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

971

2013-2014 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2013

Introduced by Sen. LIBOUS -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance

AN ACT to amend the insurance law, in relation to reciprocal insurance companies, and medical malpractice premium rates and surcharges; and to amend chapter 266 of the laws of 1986, amending the civil practice law and rules and other laws relating to malpractice and professional medical conduct, in relation to medical malpractice premium rates and surcharges

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

Section 1. Section 7308 of the insurance law is amended to read as follows:

S 7308. Conversion of domestic reciprocal insurers into stock property/casualty insurance companies. (a) AS USED IN THIS ARTICLE:

(1) "DOMESTIC RECIPROCAL MEDICAL MALPRACTICE INSURER" MEANS ANY DOMESTIC RECIPROCAL INSURER ORGANIZED PURSUANT TO ARTICLE SIXTY-ONE OF THIS CHAPTER FOR WHICH, IN THE YEAR ENDING DECEMBER THIRTY-FIRST PRIOR TO CONVERTING TO A STOCK PROPERTY/CASUALTY INSURANCE COMPANY, AT LEAST NINETY PERCENT OF ITS PREMIUM WRITINGS WERE DERIVED FROM INSURING PHYSICIANS OR DENTISTS WHO HAD AN ACADEMIC APPOINTMENT AT ANY STATE UNIVERSITY OF NEW YORK MEDICAL SCHOOL OR FACILITY, OR WHO HAD AN ACADEMIC APPOINTMENT AT NEW YORK MEDICAL COLLEGE;

(2) "CLINICAL PRACTICE PLAN" MEANS (A) A CLINICAL PRACTICE PLAN AS DEFINED IN SUBPARAGRAPH (III) OF PARAGRAPH (B) OF SUBDIVISION FOURTEEN OF SECTION TWO HUNDRED SIX OF THE PUBLIC HEALTH LAW AND WHICH PLAN IS SUBJECT TO REGULATION BY THE BOARD OF REGENTS, AND (B) WESTCHESTER MEDICAL CENTER.

(B) Any domestic reciprocal insurer doing business under the provisions of this article may, EITHER (1) by the affirmative vote of its subscribers holding two-thirds of its operating reserve accumu-

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

LBD05297-01-3

lations at the date of the meeting at which the proposal to convert is voted upon, OR (2) IN THE CASE OF A DOMESTIC RECIPROCAL MEDICAL MALPRACTICE INSURER, BY THE UNANIMOUS AFFIRMATIVE VOTE OF ITS ADVISORY COMMITTEE, be converted into and licensed as a stock property/casualty insurance company, in the manner prescribed by this section and subject to any other requirements of law. The advisory committee of any such reciprocal insurer proposing so to convert shall cause the attorney-in-fact of such reciprocal insurer to give to [each subscriber of record at the close of business on the last day of the quarter year next preceding the issue of such notice] THE SUPERINTENDENT not less than thirty days notice by mail of [the meeting at which the] SUCH proposed conversion [is to be voted upon and of a hearing of the subscribers before the superintendent]. [At such hearing or any adjournment thereof, the] THE superintendent shall pass upon the fairness of the terms and conditions of the proposed conversion and of the issuance of shares of the corporation and he OR SHE shall approve [or disapprove] the same IN THE ABSENCE OF CLEAR EVIDENCE THAT SUCH CONVERSION WOULD BE DETRIMENTAL TO THE INTERESTS OF THE PEOPLE OF THE STATE. The provisions of this chapter relative to a similar domestic insurance company organized to do the same kinds of insurance business shall apply to the organization and licensing of such corporation.

[(b)] (C) If converted into a stock insurance corporation, subscriptions to the capital shares may be made, in whole or in part, by the subscribers of the reciprocal insurer, and their subscriptions may be paid in to the extent of their operating reserve accumulations by a transfer thereof or any portion thereof to such corporation. The contingent surplus of the reciprocal insurer accumulated pursuant to subsection (a) of section six thousand one hundred five of this chapter shall be included in the capital and surplus of the corporation and shares representing the same shall be issued to existing subscribers, at the rate determined as provided in the next sentence for each dollar of par value of the shares of such new corporation, in proportion to their shares in the aggregate operating reserves at the time when the proposal to convert is adopted. The rate of payment for each dollar of par value of the stock of such new corporation shall be determined by agreement between the advisory committee of the reciprocal insurer and the board of directors of the stock insurance company. Every such subscriber shall be entitled in the subscription to the capital shares of such corporation to a priority in subscribing thereto for thirty days after the opening of the books of subscription in proportion to his interest in such reciprocal insurer at such date but at the rate of payment fixed by the board of directors. At the expiration of such thirty days the board of directors may sell and dispose of the capital shares which have not been taken or subscribed, as aforesaid, but at not less than the same rate of payment. [(c)] THIS SUBSECTION SHALL NOT APPLY TO DOMESTIC RECIPROCAL MEDICAL MALPRACTICE INSURERS.

