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

3967--B

2011-2012 Regular Sessions

I N A S S E M B L Y

January 31, 2011

Introduced by M. of A. MORELLE, P. RIVERA -- read once and referred to the Committee on Insurance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the insurance law, in relation to exempting large commercial insureds from certain rate and policy form requirements

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

Section 1. Subsections (a) and (b) of section 6301 of the insurance law are amended to read as follows:

(a) Notwithstanding any provision of this chapter, the superintendent shall, pursuant to regulations promulgated by [him] THE SUPERINTENDENT, permit exemption from filing requirements only with respect to rates and policy forms, where applicable, for any of the kinds of insurance [authorized to be written in this state] SPECIFIED IN SUBSECTION (B) OF THIS SECTION.

(b) [No] AN exemption pursuant to subsection (a) [hereof] OF THIS SECTION shall be permitted in relation to the kinds of insurance set forth in [paragraph one, two, three, fifteen, eighteen or twenty-three] PARAGRAPHS FOUR THROUGH FOURTEEN, SIXTEEN, SEVENTEEN, NINETEEN THROUGH TWENTY-TWO, TWENTY-SEVEN AND TWENTY-NINE of subsection (a) of section one thousand one hundred thirteen of this chapter[, or to] AND SUCH INSURANCE AS THE SUPERINTENDENT DEEMS TO BE SUBSTANTIALLY SIMILAR TO ONE OF THE FOREGOING KINDS, EXCEPT NO EXEMPTION MAY BE PERMITTED FOR: (1) coverage for personal lines to natural persons for non-business purposes; (2) INSURANCE SPECIFIED IN SUBSECTION (B) OF SECTION TWO THOUSAND THREE HUNDRED FIVE OR SECTION TWO THOUSAND THREE HUNDRED TWENTY-EIGHT OF THIS CHAPTER; (3) INSURANCE REQUIRED TO SATISFY ANY FINANCIAL RESPONSIBILITY REQUIREMENT OF THIS STATE; OR (4) A POLICY WRITTEN ON A GROUP BASIS. However, any risk pursuant to paragraph one,

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

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two or three of [such] subsection (A) of [such] section ONE THOUSAND ONE HUNDRED THIRTEEN of this chapter, MEDICAL MALPRACTICE INSURANCE (EXCEPT FOR PHYSICIANS AND SURGEONS), or personal lines risk (except private passenger, non-fleet automobile insurance) shall be exempt pursuant to subsection (a) [hereof] OF THIS SECTION 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 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] THE AUTHORIZED CONTROL LEVEL AS SET FORTH IN ARTICLE THIRTEEN OF THIS CHAPTER;

(2) a United States branch which maintains at all times a trusteed surplus of at least [twice the minimum trusteed surplus required to be maintained for the kinds of insurance which it is authorized to write in this state] 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 trusteed surplus requirement imposed upon such insurer by the provisions of the article pursuant to which it was initially licensed.

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

S 3. Section 6303 of the insurance law is amended to read as follows:

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

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

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

(3) THE POLICY IS ISSUED TO A LARGE COMMERCIAL INSURED THAT EMPLOYS OR RETAINS A RISK MANAGER TO ASSIST IN THE NEGOTIATION AND PURCHASE OF A POLICY EXEMPTED UNDER THIS ARTICLE.

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

(1) "LARGE COMMERCIAL INSURED" MEANS AN ENTITY THAT GENERATES ANNUAL COMMERCIAL RISK INSURANCE PREMIUM IN EXCESS OF TWENTY-FIVE THOUSAND DOLLARS WITH RESPECT TO THE KINDS OF INSURANCE SPECIFIED IN PARAGRAPHS FOUR THROUGH FOURTEEN, SIXTEEN, SEVENTEEN, NINETEEN THROUGH TWENTY-TWO AND TWENTY-SEVEN OF SUBSECTION (A) OF SECTION ONE THOUSAND ONE HUNDRED THIRTEEN OF THIS CHAPTER AND:

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

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

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

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

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

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

(VII) IS A MUNICIPALITY WITH A POPULATION OF FIFTY THOUSAND OR MORE PERSONS.

(2) "RISK MANAGER" MEANS AN INDIVIDUAL WHO HOLDS THE PROFESSIONAL DESIGNATION OF CPCU, ARM, OR CRM WITH AT LEAST FIVE YEARS EXPERIENCE IN THE ANALYSIS AND TREATMENT OF RISK, LOSS EXPOSURE, INSURANCE COVERAGES, AND ALTERNATIVE METHODS AND PROGRAMS, WHO IS NOT EMPLOYED BY THE INSURER ISSUING THE POLICY OR ANY PERSON IN THE INSURER'S HOLDING COMPANY SYSTEM, AND WHO IS LICENSED AS AN INSURANCE PRODUCER PURSUANT TO ARTICLE TWENTY-ONE OF THIS CHAPTER, UNLESS EXEMPTED FROM LICENSING THEREIN.

(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 DEPARTMENT OF LABOR. THE SUPERINTENDENT MAY CONDUCT A PUBLIC HEARING TO DETERMINE WHETHER SUCH INCREASE IS NECESSARY.

(D) 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.

[(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 REQUIREMENTS WHERE AND TO THE EXTENT THAT THE SUPERINTENDENT DEEMS IT IN THE INTEREST OF THE POLICYHOLDERS.

S 4. Subsection (b) of section 2307 of the insurance law, as amended by chapter 508 of the laws of 1998, is amended to read as follows:

(b) (1) Except as otherwise provided herein, no policy form shall be delivered or issued for delivery unless it has been filed with the superintendent and either [he] THE SUPERINTENDENT has approved it, or thirty days have elapsed and [he] THE SUPERINTENDENT has not disapproved it as misleading or violative of public policy.

(2) After notice and hearing to the insurer or rate service organization which submitted a policy form for approval, the superintendent may withdraw approval of such form on finding that the use of such form is contrary to the legal requirements applicable at the time of withdrawal. The effective date of the withdrawal of approval shall be prescribed by the superintendent but shall be not less than ninety days after notice of withdrawal.

(3) With regard to residual value insurance, policy forms and any amendments thereto shall be filed with the superintendent within thirty days of their use by the insurer. For purposes of this subsection, "residual value insurance" shall have the same meaning as set forth in paragraph twenty-two of subsection (a) of section one thousand one hundred thirteen of this chapter, provided however, for the purposes of this subsection such insurance shall only be utilized for commercial purposes, and shall not include personal lines of insurance as defined in paragraph two of subsection (a) of section three thousand four hundred twenty-five of this chapter or any commercial auto insurance, and, provided further that applicants for such insurance shall sign a statement that the applicant has an appropriate level of knowledge and understanding of the use of residual value insurance.

(4) 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 PARAGRAPH ONE OF THIS SUBSECTION, UNLESS THE SUPERINTENDENT DIRECTS THAT THEY BE FILED.

S 5. This act shall take effect immediately.