORM THAT HAS NOT BEEN PREVIOUSLY FILED WITH THE SUPER-
45 INTENDENT SHALL BE FILED WITH THE SUPERINTENDENT FOR INFORMATIONAL
46 PURPOSES WITHIN THREE BUSINESS DAYS AFTER FIRST DELIVERY OF A POLICY
47 USING SUCH FORM, BUT NO LATER THAN SIXTY CALENDAR DAYS AFTER THE INCEP-
48 TION DATE OF SUCH POLICY.

49 (b) [All policies] FOR THE PURPOSES OF THIS SECTION:

50 (1) "LARGE COMMERCIAL INSURED" MEANS AN ENTITY THAT GENERATES ANNUAL
51 COMMERCIAL RISK INSURANCE PREMIUM, OTHER THAN FOR MEDICAL MALPRACTICE
52 INSURANCE, IN EXCESS OF TWENTY-FIVE THOUSAND DOLLARS WITH RESPECT TO THE
53 KINDS OF INSURANCE SPECIFIED IN PARAGRAPHS FOUR THROUGH FOURTEEN,
54 SIXTEEN, SEVENTEEN, NINETEEN THROUGH TWENTY-TWO, TWENTY-SEVEN AND TWEN-
55 TY-NINE OF SUBSECTION (A) OF SECTION ONE THOUSAND ONE HUNDRED THIRTEEN

1 OF THIS CHAPTER AND SUCH INSURANCE AS THE SUPERINTENDENT DEEMS TO BE
2 SUBSTANTIALLY SIMILAR TO ONE OF THE FOREGOING KINDS AND:

3 (A) HAS A NET WORTH OF AT LEAST SEVEN MILLION FIVE HUNDRED THOUSAND
4 DOLLARS AS OF THE INSURED'S FISCAL YEAR END IMMEDIATELY PRECEDING THE
5 POLICY'S EFFECTIVE DATE;

6 (B) HAS GROSS ASSETS EXCEEDING TEN MILLION DOLLARS AND A NET WORTH OF
7 AT LEAST ONE MILLION FIVE HUNDRED THOUSAND DOLLARS AS OF THE INSURED'S
8 FISCAL YEAR END IMMEDIATELY PRECEDING THE POLICY'S EFFECTIVE DATE;

9 (C) IS A FOR-PROFIT BUSINESS ENTITY THAT GENERATES ANNUAL GROSS REVEN-
10 UES EXCEEDING FIFTEEN MILLION DOLLARS, AND HAS A NET WORTH OF AT LEAST
11 ONE MILLION FIVE HUNDRED THOUSAND DOLLARS AS OF THE INSURED'S FISCAL
12 YEAR END IMMEDIATELY PRECEDING THE POLICY'S EFFECTIVE DATE;

13 (D) IS A FOR-PROFIT BUSINESS ENTITY THAT HAS GROSS ASSETS EXCEEDING
14 TEN MILLION DOLLARS AND GENERATES ANNUAL GROSS REVENUES EXCEEDING
15 FIFTEEN MILLION DOLLARS AS OF THE INSURED'S FISCAL YEAR END IMMEDIATELY
16 PRECEDING THE POLICY'S EFFECTIVE DATE;

17 (E) IS A NOT-FOR-PROFIT ORGANIZATION OR PUBLIC ENTITY WITH AN ANNUAL
18 BUDGET EXCEEDING TWENTY MILLION DOLLARS FOR EACH OF ITS THREE FISCAL
19 YEARS IMMEDIATELY PRECEDING THE POLICY'S EFFECTIVE DATE;

20 (F) HAS FIFTY EMPLOYEES OR, TOGETHER WITH ITS PARENT, SUBSIDIARIES AND
21 AFFILIATES, ONE HUNDRED EMPLOYEES, AS OF THE INSURED'S FISCAL YEAR END
22 IMMEDIATELY PRECEDING THE POLICY'S EFFECTIVE DATE; OR

23 (G) IS A MUNICIPALITY WITH A POPULATION OF FIFTY THOUSAND OR MORE
24 PERSONS.

25 (2) "SPECIAL RISK MANAGER" MEANS A PERSON WHO MEETS ALL OF THE FOLLOW-
26 ING REQUIREMENTS:

27 (A) THE PERSON IS AN EMPLOYEE OF, OR THIRD-PARTY CONSULTANT RETAINED
28 BY, THE LARGE COMMERCIAL INSURED;

29 (B) THE PERSON PROVIDES SKILLED SERVICES IN LOSS PREVENTION, LOSS
30 REDUCTION, OR RISK AND INSURANCE COVERAGE ANALYSIS AND ASSESSMENT, AND
31 PURCHASE OF INSURANCE; AND

32 (C) THE PERSON:

