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

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2013-2014 Regular Sessions

I N A S S E M B L Y

January 11, 2013

Introduced by M. of A. SILVER, TITONE, CUSICK, MORELLE, GOLDFEDER, WEISENBERG, SKOUFIS, BROOK-KRASNY, CYMBROWITZ, HENNESSEY, WEINSTEIN, GOTTFRIED, LUPARDO, NOLAN, PERRY, SANTABARBARA, MILLMAN, OTIS, RAMOS -- Multi-Sponsored by -- M. of A. ABINANTI, BENEDETTO, BRENNAN, COLTON, ENGLEBRIGHT, GALEF, GLICK, GUNTHER, JACOBS, JAFFEE, LAVINE, V. LOPEZ, MAISEL, MARKEY, ORTIZ, PAULIN, SOLAGES, SWEENEY, THIELE, TITUS, ZEBROWSKI -- read once and referred 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, in relation to creating a homeowners' bill of rights and a consumer guide on insuring against catastrophic loss caused by natural disasters

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

Section 1. The insurance law is amended by adding a new section 3444-a to read as follows:

S 3444-A. HOMEOWNERS' BILL OF RIGHTS. (A) ANY INSURER THAT WRITES PERSONAL LINES INSURANCE AS DEFINED IN PARAGRAPH TWO OF SUBSECTION (A) OF SECTION THREE THOUSAND FOUR HUNDRED TWENTY-FIVE OF THIS ARTICLE OR COMMERCIAL LINES INSURANCE POLICIES THAT COVER LOSS OF OR DAMAGE TO REAL PROPERTY, PERSONAL PROPERTY, OR OTHER LIABILITIES FOR LOSS OF OR DAMAGE TO PROPERTY SHALL, UPON ISSUANCE AND RENEWAL OF ANY SUCH POLICY OR CONTRACT, PROVIDE TO AN INSURED OR POTENTIAL INSURED WRITTEN DETAILED DISCLOSURE IN A NOTICE PRESCRIBED OR APPROVED BY THE SUPERINTENDENT DESCRIBING CLEARLY AND IN PLAIN LANGUAGE THE FOLLOWING:

(1) ANY AND ALL COVERAGE FOR LOSS CAUSED BY CERTAIN OCCURRENCES, INCLUDING BUT NOT LIMITED TO FIRE, WIND, WINDSTORM, MUDSLIDE, HURRICANE, SNOW, ICE, WATER SURGE, OR FLOOD, COVERAGES PROVIDED UNDER THE POLICY, ANY LIMITATIONS ON OR EXCLUSIONS FROM COVERAGE, CIRCUMSTANCES THAT WOULD INVALIDATE COVERAGE UNDER THE POLICY, ANY APPLICABLE DEDUCTIBLES, AND WHEN SUCH DEDUCTIBLES SHALL BE TRIGGERED;

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

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(2) ALL INFORMATION RELATED TO CLAIMS INVESTIGATION AND PROCESSING, INCLUDING BUT NOT LIMITED TO THE PROCESS BY WHICH THE INSURED MAY FILE A CLAIM, ALL APPLICABLE TIME FRAMES REQUIRED BY LAW AND REGULATION, ALL NECESSARY PROOF OF LOSS INFORMATION AND OTHER INFORMATION THE INSURER MAY REQUIRE FROM THE INSURED, THE PROCESS BY WHICH THE INSURED MAY FILE A COMPLAINT WITH THE DEPARTMENT, AND ANY OTHER INFORMATION DEEMED NECESSARY BY THE SUPERINTENDENT;

(3) ANY AND ALL RIGHTS A CLAIMANT HAS UNDER THE LAWS AND POLICY WHEN A CLAIM IS DENIED OR WHEN THE CLAIMANT REJECTS A SETTLEMENT OFFER FROM THE INSURER, INCLUDING THEIR RIGHT TO FILE A COMPLAINT WITH THE DEPARTMENT;

