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

3400--A

2011-2012 Regular Sessions

I N S E N A T E

February 18, 2011

Introduced by Sen. SEWARD -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the insurance law and the tax law, in relation to excess line insurance

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

Section 1. Paragraphs 4, 16 and 39 of subsection (a) of section 107 of the insurance law are amended to read as follows:

(4) "Affiliate" means a corporation, a majority of whose shares is owned or controlled by shareholders, directors or officers of another corporation, who own or control a majority of the shares of the other corporation EXCEPT FOR PURPOSES OF INSURANCE PROCURED BY EXCESS LINE BROKERS LICENSED PURSUANT TO SECTION TWO THOUSAND ONE HUNDRED FIVE OF THIS CHAPTER.

(16) "Control". Except for the purposes of article fifteen of this chapter AND INSURANCE PROCURED BY EXCESS LINE BROKERS LICENSED PURSUANT TO SECTION TWO THOUSAND ONE HUNDRED FIVE OF THIS CHAPTER, "control", including the terms "controlling", "controlled by" and "under common control with", means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an institution, whether through the ownership of voting securities, by contract or otherwise.

(39) "State" means any state of the United States, the commonwealth of Puerto Rico [and], the District of Columbia, GUAM, THE NORTHERN MARIANA ISLANDS, THE VIRGIN ISLANDS AND AMERICAN SAMOA.

S 2. Subsection (l) of section 2101 of the insurance law, as added by chapter 687 of the laws of 2003, is amended and five new subsections (w), (x), (y), (z) and (aa) are added to read as follows:

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

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(l) In this article, WITH RESPECT TO AN INSURANCE PRODUCER, "[home] RESIDENT state" means the District of Columbia or any state or territory of the United States in which an insurance producer maintains his, her or its principal place of residence or principal place of business and is licensed to act as an insurance producer.

(W) IN THIS ARTICLE, FOR PURPOSES OF INSURANCE PROCURED BY EXCESS LINE BROKERS LICENSED PURSUANT TO SECTION TWO THOUSAND ONE HUNDRED FIVE OF THIS CHAPTER, THE TERM "AFFILIATE" MEANS, WITH RESPECT TO AN INSURED, ANY ENTITY THAT CONTROLS, IS CONTROLLED BY, OR IS UNDER COMMON CONTROL WITH, THE INSURED. THE TERM "AFFILIATED GROUP" MEANS ANY GROUP OF ENTITIES THAT ARE ALL AFFILIATED.

(X) IN THIS ARTICLE, FOR PURPOSES OF INSURANCE PROCURED BY EXCESS LINE BROKERS LICENSED PURSUANT TO SECTION TWO THOUSAND ONE HUNDRED FIVE OF THIS CHAPTER, AN ENTITY HAS "CONTROL" OVER ANOTHER ENTITY IF:

(1) THE ENTITY DIRECTLY OR INDIRECTLY OR ACTING THROUGH ONE OR MORE OTHER PERSONS OWNS, CONTROLS, OR HAS THE POWER TO VOTE TWENTY-FIVE PERCENT OR MORE OF ANY CLASS OF VOTING SECURITIES OF THE OTHER ENTITY; OR

(2) THE ENTITY CONTROLS IN ANY MANNER THE ELECTION OF A MAJORITY OF THE DIRECTORS OR TRUSTEES OF THE OTHER ENTITY.

(Y)(1) IN THIS ARTICLE, FOR PURPOSES OF INSURANCE PROCURED BY EXCESS LINE BROKERS LICENSED PURSUANT TO SECTION TWO THOUSAND ONE HUNDRED FIVE OF THIS CHAPTER, THE TERM "HOME STATE" WITH RESPECT TO AN INSURED MEANS:

(A) THE STATE IN WHICH AN INSURED MAINTAINS ITS PRINCIPAL PLACE OF BUSINESS OR, IN THE CASE OF AN INDIVIDUAL, THE INDIVIDUAL'S PRINCIPAL RESIDENCE; OR

(B) IF ONE HUNDRED PERCENT OF THE INSURED RISK IS LOCATED OUT OF THE STATE REFERRED TO IN SUBPARAGRAPH (A) OF THIS PARAGRAPH, THE STATE TO WHICH THE GREATEST PERCENTAGE OF THE INSURED'S TAXABLE PREMIUM FOR THAT INSURANCE CONTRACT IS ALLOCATED.