(D) IN THE CASE OF A DOMESTIC RECIPROCAL MEDICAL MALPRACTICE INSURER, IF CONVERTED INTO A STOCK INSURANCE CORPORATION, SUBSCRIPTIONS TO THE CAPITAL SHARES MAY BE MADE, IN WHOLE OR IN PART, ONLY BY THE CLINICAL PRACTICE PLANS REPRESENTED ON ITS ADVISORY COMMITTEE, AND THEIR SUBSCRIPTIONS MAY BE PAID IN TO THE EXTENT OF THEIR RESPECTIVE SUBSCRIBERS' OPERATING RESERVE ACCUMULATIONS BY A TRANSFER THEREOF OR ANY PORTION THEREOF TO SUCH CORPORATION. THE CONTINGENT SURPLUS OF THE RECIPROCAL INSURER ACCUMULATED PURSUANT TO SUBSECTION (A) OF SECTION SIX THOUSAND ONE HUNDRED FIVE OF THIS CHAPTER SHALL BE INCLUDED IN THE CAPITAL AND SURPLUS OF THE CORPORATION AND SHARES REPRESENTING THE SAME

SHALL BE ISSUED TO SUCH CLINICAL PRACTICE PLANS AT THE RATE DETERMINED AS PROVIDED IN THE NEXT SENTENCE FOR EACH DOLLAR OF PAR VALUE OF THE SHARES OF SUCH NEW CORPORATION, IN PROPORTION TO THEIR RESPECTIVE SUBSCRIBERS' SHARE IN THE AGGREGATE OPERATING RESERVES AT THE TIME WHEN THE PROPOSAL TO CONVERT IS ADOPTED. THE RATE OF PAYMENT FOR EACH DOLLAR OF PAR VALUE OF THE STOCK OF SUCH NEW CORPORATION SHALL BE DETERMINED BY AGREEMENT BETWEEN THE ADVISORY COMMITTEE OF THE RECIPROCAL INSURER AND THE BOARD OF DIRECTORS OF THE STOCK INSURANCE COMPANY. EVERY SUCH CLINICAL PRACTICE PLAN SHALL BE ENTITLED IN THE SUBSCRIPTION TO THE CAPITAL SHARES OF SUCH CORPORATION TO A PRIORITY IN SUBSCRIBING THERETO FOR THIRTY DAYS AFTER THE OPENING OF THE BOOKS OF SUBSCRIPTION IN PROPORTION TO ITS INTEREST IN SUCH RECIPROCAL INSURER AT SUCH DATE BUT AT THE RATE OF PAYMENT FIXED BY THE BOARD OF DIRECTORS. AT THE EXPIRATION OF SUCH THIRTY DAYS THE BOARD OF DIRECTORS MAY SELL AND DISPOSE OF THE CAPITAL SHARES WHICH HAVE NOT BEEN TAKEN OR SUBSCRIBED, AS AFORESAID, BUT AT NOT LESS THAN THE SAME RATE OF PAYMENT.

(E) If after examination, the superintendent finds that the proceedings for the conversion to a corporation of any such insurer have been regularly taken in conformity with law, and that the corporation meets with the requirements of this chapter, he may issue a license to such insurer to do business under the provisions of this chapter. Thereupon, the remaining assets shall be forthwith transferred to it, and the predecessor reciprocal insurer or insurers shall cease to have authority to do business as such and shall be deemed extinguished. Every such new corporation formed by conversion shall assume and succeed to all of the obligations and liabilities of the converting reciprocal insurer and be held liable to pay and discharge all such debts and liabilities in the same manner as if they had been incurred or contracted by the corporation, but, EXCEPT IN THE CASE OF A DOMESTIC RECIPROCAL MEDICAL MALPRACTICE INSURER, the subscribers of the reciprocal insurer shall continue subject to all the liabilities, claims and demands which shall then exist, or which may thereafter accrue against them, or any of them, by reason of any obligations incurred by them or in their behalf as such subscribers before the date of conversion.

(F) Upon the conversion of any reciprocal insurer, OTHER THAN A DOMESTIC RECIPROCAL MEDICAL INSURER, dissenting subscribers, meaning thereby subscribers who shall not within thirty days after the opening of the books of subscription have subscribed to shares of the corporation and applied their accumulated operating reserves to payment therefor as provided in subsection (b) [hereof] OF THIS SECTION, shall be entitled to the conditional withdrawal of their accumulated operating reserves on deposit with the reciprocal insurer as of the date of conversion but a sufficient amount thereof shall be retained by the corporation as a deposit until all of the obligations incurred on its behalf have been extinguished. When all of such obligations have been paid, discharged or terminated, and the superintendent after an examination shall have so certified, the said subscribers' deposits or the balances thereof remaining to their credit shall be returned and released, whereupon the powers of the attorney-in-fact relating thereto shall cease and terminate.