(4) THAT THE PROVISIONS OF THIS POLICY MAY BE MODIFIED OR CHANGED PURSUANT TO STATE OR FEDERAL LAW WHEN A LOCAL STATE OF EMERGENCY IS DECLARED PURSUANT TO SECTION TWENTY-FOUR OF THE EXECUTIVE LAW, WHEN THE GOVERNOR DECLARES A DISASTER EMERGENCY PURSUANT TO SECTION TWENTY-EIGHT OF THE EXECUTIVE LAW, OR WHEN THE PRESIDENT OF THE UNITED STATES ISSUES A MAJOR DISASTER OR EMERGENCY DECLARATION PURSUANT TO THE ROBERT T. STAFFORD DISASTER RELIEF AND EMERGENCY ASSISTANCE ACT (P.L. 93-288) AND HOW THE INSURED MAY OBTAIN INFORMATION ABOUT ANY SUCH MODIFICATIONS OR CHANGES;

(5) INFORMATION ON HOW THE INSURED MAY CONTACT THE INSURER, INCLUDING THE INSURER'S BUSINESS HOURS, MAILING ADDRESS, PHONE NUMBER, FAX NUMBER, WEBSITE ADDRESS AND EMAIL; AND

(6) INFORMATION ON HOW THE INSURED CAN OBTAIN THE CONSUMERS GUIDE ON INSURING AGAINST CATASTROPHIC LOSSES CREATED BY THE DEPARTMENT PURSUANT TO SECTION THREE HUNDRED THIRTY-EIGHT OF THIS CHAPTER AND ANY OTHER GUIDES, PAMPHLETS, OR OTHER INFORMATION THE DEPARTMENT HAS MADE PUBLICLY AVAILABLE THAT WOULD BE BENEFICIAL TO THE INSURED.

S 2. Section 3444 of the insurance law, as amended by chapter 21 of the laws of 2008, is amended to read as follows:

S 3444. Flood insurance notice AND FLOOD ZONE DISCLOSURE. 1. Insurers shall provide to their homeowners and dwelling fire personal lines insureds an annual notice prescribed or approved by the superintendent, explaining clearly and in plain language that: (a) such policies do not provide coverage for loss caused by mudslide or flood; and (b) insurance is available under separate policies issued in accordance with the National Flood Insurance Program, 42 U.S.C. S 4001 et seq., including information regarding flood insurance eligibility and access.

2. The policyholder notice required by SUBSECTION ONE OF this section shall accompany all new homeowners and dwelling fire personal lines policies and all renewal homeowners and dwelling fire policies.

3. (A) AN INSURER OR PRODUCER SHALL, PRIOR TO THE TIME A POLICY SUBJECT TO SUBSECTION (A) OF SECTION THREE THOUSAND FOUR HUNDRED FORTY-FOUR-A OF THIS ARTICLE IS SOLD OR PURCHASED AND UPON RENEWAL OF ANY SUCH POLICY, DISCLOSE TO THE POTENTIAL INSURED THAT THE REAL PROPERTY WHICH WOULD BE COVERED BY THE POLICY IS IN A FLOOD ZONE, WHICH FLOOD ZONE THE REAL PROPERTY IS LOCATED IN, AND WHAT THE LEVEL OF RISK ASSOCIATED WITH THAT FLOOD ZONE IS, AS DETERMINED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY. THIS DISCLOSURE SHALL BE IN A FORM AND MANNER PRESCRIBED OR APPROVED BY THE SUPERINTENDENT.