(2) IF MORE THAN ONE INSURED FROM AN AFFILIATED GROUP ARE INSURED BY A SINGLE INSURANCE CONTRACT PROCURED BY AN EXCESS LINE BROKER, THE TERM "HOME STATE" MEANS THE HOME STATE, AS DETERMINED PURSUANT TO PARAGRAPH (1) OF THIS SUBSECTION, OF THE MEMBER OF THE AFFILIATED GROUP THAT HAS THE LARGEST PERCENTAGE OF PREMIUM ATTRIBUTED TO IT UNDER SUCH INSURANCE CONTRACT.

(Z) IN THIS ARTICLE, FOR PURPOSES OF INSURANCE PROCURED BY EXCESS LINE BROKERS LICENSED PURSUANT TO SECTION TWO THOUSAND ONE HUNDRED FIVE OF THIS CHAPTER, THE TERM "EXEMPT COMMERCIAL PURCHASER" MEANS ANY PERSON PURCHASING COMMERCIAL INSURANCE THAT, AT THE TIME OF PLACEMENT, MEETS THE FOLLOWING REQUIREMENTS:

(1) THE PERSON EMPLOYS OR RETAINS A QUALIFIED RISK MANAGER TO NEGOTIATE INSURANCE COVERAGE;

(2) THE PERSON HAS PAID AGGREGATE NATIONWIDE COMMERCIAL PROPERTY AND CASUALTY INSURANCE PREMIUMS IN EXCESS OF ONE HUNDRED THOUSAND DOLLARS IN THE IMMEDIATELY PRECEDING TWELVE MONTHS; AND

(3) THE PERSON MEETS AT LEAST ONE OF THE FOLLOWING CRITERIA:

(A) THE PERSON POSSESSES A NET WORTH IN EXCESS OF TWENTY MILLION DOLLARS, AS SUCH AMOUNT IS ADJUSTED PURSUANT TO PARAGRAPH (2) OF THIS SUBSECTION;

(B) THE PERSON GENERATES ANNUAL REVENUES IN EXCESS OF FIFTY MILLION DOLLARS, AS SUCH AMOUNT IS ADJUSTED PURSUANT TO PARAGRAPH (2) OF THIS SUBSECTION;

(C) THE PERSON EMPLOYS MORE THAN FIVE HUNDRED FULL-TIME OR FULL-TIME EQUIVALENT EMPLOYEES PER INDIVIDUAL INSURED OR IS A MEMBER OF AN AFFILIATED GROUP EMPLOYING MORE THAN ONE THOUSAND EMPLOYEES IN THE AGGREGATE;

(D) THE PERSON IS A NOT-FOR-PROFIT ORGANIZATION OR PUBLIC ENTITY GENERATING ANNUAL BUDGETED EXPENDITURES OF AT LEAST THIRTY MILLION DOLLARS, AS SUCH AMOUNT IS ADJUSTED PURSUANT TO PARAGRAPH (2) OF THIS SUBSECTION;

(E) THE PERSON IS A MUNICIPALITY WITH A POPULATION IN EXCESS OF FIFTY THOUSAND PERSONS.

(4) EFFECTIVE ON THE FIFTH JANUARY FIRST OCCURRING AFTER THE DATE OF THE ENACTMENT OF THIS ARTICLE AND EACH FIFTH JANUARY FIRST OCCURRING THEREAFTER, THE AMOUNTS IN SUBPARAGRAPHS (A), (B), AND (D) OF PARAGRAPH (3) OF THIS SUBSECTION SHALL 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.

(AA) FOR PURPOSES OF INSURANCE PROCURED BY EXCESS LINE BROKERS LICENSED PURSUANT TO SECTION TWO THOUSAND ONE HUNDRED FIVE OF THIS CHAPTER, THE TERM "QUALIFIED RISK MANAGER" MEANS, WITH RESPECT TO A POLICYHOLDER OF COMMERCIAL INSURANCE, A PERSON WHO MEETS ALL OF THE FOLLOWING REQUIREMENTS:

(1) THE PERSON IS AN EMPLOYEE OF, OR THIRD-PARTY CONSULTANT RETAINED BY, THE COMMERCIAL POLICYHOLDER;

(2) THE PERSON PROVIDES SKILLED SERVICES IN LOSS PREVENTION, LOSS REDUCTION, OR RISK AND INSURANCE COVERAGE ANALYSIS, AND PURCHASE OF INSURANCE;

(3) THE PERSON:

(A) HAS, AT A MINIMUM, A BACHELOR'S DEGREE FROM AN ACCREDITED COLLEGE OR UNIVERSITY IN RISK MANAGEMENT, BUSINESS ADMINISTRATION, FINANCE, ECONOMICS, OR ANY OTHER FIELD DETERMINED BY THE SUPERINTENDENT OR OTHER STATE REGULATORY OFFICIAL OR ENTITY TO DEMONSTRATE MINIMUM COMPETENCE IN RISK MANAGEMENT; AND