33 (I)(I) HAS A BACHELOR'S DEGREE OR HIGHER FROM AN ACCREDITED COLLEGE OR
34 UNIVERSITY IN RISK MANAGEMENT, BUSINESS ADMINISTRATION, FINANCE, ECONOM-
35 ICS, OR ANY OTHER FIELD DETERMINED BY THE SUPERINTENDENT TO DEMONSTRATE
36 MINIMUM COMPETENCE IN RISK MANAGEMENT; AND

37 (II)(AA) HAS FIVE YEARS OF EXPERIENCE IN RISK FINANCING, LOSS
38 PREVENTION, RISK AND INSURANCE COVERAGE ANALYSIS AND ASSESSMENT, OR
39 PURCHASING COMMERCIAL RISK INSURANCE; AND

40 (BB) HAS:

41 (AAA) A DESIGNATION AS A CHARTERED PROPERTY AND CASUALTY UNDERWRITER
42 (IN THIS CLAUSE REFERRED TO AS A "CPCU") ISSUED BY THE AMERICAN INSTI-
43 TUTE FOR CPCU/INSURANCE INSTITUTE OF AMERICA;

44 (BBB) A DESIGNATION AS AN ASSOCIATE IN RISK MANAGEMENT (ARM) ISSUED BY
45 THE AMERICAN INSTITUTE FOR CPCU/INSURANCE INSTITUTE OF AMERICA;

46 (CCC) A DESIGNATION AS CERTIFIED RISK MANAGER (CRM) ISSUED BY THE
47 NATIONAL ALLIANCE FOR INSURANCE EDUCATION & RESEARCH;

48 (DDD) A DESIGNATION AS A RISK AND INSURANCE MANAGEMENT SOCIETY (RIMS)
49 FELLOW (RF) ISSUED BY THE GLOBAL RISK MANAGEMENT INSTITUTE; OR

50 (EEE) ANY OTHER DESIGNATION, CERTIFICATION, OR LICENSE DETERMINED BY
51 THE SUPERINTENDENT TO DEMONSTRATE MINIMUM COMPETENCY IN RISK MANAGEMENT;

52 (II)(I) HAS AT LEAST SEVEN YEARS OF EXPERIENCE IN RISK FINANCING, LOSS
53 PREVENTION, RISK AND INSURANCE COVERAGE ANALYSIS AND ASSESSMENT, OR
54 PURCHASING COMMERCIAL RISK INSURANCE; AND

(II) HAS ANY ONE OF THE DESIGNATIONS SPECIFIED IN SUBCLAUSES (AAA) THROUGH (EEE) OF SUBITEM (BB) OF CLAUSE (II) OF ITEM (I) OF THIS SUBPARAGRAPH;

(III) HAS AT LEAST TEN YEARS OF EXPERIENCE IN RISK FINANCING, LOSS PREVENTION, RISK AND INSURANCE COVERAGE ANALYSIS AND ASSESSMENT, OR PURCHASING COMMERCIAL RISK INSURANCE; OR

(IV) (I) HAS A GRADUATE DEGREE FROM AN ACCREDITED COLLEGE OR UNIVERSITY IN RISK MANAGEMENT, BUSINESS ADMINISTRATION, FINANCE, ECONOMICS, OR ANY OTHER FIELD DETERMINED BY THE SUPERINTENDENT TO DEMONSTRATE MINIMUM COMPETENCE IN RISK MANAGEMENT; AND

(II)(AA) HAS AT LEAST THREE YEARS OF EXPERIENCE IN RISK FINANCING, LOSS PREVENTION, RISK AND INSURANCE COVERAGE ANALYSIS AND ASSESSMENT, OR PURCHASING COMMERCIAL RISK INSURANCE; OR

(BB) HAS ANY ONE OF THE DESIGNATIONS SPECIFIED IN SUBCLAUSES (AAA) THROUGH (EEE) OF SUBITEM (BB) OF CLAUSE (II) OF ITEM (I) OF THIS SUBPARAGRAPH.

(3) "MUNICIPALITY" SHALL MEAN ANY COUNTY, CITY, TOWN OR VILLAGE.

(C) EFFECTIVE ON THE FIFTH JANUARY FIRST OCCURRING AFTER THE DATE OF THE ENACTMENT OF THIS SUBSECTION AND EACH FIFTH JANUARY FIRST OCCURRING THEREAFTER, THE AMOUNTS SPECIFIED IN PARAGRAPH ONE OF SUBSECTION (B) OF THIS SECTION MAY BE ADJUSTED TO REFLECT THE PERCENTAGE CHANGE FOR SUCH FIVE-YEAR PERIOD IN THE CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS PUBLISHED BY THE BUREAU OF LABOR STATISTICS OF THE UNITED STATES DEPARTMENT OF LABOR. THE SUPERINTENDENT MAY CONDUCT A PUBLIC HEARING TO DETERMINE WHETHER SUCH INCREASE IS NECESSARY.