(B) AT THE TIME OF THE DISCLOSURE REQUIRED BY PARAGRAPH (A) OF THIS SUBSECTION, AN INSURER OR PRODUCER SHALL NOTIFY POTENTIAL INSUREDS, IN A FORM AND MANNER PRESCRIBED OR APPROVED BY THE SUPERINTENDENT, OF THE AVAILABILITY OF ADDITIONAL COVERAGE OPTIONS FOR DAMAGE AS A RESULT OF WEATHER CONDITIONS, NATURAL DISASTERS, OR OTHER OCCURRENCES, INCLUDING BUT NOT LIMITED TO FIRE, WIND, WINDSTORM, MUDSLIDE, HURRICANE, SNOW, ICE, WATER SURGE, AND FLOOD. SUCH NOTIFICATION SHALL CONTAIN INFORMATION

ON ADDITIONAL AVAILABLE POLICIES AND RIDERS, THE NEW YORK PROPERTY INSURANCE UNDERWRITING ASSOCIATION, THE COASTAL MARKET ASSISTANCE PROGRAM, THE NATIONAL FLOOD INSURANCE PROGRAM, AND ANY OTHER OPTIONS AUTHORIZED BY STATE OR FEDERAL LAW. THE NOTIFICATION MUST INCLUDE A CONCISE STATEMENT THAT ADDITIONAL TYPES OF COVERAGE ARE AVAILABLE AND THE TYPES OF COVERAGE THAT CAN BE PURCHASED FROM THE INSURER AND FROM ANOTHER PARTY.

(C) THE POTENTIAL INSURED SHALL ACKNOWLEDGE RECEIPT OF THE DISCLOSURE AND NOTIFICATION REQUIRED BY PARAGRAPHS (A) AND (B) OF THIS SUBSECTION THROUGH A SIGNED WRITING, ELECTRONIC SIGNATURE, OR ANY OTHER MEANS PRESCRIBED OR APPROVED BY THE SUPERINTENDENT, EVIDENCING THAT THE POTENTIAL INSURED HAS RECEIVED THE DISCLOSURE. SUCH ACKNOWLEDGMENT SHALL BE PRESUMPTIVE EVIDENCE THAT THE OBLIGATIONS OF DISCLOSURE AND NOTIFICATION STATED WITHIN THIS SUBSECTION HAVE BEEN FULFILLED BY THE INSURER OR PRODUCER AND SHALL NOT BE REQUIRED UPON RENEWAL.

4. (A) IF THE FLOOD ZONE IN WHICH THE INSURED REAL PROPERTY IS LOCATED CHANGES, THE INSURER OR PRODUCER SHALL, PRIOR TO THE RENEWAL OF THE POLICY, PROVIDE THE INSURED WITH AN UPDATED DISCLOSURE INFORMING THE INSURED OF THE NEW FLOOD ZONE AND WHAT THE LEVEL OF RISK ASSOCIATED WITH THAT FLOOD ZONE IS, AS DETERMINED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY. THIS UPDATED DISCLOSURE SHALL BE PROVIDED IN A FORM AND MANNER PRESCRIBED OR APPROVED BY THE SUPERINTENDENT.

(B) THE INSURED SHALL ACKNOWLEDGE RECEIPT OF THE UPDATED DISCLOSURE REQUIRED BY PARAGRAPH (A) OF THIS SUBSECTION THROUGH A SIGNED WRITING, ELECTRONIC SIGNATURE, OR ANY OTHER MEANS PRESCRIBED OR APPROVED BY THE SUPERINTENDENT, EVIDENCING THAT THE POTENTIAL INSURED HAS RECEIVED THE DISCLOSURE. SUCH ACKNOWLEDGMENT SHALL BE PRESUMPTIVE EVIDENCE THAT THE OBLIGATIONS OF DISCLOSURE AND NOTIFICATION STATED WITHIN THIS SUBSECTION HAVE BEEN FULFILLED BY THE INSURER OR PRODUCER.

S 3. Paragraph 6 of subsection (a) of section 2601 of the insurance law, as amended by chapter 388 of the laws of 2008, is amended and a new paragraph 7 is added to read as follows:

(6) failing to promptly disclose coverage pursuant to subsection (d) or subparagraph (A) of paragraph two of subsection (f) of section three thousand four hundred twenty of this chapter[.]; OR

(7) KNOWINGLY MISREPRESENTING OR FAILING TO PROVIDE PERTINENT FACTS OF POLICY PROVISIONS TO CLAIMANTS AS REQUIRED BY SECTION THREE THOUSAND FOUR HUNDRED FORTY-FOUR-A OF THIS CHAPTER AND NOT COMPLYING WITH SUCH POLICY PROVISIONS, INCLUDING ESTABLISHED TIME FRAMES FOR INVESTIGATION, CLAIMS PROCESSING AND SETTLEMENT, AND PAYMENT OF CLAIMS.