(B) HAS THREE YEARS OF EXPERIENCE IN RISK FINANCING, CLAIMS ADMINISTRATION, LOSS PREVENTION, RISK AND INSURANCE ANALYSIS, OR PURCHASING COMMERCIAL LINES OF INSURANCE; OR

(C) HAS A DESIGNATION AS A CHARTERED PROPERTY AND CASUALTY UNDERWRITER ("CPCU") ISSUED BY THE AMERICAN INSTITUTE FOR CPCU/INSURANCE INSTITUTE OF AMERICA;

(D) HAS A DESIGNATION AS AN ASSOCIATE IN RISK MANAGEMENT ("ARM") ISSUED BY THE AMERICAN INSTITUTE FOR CPCU/INSURANCE INSTITUTE OF AMERICA;

(E) HAS A DESIGNATION AS CERTIFIED RISK MANAGER ("CRM") ISSUED BY THE NATIONAL ALLIANCE FOR INSURANCE EDUCATION & RESEARCH;

(F) HAS A DESIGNATION AS A RIMS FELLOW ("RF") ISSUED BY THE GLOBAL RISK MANAGEMENT INSTITUTE; OR

(G) HAS ANY OTHER DESIGNATION, CERTIFICATION, OR LICENSE DETERMINED BY THE SUPERINTENDENT OR OTHER STATE INSURANCE REGULATORY OFFICIAL OR ENTITY TO DEMONSTRATE MINIMUM COMPETENCY IN RISK MANAGEMENT;

(4) HAS AT LEAST SEVEN YEARS OF EXPERIENCE IN RISK FINANCING, CLAIMS ADMINISTRATION, LOSS PREVENTION, RISK AND INSURANCE COVERAGE ANALYSIS, OR PURCHASING COMMERCIAL LINES OF INSURANCE; AND

(A) HAS ANY ONE OF THE DESIGNATIONS SPECIFIED IN SUBPARAGRAPHS (A) THROUGH (G) OF PARAGRAPH (3) OF SUBSECTION (AA) OF THIS SECTION;

(B) HAS AT LEAST TEN YEARS OF EXPERIENCE IN RISK FINANCING, CLAIMS ADMINISTRATION, LOSS PREVENTION, RISK AND INSURANCE COVERAGE ANALYSIS, OR PURCHASING COMMERCIAL LINES OF INSURANCE; OR

(C) 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 OR OTHER STATE REGULATORY OFFICIAL OR ENTITY TO DEMONSTRATE MINIMUM COMPETENCE IN RISK MANAGEMENT.

S 3. Paragraph 11 of subsection (g) of section 2103 of the insurance law, as added by chapter 687 of the laws of 2003, is amended to read as follows:

(11) of any individual who applies for an insurance agent license in this state who was previously licensed for the same line or lines of authority in another state, provided, however, that the applicant's [home] RESIDENT state grants non-resident licenses to residents of this state on the same basis. Such individual shall also not be required to complete any prelicensing education. This exemption is only available if the person is currently licensed in that state or if the application is received within ninety days of the date of cancellation of the applicant's previous license and if the prior state issues a certification that, at the time of cancellation, the applicant was in good standing in that state or the state's producer database records, maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries, indicate that the producer is or was licensed in good standing for the line of authority requested. An individual or entity licensed in another state who moves to this state shall make an application within ninety days of establishing legal residence to become a resident licensee. No prelicensing education or examination shall be required of that person to obtain any line of authority previously held in the prior state except where the superintendent determines otherwise by regulation.

S 4. Subparagraph (G) of paragraph 3 of subsection (e) of section 2104 of the insurance law, as amended by chapter 687 of the laws of 2003, is amended to read as follows:

(G) was previously licensed for the same line or lines of authority in another state, provided, however, that the applicant's [home] RESIDENT state grants non-resident licenses to residents of this state on the same basis. Such individual shall also not be required to complete any prelicensing education. This exemption is only available if the person is currently licensed in that state or if the application is received within ninety days of the date of cancellation of the applicant's previous license and if the prior state issues a certification that, at the time of cancellation, the applicant was in good standing in that state or the state's producer database records, maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries, indicate that the producer is or was licensed in good standing for the line of authority requested. An individual or entity licensed in another state who moves to this state shall make an application within ninety days of establishing legal residence to become a resident licensee. No prelicensing education or examination shall be required of that person to obtain any line of authority previously held in the prior state except where the superintendent determines otherwise by regulation.