(D) (1) EXCEPT AS PROVIDED IN PARAGRAPH TWO OF THIS SUBSECTION, EVERY POLICY issued pursuant to the provisions of this article shall contain a notice to the policyholder that the rate and policy form are not subject to the filing requirements of this state and such other notices required by the superintendent pursuant to regulation.

(2) EVERY POLICY ISSUED PURSUANT TO PARAGRAPH THREE OF SUBSECTION (A) OF SECTION SIX THOUSAND THREE HUNDRED THREE OF THIS ARTICLE SHALL CONTAIN A NOTICE TO THE POLICYHOLDER THAT THE RATES ARE NOT SUBJECT TO THE FILING REQUIREMENTS OF THIS STATE AND THE POLICY FORMS ARE NOT SUBJECT TO THE APPROVAL REQUIREMENTS OF THIS STATE, AND SUCH OTHER NOTICES REQUIRED BY THE SUPERINTENDENT PURSUANT TO REGULATION.

[(c)] (E) The superintendent may by regulation prescribe limitations on the total amount of business [which] THAT an insurer may transact pursuant to this article OR REIMPOSE FILING OR APPROVAL REQUIREMENTS WHERE AND TO THE EXTENT THAT THE SUPERINTENDENT DEEMS IT IN THE INTEREST OF THE POLICYHOLDERS.

S 5. Section 2307 of the insurance law is amended by adding a new subsection (e) to read as follows:

(E) POLICY FORMS FOR INLAND MARINE RISKS WHERE THE RATES FOR SUCH RISKS BY GENERAL CUSTOM OF THE BUSINESS ARE NOT WRITTEN ACCORDING TO MANUAL RATES OR RATING PLANS SHALL NOT BE FILED PURSUANT TO SUBSECTION (B) OF THIS SECTION, UNLESS THE SUPERINTENDENT DIRECTS THAT THEY BE FILED.

S 6. Subsection (d) of section 2320 of the insurance law, as amended by chapter 235 of the laws of 1989, is amended to read as follows:

(d) This section shall be applicable to kinds of insurance or insurance activities the rates for which[, pursuant to subsection (a) of section two thousand three hundred five, section two thousand three hundred twenty-eight or section two thousand three hundred forty-four of this article,] are not subject to prior approval AND WHICH ARE SUBJECT TO THIS ARTICLE.

1 S 7. Subsection (f) of section 2321 of the insurance law, as amended
2 by chapter 235 of the laws of 1989, is amended to read as follows:

3 (f) This section shall be applicable to kinds of insurance or insur-
4 ance activities the rates for which[, pursuant to subsection (b) of
5 section two thousand three hundred five, section two thousand three
6 hundred twenty-eight or section two thousand three hundred forty-four of
7 this article,] are subject to prior approval AND WHICH ARE SUBJECT TO
8 THIS ARTICLE.

9 S 8. Section 3110 of the insurance law is amended to read as follows:

10 S 3110. Withdrawal of [approval of] any policy form. (A) Whenever by
11 the provisions of this chapter the superintendent is authorized to give
12 [his] approval of any form of insurance policy or contract, [he] THE
13 SUPERINTENDENT may, after notice and hearing given to the insurer
14 [which] THAT submitted such form for approval, withdraw an approval
15 previously given, if the use of such form is contrary to the require-
16 ments applicable to such form at the time of such withdrawal. Any such
17 withdrawal shall be effective at the expiration of such period, not less
18 than ninety days after the giving of notice of withdrawal, as the super-
19 intendent shall in such notice prescribe.

20 (B) WHENEVER BY THE PROVISIONS OF THIS CHAPTER AN INSURER MAY USE A
21 POLICY FORM WITHOUT OBTAINING THE PRIOR APPROVAL OF THE SUPERINTENDENT,
22 THE SUPERINTENDENT MAY, AFTER NOTICE AND HEARING GIVEN TO THE INSURER,
23 ORDER THE INSURER TO CEASE USING SUCH POLICY FORM, IF THE USE OF SUCH
24 FORM IS CONTRARY TO THE REQUIREMENTS APPLICABLE TO SUCH FORM AT THE TIME
25 OF THE EFFECTIVE DATE OF SUCH ORDER. ANY SUCH ORDER SHALL BE EFFECTIVE
26 AT THE EXPIRATION OF SUCH PERIOD, NOT LESS THAN NINETY DAYS AFTER THE
27 GIVING OF A NOTICE OF CESSATION, AS THE SUPERINTENDENT SHALL IN SUCH
28 NOTICE PRESCRIBE.

29 S 9. This act shall take effect on the ninetieth day after it shall
30 have become a law; provided that the amendments to subsection (d) of
31 section 2320 of the insurance law made by section six of this act shall
32 not affect the expiration of such section and shall be deemed to expire
33 therewith.