S 4. The insurance law is amended by adding a new section 338 to read as follows:

S 338. CONSUMER GUIDE ON INSURING AGAINST CATASTROPHIC LOSSES. (A) SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS SECTION, THE SUPERINTENDENT SHALL ISSUE AND UPDATE, AS NECESSARY, A CONSUMER GUIDE ON INSURING AGAINST CATASTROPHIC LOSSES THAT SHALL CONTAIN COMPREHENSIVE INFORMATION WRITTEN IN PLAIN LANGUAGE IN A CLEAR AND UNDERSTANDABLE FORMAT, INCLUDING THE FOLLOWING:

(1) THE WAYS IN WHICH DIFFERENT TYPES OF WEATHER CONDITIONS, NATURAL DISASTERS, OR OTHER OCCURRENCES CAN CAUSE CATASTROPHIC LOSSES, INCLUDING BUT NOT LIMITED TO DAMAGE FROM FIRE, WIND, WINDSTORM, MUDSLIDE, HURRICANE, SNOW, ICE, EXTREME COLD, WATER SURGE, AND FLOOD;

(2) THE TYPES OF INSURANCE AVAILABLE THAT PROVIDE COVERAGE AGAINST CATASTROPHIC LOSSES FOR BOTH HOMEOWNERS AND BUSINESSES, A LISTING OF COMPANIES THAT PROVIDE SUCH COVERAGE, AND RECOMMENDATIONS AS TO HOW BEST

TO SHOP FOR AND COMPARE PRICES, SERVICE AND QUALITY OF INSURANCE COVERAGE;

(3) A LIST OF THE EXCLUSIONS TYPICALLY FOUND IN SUCH COVERAGE AND INFORMATION ON HOW A CONSUMER MAY OBTAIN COVERAGE FOR SUCH EXCLUSIONS, INCLUDING A LISTING OF COMPANIES THAT PROVIDE SUCH COVERAGE AND AN EXPLANATION OF, INFORMATION ON, AND THE TYPES OF COVERAGE AVAILABLE FROM THE NEW YORK PROPERTY INSURANCE UNDERWRITERS ASSOCIATION, THE COASTAL MARKET ASSISTANCE PROGRAM, AND THE NATIONAL FLOOD INSURANCE PROGRAM, AND OTHER OPTIONS AUTHORIZED BY STATE OR FEDERAL LAW;

(4) STEPS A CONSUMER CAN TAKE TO PREPARE FOR A NATURAL DISASTER OR OTHER CATASTROPHIC LOSS;

(5) STEPS A CONSUMER CAN TAKE FOLLOWING A CATASTROPHIC LOSS IN ORDER TO FACILITATE THE TIMELY PROCESSING OF THE CONSUMER'S INSURANCE CLAIM AND AN EXPLANATION OF POLICYHOLDERS' RIGHTS AS PROVIDED IN LAW AND REGULATION; AND

(6) A DEPARTMENT TOLL FREE CONSUMER HOT-LINE AND WEBSITE ADDRESS THROUGH WHICH CONSUMERS MAY INITIATE COMPLAINTS, AND REQUEST GENERAL INFORMATION ABOUT INSURANCE.

(B) THE REQUIREMENTS SET FORTH IN SUBSECTION (A) OF THIS SECTION MAY BE SATISFIED BY SEPARATE OR SUPPLEMENTAL PUBLICATIONS AND UPDATES.

(C) THE SUPERINTENDENT SHALL POST THE CONSUMER GUIDE ON INSURING AGAINST CATASTROPHIC LOSSES ON THE DEPARTMENT'S WEBSITE.

S 5. This act shall take effect immediately.