S 5. Subsections (a) and (b) of section 2105 of the insurance law, subsection (a) as amended by chapter 626 of the laws of 2006 and subsection (b) as amended by chapter 687 of the laws of 2003, are amended and a new subsection (i) is added to read as follows:

(a) The superintendent may issue an excess line broker's license to any person, firm, association or corporation who or which is domiciled or maintains an office in this state and is licensed as an insurance broker under section two thousand one hundred four of this article, or who or which is licensed as an excess line broker in the licensee's [home] RESIDENT state, provided, however, that the applicant's [home]

RESIDENT state grants non-resident licenses to residents of this state on the same basis, except that reciprocity is not required in regard to the placement of liability insurance on behalf of a purchasing group or any of its members; authorizing such person, firm, association or corporation to procure, subject to the restrictions herein provided, policies of insurance from insurers which are not authorized to transact business in this state of the kind or kinds of insurance specified in paragraphs four through fourteen, sixteen, seventeen, nineteen, twenty, twenty-two, twenty-seven, twenty-eight and thirty-one of subsection (a) of section one thousand one hundred thirteen of this chapter and in subsection (h) of this section, provided, however, that the provisions of this section and section two thousand one hundred eighteen of this article shall not apply to ocean marine insurance and other contracts of insurance enumerated in subsections (b) and (c) of section two thousand one hundred seventeen of this article. Such license may be suspended or revoked by the superintendent whenever in his OR HER judgment such suspension or revocation will best promote the interests of the people of this state. NOTWITHSTANDING ANYTHING IN THIS CHAPTER TO THE CONTRARY, NO PERSON, FIRM, ASSOCIATION OR CORPORATION IS REQUIRED TO OBTAIN AN EXCESS LINE BROKER'S LICENSE TO PROCURE INSURANCE FOR AN INSURED WHOSE HOME STATE IS A STATE OTHER THAN NEW YORK.

(b) Before the superintendent issues any such license or renewal, there shall be filed in the superintendent's office an application by the person, firm, association or corporation desiring such license, in such form or forms, and supplements thereto, and containing information the superintendent prescribes. For each business entity, the sub-licensee or sub-licensees named in the application shall be designated responsible for the business entity's compliance with the insurance laws, rules and regulations of this state. A person or entity licensed as an excess line broker in his, her or its [home] RESIDENT state may receive a non-resident excess line broker license pursuant to subsection (a) of this section with the submission of the application.

(I) ON AND AFTER JULY 21, 2012, NO FEES RELATING TO THE LICENSING OF AN INDIVIDUAL OR ENTITY AS AN EXCESS LINE BROKER ARE PERMITTED TO BE CHARGED UNLESS THE STATE HAS IN EFFECT AT SUCH TIME LAWS OR REGULATIONS THAT PROVIDE FOR PARTICIPATION BY THE STATE IN THE NATIONAL INSURANCE PRODUCER DATABASE OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, OR ANY OTHER EQUIVALENT UNIFORM NATIONAL DATABASE, FOR THE LICENSURE OF EXCESS LINE BROKERS AND THE RENEWAL OF SUCH LICENSES.

S 6. Subparagraph (B) of paragraph 1 of subsection (f) of section 2106 of the insurance law, as amended by chapter 687 of the laws of 2003, is amended to read as follows:

(B) A "non-resident reinsurance intermediary" means a person who is a non-resident of this state and who is licensed to act as a reinsurance intermediary in their [home] RESIDENT state.

S 7. Paragraphs 2 and 4 of subsection (f) of section 2110 of the insurance law, as amended by chapter 687 of the laws of 2003, are amended to read as follows:

(2) A non-resident insurance producer's license or sub-license may be summarily revoked in the event that the licensee's license as an agent, broker, adjuster or in any other capacity under the insurance law of the licensee's [home] RESIDENT state of domicile or such license of the firm or association of which the licensee is a member, employee or sub-licensee, or such license of the corporation of which the licensee is an officer, director, employee or sub-licensee has been suspended or revoked or renewal thereof denied in the licensee's [home] RESIDENT

state of domicile by a procedure affording to the licensee or it a statutory right to a hearing, for action or conduct which, if it had been established upon a hearing before the superintendent, would have constituted grounds for revocation of a license under subsection (a) of this section.

(4) Upon submission to the superintendent of satisfactory proof that a suspension or revocation of a license issued by a [home] RESIDENT state to act as an insurance agent, insurance broker, adjuster or in another licensed capacity under the insurance law of such other state or a denial of renewal thereof has been duly withdrawn, set aside, reversed or voided, the superintendent shall thereupon reinstate and restore any and all licenses revoked in accordance with the provisions of this subsection.

S 8. Subsection (a) of section 2118 of the insurance law, as amended by chapter 220 of the laws of 1986, and paragraph 2 as amended by chapter 663 of the laws of 1993, is amended to read as follows:

(a) (1) NOTWITHSTANDING ANY PROVISION OF THIS CHAPTER TO THE CONTRARY, THE PLACEMENT OF EXCESS LINE INSURANCE SHALL BE EXCLUSIVELY SUBJECT TO THE LAWS OF THE INSURED'S HOME STATE AS DEFINED IN SUBSECTION (Y) OF SECTION TWO THOUSAND ONE HUNDRED ONE OF THIS ARTICLE. ANY LAW, REGULATION, PROVISION OR ACTION OF ANY STATE THAT PURPORTS TO APPLY TO EXCESS LINE INSURANCE SOLD TO, SOLICITED BY, OR NEGOTIATED WITH AN INSURED WHOSE HOME STATE IS ANOTHER STATE SHALL BE PREEMPTED WITH RESPECT TO SUCH APPLICATION.

(2) Every licensee licensed pursuant to section two thousand one hundred five of this article shall be required to use due care in selecting the unauthorized insurer from whom policies are procured under his OR HER license.

[(2) (A) No policy of insurance may be procured by a licensee from any foreign or alien insurer which is controlled, by a foreign government or by a political subdivision thereof, or which is an agency of any such government or subdivision if the superintendent determines that: (i) such insurer receives a subsidy or other competitive advantage, as a result of such control or status, that would enable it to compete unfairly with similarly situated insurers which are not so controlled or constituted; (ii) such insurer is entitled to claim sovereign immunity as a result of such control and the insurer has not waived the sovereign immunity; or (iii) the use of such insurer would be detrimental to the interests of the people of this state.

(B) No licensee shall be deemed to be in noncompliance with this subsection unless: (i) the superintendent has made a prior determination that the foreign or alien insurer from which the licensee procured a policy of insurance should not be used as an excess line insurer in this state in accordance with the provisions of this subsection; or (ii) the licensee knew or should have known that such insurer should not be used as an excess line insurer in accordance with the provisions of this subsection. The superintendent may promulgate regulations to provide guidance to the licensee.

(C)] (3)(A) THE SUPERINTENDENT MAY NOT PROHIBIT AN UNAUTHORIZED ALIEN INSURER FROM INSURING ANY RISK OF THE KINDS OF INSURANCE SET FORTH IN SUBSECTION (A) OF SECTION TWO THOUSAND ONE HUNDRED FIVE OF THIS CHAPTER PLACED BY EXCESS LINE BROKERS LICENSED UNDER THIS ARTICLE IF SUCH INSURER IS LISTED ON THE MOST CURRENT QUARTERLY LISTING OF ALIEN INSURERS MAINTAINED BY THE INTERNATIONAL INSURERS DEPARTMENT OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS.

(B) AN UNAUTHORIZED FOREIGN INSURER IS ELIGIBLE TO INSURE RISKS PLACED BY EXCESS LINE BROKERS LICENSED UNDER THIS ARTICLE PROVIDED SUCH INSURER FURNISHES SATISFACTORY PROOF AS DETERMINED BY THE SUPERINTENDENT IN A REGULATION THAT IT IS PERMITTED TO WRITE THE TYPE OF INSURANCE REQUESTED IN ITS DOMICILIARY JURISDICTION, AND HAS CAPITAL AND SURPLUS OR ITS EQUIVALENT UNDER THE LAWS OF ITS DOMICILIARY JURISDICTION EQUAL TO THE GREATER OF FIFTEEN MILLION DOLLARS OR AN AMOUNT SET FORTH AND DETERMINED BY THE SUPERINTENDENT IN A REGULATION.

(4) Every such insurer shall otherwise satisfy all applicable requirements for placement by an excess line broker.

S 9. Paragraph 3 of subsection (b) of section 2118 of the insurance law is amended by adding a new subparagraph (F) to read as follows:

(F) AN EXCESS LINE BROKER SEEKING TO PROCURE OR PLACE INSURANCE WITH AN UNAUTHORIZED INSURER FOR AN EXEMPT COMMERCIAL PURCHASER SHALL NOT BE REQUIRED TO SATISFY ANY REQUIREMENT TO MAKE A DILIGENT EFFORT TO DETERMINE WHETHER THE FULL AMOUNT OR TYPE OF INSURANCE SOUGHT BY SUCH EXEMPT COMMERCIAL PURCHASER CAN BE OBTAINED FROM AUTHORIZED INSURERS IF:

(I) THE BROKER PROCURING OR PLACING THE EXCESS LINE INSURANCE HAS DISCLOSED TO THE EXEMPT COMMERCIAL PURCHASER THAT SUCH INSURANCE MAY OR MAY NOT BE AVAILABLE FROM AUTHORIZED INSURERS THAT MAY PROVIDE GREATER PROTECTION WITH MORE REGULATORY OVERSIGHT; AND

(II) THE EXEMPT COMMERCIAL PURCHASER HAS SUBSEQUENTLY REQUESTED, IN WRITING, THE BROKER TO PROCURE OR PLACE SUCH INSURANCE FROM AN UNAUTHORIZED INSURER.

S 10. Paragraphs 5, 8 and 9 of subsection (b) of section 2118 of the insurance law, paragraph 5 as amended by chapter 630 of the laws of 1988 and paragraphs 8 and 9 as added by chapter 687 of the laws of 2003, are amended to read as follows:

(5) Before placing business with an unauthorized insurer, each licensee shall ascertain and verify the fact that such insurer is authorized in its domiciliary jurisdiction to write the insurance policy proposed to be procured from it by the licensee. No unauthorized insurer shall be deemed unacceptable for placement of business solely on the ground that it has been so authorized to write such business in its domiciliary jurisdiction for a period of less than three years preceding the placement of such risk by the licensee. [In determining whether business may be placed with such unauthorized insurer, the superintendent shall consider such factors as: the interests of the public and policyholders, the length of time such insurer has been authorized in its domiciliary jurisdiction and elsewhere, its financial condition, and unavailability of particular coverages from authorized insurers.] IF AN UNAUTHORIZED INSURER DOES NOT MEET THE ELIGIBILITY REQUIREMENTS OF PARAGRAPH (2) OF SUBSECTION (A) OF SECTION TWO THOUSAND ONE HUNDRED EIGHTEEN OF THIS CHAPTER, AN EXCESS LINE BROKER MAY NONETHELESS PLACE A RISK WITH SUCH AN INSURER UPON AN AFFIRMATIVE FINDING OF ACCEPTABILITY BY THE SUPERINTENDENT. THE FINDING SHALL BE BASED UPON SUCH FACTORS AS QUALITY OF MANAGEMENT, CAPITAL AND SURPLUS OF ANY PARENT COMPANY, COMPANY UNDERWRITING PROFIT AND INVESTMENT INCOME TRENDS, MARKET AVAILABILITY AND COMPANY RECORD AND REPUTATION WITHIN THE INDUSTRY. IN NO EVENT SHALL THE SUPERINTENDENT MAKE AN AFFIRMATIVE FINDING OF ACCEPTABILITY WHEN THE UNAUTHORIZED INSURER'S CAPITAL AND SURPLUS IS LESS THAN FOUR MILLION FIVE HUNDRED THOUSAND DOLLARS.

(8) For purposes of this article, unless exempt under the provisions of section two thousand one hundred seventeen of this article, a policy of insurance obtained from an insurer not authorized to transact business in this state must be procured pursuant to an excess line license

when [the entire property or risk exposure insured or any part thereof, is located in this state and:] THE HOME STATE OF THE INSURED IS NEW YORK.

[(A) the insured negotiated to acquire the coverage from within this state; or

(B) the policy was delivered to the insured in this state.]

(9) Nothing in this article shall prohibit an excess line licensee from placing risks under the excess or surplus line law of another state provided that the excess line licensee[:

(A)] is licensed under the [applicable state law] LAWS OF THE HOME STATE OF THE INSURED as an excess or surplus line broker or places such risk through a licensed excess or surplus line broker in such state[; and

(B) either no portion of the property or risk exposure is in this state, or the insured has property or risk exposure both in this state and in another state where the insured maintains a bona fide office from which it negotiated to acquire the coverage and to which the policy is delivered].

S 10-a. Paragraph 1 of subsection (d) of section 2118 of the insurance law, as amended by chapter 190 of the laws of 1990, is amended to read as follows:

(1) Every person, firm, association or corporation licensed pursuant to the provisions of section two thousand one hundred five of this article shall pay A PREMIUM TAX to the superintendent IN a sum equal to three and six-tenths percent of the gross premiums charged the insureds by the insurers for insurance procured by such licensee pursuant to such license, less the amount of such premiums returned to such insureds. Where the insurance covers property or risks located or resident both in and out of this state, AND THE COVERAGE INCEPTS ON OR PRIOR TO JULY 20, 2011, the sum payable shall be computed on that portion of the gross premiums allocated to this state pursuant to subsection (b) of section nine thousand one hundred two of this chapter less the amount of gross premiums allocated to this state and returned to the insured; PROVIDED, HOWEVER, THAT FOR SUCH POLICIES IN WHICH COVERAGE INCEPTS ON OR AFTER JULY 21, 2011, THIS TAX SHALL ONLY APPLY TO EXCESS LINE TRANSACTIONS IN WHICH THE INSURED'S HOME STATE IS NEW YORK AS THAT TERM IS DEFINED IN SUBSECTION (Y) OF SECTION TWO THOUSAND ONE HUNDRED ONE OF THIS ARTICLE, AND SUCH TAX SHALL NOT BE ALLOCATED PURSUANT TO SUBSECTION (B) OF SECTION NINE THOUSAND ONE HUNDRED TWO OF THIS CHAPTER. FOR PURPOSES OF THIS SECTION, THE TERM "PREMIUM TAX" MEANS, WITH RESPECT TO EXCESS LINE INSURANCE, ANY TAX, FEE, ASSESSMENT OR ANY OTHER CHARGE IMPOSED BY THE STATE DIRECTLY OR INDIRECTLY BASED ON ANY PAYMENT MADE AS CONSIDERATION FOR SUCH POLICY OF INSURANCE, INCLUDING PREMIUM DEPOSITS, ASSESSMENTS, REGISTRATION FEES AND ANY OTHER COMPENSATION GIVEN IN CONSIDERATION FOR SUCH POLICY OF INSURANCE.

S 11. Subsection (b) of section 2134 of the insurance law, as added by chapter 687 of the laws of 2003, is amended to read as follows:

(b) In addition to the requirements of subsection (a) of this section, a nonresident insurance producer who changes his, her or its [home] RESIDENT state, or a resident insurance producer who changes his, her or its [home] RESIDENT state to another state, within thirty days of the date of change, shall provide certification of such change from the new [home] RESIDENT state. No fee or license application shall be required therefor.

S 12. Subsections (a), (b) and (d) of section 2136 of the insurance law, as added by chapter 687 of the laws of 2003, are amended to read as follows:

(a) the applicant has a current and valid license in his or her [home] RESIDENT state and is in good standing in his or her [home] RESIDENT state;

(b) the applicant has submitted a completed application in the form prescribed by the superintendent or submitted the application for licensure submitted to his or her [home] RESIDENT state;

(d) the applicant's [home] RESIDENT state awards nonresident insurance producer licenses to residents of this state on the same basis as provided in this subsection.

S 13. Subparagraph (E) of paragraph 1 of subsection (f) of section 2137 of the insurance law, as added by chapter 499 of the laws of 2009, is amended to read as follows:

(E) any individual seeking to be named a licensee or sub-licensee, who is a nonresident and a life settlement broker or who is licensed as an insurance producer with a life line of authority in the individual's [home] RESIDENT state for at least one year; provided, however, that the individual's [home] RESIDENT state grants nonresident licenses to residents of this state on the same basis.

S 14. Subsection (a) and paragraph 1 of subsection (b) of section 9102 of the insurance law, as amended by chapter 190 of the laws of 1990, are amended to read as follows:

(a) In determining the amount of direct premiums taxable in this state, all such premiums written, procured, or received in this state shall be deemed written on property or risks located or resident in this state except such premiums properly allocated and reported as taxable premiums of any other state or states, PROVIDED THAT FOR PURPOSES OF INSURANCE PROCURED BY EXCESS LINE BROKERS PURSUANT TO SECTION TWO THOUSAND ONE HUNDRED FIVE OF THIS CHAPTER, NO SUCH ALLOCATION SHALL BE MADE WHERE THE EXCESS LINE TRANSACTION INVOLVES AN INSURED WHOSE HOME STATE IS NEW YORK AS THAT TERM IS DEFINED IN SUBSECTION (Y) OF SECTION TWO THOUSAND ONE HUNDRED ONE OF THIS CHAPTER WITH RESPECT TO EXCESS LINE PLACEMENTS IN WHICH COVERAGE INCEPTS ON OR AFTER JULY 21, 2011.

(1) In determining the amount of gross premiums taxable in this state pursuant to paragraph one of subsection (d) of section two thousand one hundred eighteen of this chapter, where a placement of excess line insurance INCEPTS ON OR PRIOR TO JULY 20, 2011 AND covers property or risks located or resident both in and out of this state, the sum paid to the superintendent shall be computed on that portion of the policy premium that is attributable to property or risks located or resident in this state, as determined by reference to an allocation schedule prescribed by the superintendent in a regulation. WITH RESPECT TO EXCESS LINE PLACEMENTS IN WHICH COVERAGE INCEPTS ON OR AFTER JULY 21, 2011, ONE HUNDRED PERCENT OF THE PREMIUM CHARGED SHALL BE SUBJECT TO THE TAX WITHOUT ALLOCATION, BUT ONLY TO PLACEMENTS WHERE THE HOME STATE OF THE INSURED, AS THAT TERM IS DEFINED IN SUBSECTION (Y) OF SECTION TWO THOUSAND ONE HUNDRED ONE OF THIS CHAPTER, IS NEW YORK.

S 15. Subsection (b) of section 1550 of the tax law, as added by chapter 190 of the laws of 1990, is amended and two new subsections (d) and (e) are added to read as follows:

(b) The term "premium" includes all amounts paid as consideration for insurance contracts and shall include premium deposits, assessments, policy fees, membership fees, REGISTRATION FEES and every other compensation for such contract. The term "premium" includes all such amounts

paid irrespective of whether such amounts are deductible for federal income tax purposes.

(D) THE TERM "INDEPENDENTLY PROCURED INSURANCE" MEANS INSURANCE OBTAINED DIRECTLY BY AN INSURED FROM AN INSURER NOT AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE UNDER A CERTIFICATE OF AUTHORITY FROM THE SUPERINTENDENT OF INSURANCE.

(E) THE TERM "PREMIUM TAX" MEANS, WITH RESPECT TO INDEPENDENTLY PROCURED INSURANCE, ANY TAX, FEE, ASSESSMENT OR OTHER CHARGE IMPOSED BY THIS STATE DIRECTLY OR INDIRECTLY BASED ON ANY PAYMENT MADE AS CONSIDERATION FOR SUCH INSURANCE, INCLUDING PREMIUM DEPOSITS, ASSESSMENTS, REGISTRATION FEES AND ANY OTHER COMPENSATION GIVEN IN CONSIDERATION FOR SUCH A POLICY OF INSURANCE.

S 16. Section 1551 of the tax law, as amended by chapter 73 of the laws of 1991, is amended to read as follows:

S 1551. Imposition of tax. There is hereby imposed on any person who [purchases or renews a taxable insurance contract from an insurer not authorized to transact business in this state under a certificate of authority from the superintendent of insurance] INDEPENDENTLY PROCURES INSURANCE, a PREMIUM tax at the rate of three and six-tenths percent of the premiums paid or to be paid, less returns thereon, for such insurance. Nothing in this article modifies or abrogates any provision of the insurance law. THIS TAX SHALL ONLY APPLY TO INDEPENDENTLY PROCURED INSURANCE TRANSACTIONS FOR INSUREDS WHOSE HOME STATE IS NEW YORK AS THAT TERM IS DEFINED IN SUBSECTION (Y) OF SECTION TWO THOUSAND ONE HUNDRED ONE OF THE INSURANCE LAW ON COVERAGE WHICH INCEPTS ON OR AFTER JULY 21, 2011.

S 17. Section 1552 of the tax law, as added by chapter 190 of the laws of 1990, is amended to read as follows:

S 1552. Allocation. Where the taxable insurance contract covers risks located or resident both within and without this state, WITH RESPECT TO INDEPENDENTLY PROCURED INSURANCE IN WHICH COVERAGE INCEPTS ON OR PRIOR TO JULY TWENTIETH, TWO THOUSAND ELEVEN the amount of premiums allocable to risks resident or located within this state shall be determined pursuant to rules and regulations of the commissioner of taxation and finance. In promulgating such rules and regulations, the commissioner of taxation and finance shall give due consideration to the rules and regulations promulgated by the superintendent of insurance pursuant to subsection (b) of section nine thousand one hundred two of the insurance law. INDEPENDENTLY PROCURED INSURANCE POLICIES INCEPTING ON AND AFTER JULY TWENTY-FIRST, TWO THOUSAND ELEVEN SHALL BE SUBJECT TO TAX ON ONE HUNDRED PERCENT OF THE PREMIUM CHARGED WITHOUT ALLOCATION.

S 18. This act shall take effect on July 21, 2011 and applies to all insurance policies procured by excess line licensees with an effective date on or after July 21, 2011, provided, however, that the amendments to subsection (b) of section 2118 of the insurance law made by sections nine and ten of this act shall not affect the expiration and reversion of such subsection and shall be deemed to expire therewith.