(G) UPON THE CONVERSION OF ANY DOMESTIC RECIPROCAL MEDICAL MALPRACTICE INSURER, ALL SUBSCRIBERS SHALL BE ENTITLED TO THE CONDITIONAL WITHDRAWAL OF THEIR ACCUMULATED OPERATING RESERVES ON DEPOSIT WITH THE RECIPROCAL INSURER AS OF THE DATE OF CONVERSION BUT A SUFFICIENT AMOUNT THEREOF SHALL BE RETAINED BY THE CORPORATION AS A DEPOSIT UNTIL ALL OF THE OBLIGATIONS INCURRED ON ITS BEHALF HAVE BEEN EXTINGUISHED. WHEN ALL OF SUCH

OBLIGATIONS HAVE BEEN PAID, DISCHARGED OR TERMINATED, AND THE SUPERINTENDENT AFTER AN EXAMINATION SHALL HAVE SO CERTIFIED, SUCH SUBSCRIBERS' DEPOSITS OR THE BALANCES THEREOF REMAINING TO THEIR CREDIT SHALL BE RETURNED AND RELEASED, WHEREUPON THE POWERS OF THE ATTORNEY-IN-FACT RELATING THERETO SHALL CEASE AND TERMINATE.

S 2. Paragraph 2 of subsection (c) of section 5502 of the insurance law is amended by adding a new subparagraph (E) to read as follows:

(E) THE SURCHARGES ON PREMIUMS IMPOSED PURSUANT TO SECTION FORTY, AS AMENDED, OF CHAPTER TWO HUNDRED SIXTY-SIX OF THE LAWS OF NINETEEN HUNDRED EIGHTY-SIX SHALL APPLY TO ANY PLAN OR POOL ESTABLISHED IN ACCORDANCE WITH SUBPARAGRAPH (D) OF THIS PARAGRAPH TO SATISFY ANY ACTUARIALLY PROJECTED DEFICIENCY THAT IS ATTRIBUTABLE TO THE PREMIUM LEVELS FOR POLICIES PROVIDING COVERAGE FOR PHYSICIANS AND SURGEONS MEDICAL MALPRACTICE FOR THE PERIODS COMMENCING JULY FIRST, NINETEEN HUNDRED EIGHTY-FIVE AND ENDING JUNE THIRTIETH, TWO THOUSAND FIFTEEN. NO MEMBER OF SUCH PLAN OR POOL SHALL BE REQUIRED TO SATISFY ANY PORTION OF SUCH DEFICIENCY FROM ITS OWN ASSETS UNLESS THE SUPERINTENDENT OF FINANCIAL SERVICES IMPOSES SUCH A SURCHARGE, AND THE AMOUNT OF SUCH DEFICIENCY IS NOT SATISFIED WITHIN TWENTY-FOUR MONTHS OF THE DATE THE SURCHARGE IS IMPOSED, AND IN THAT EVENT SUCH MEMBERS SHALL ONLY BE LIABLE FOR THEIR PROPORTIONATE SHARE OF ANY DEFICIENCY REMAINING AFTER SUCH PLAN OR POOL HAS BEEN LIQUIDATED IN ACCORDANCE WITH ARTICLE SEVENTY-FOUR OF THIS CHAPTER, AND THEN ONLY TO THE EXTENT CLAIMS AGAINST INSUREDS COVERED BY SUCH PLAN OR POOL ARE NOT COVERED BY THE PROPERTY AND LIABILITY INSURANCE SECURITY FUND ESTABLISHED BY ARTICLE SEVENTY-SIX OF THIS CHAPTER.

S 3. Section 40 of chapter 266 of the laws of 1986, amending the civil practice law and rules and other laws relating to malpractice and professional medical conduct, as amended by section 18 of part C of chapter 59 of the laws of 2011, is amended to read as follows:

S 40. The superintendent of [insurance] FINANCIAL SERVICES shall establish rates for policies providing coverage for physicians and surgeons medical malpractice for the periods commencing July 1, 1985 and ending June 30, 2014; provided, however, that ANY INSURER FOR WHICH AT LEAST NINETY PERCENT OF ITS PREMIUM WRITINGS IN THE YEAR ENDING DECEMBER 31 PRIOR TO MAKING A FILING WERE DERIVED FROM INSURING PHYSICIANS OR DENTISTS WHO HAD AN ACADEMIC APPOINTMENT AT ANY STATE UNIVERSITY OF NEW YORK MEDICAL SCHOOL OR FACILITY, OR WHO HAD AN ACADEMIC APPOINTMENT AT NEW YORK MEDICAL COLLEGE, MAY FILE ITS MEDICAL MALPRACTICE PREMIUM RATES WITH THE DEPARTMENT OF FINANCIAL SERVICES. SUCH RATES SHALL BECOME EFFECTIVE WITHOUT PRIOR APPROVAL PROVIDED THAT THE OVERALL EFFECT OF THE FILING DOES INCREASE OR DECREASE SUCH INSURER'S AGGREGATE PREMIUM RATES BY MORE THAN FIVE PERCENT OVER THE PREMIUM RATES ESTABLISHED BY THE SUPERINTENDENT OF FINANCIAL SERVICES FOR SUCH INSURER AS OF JULY 1 OF SUCH PRECEDING YEAR. PROVIDED, FURTHER, THAT notwithstanding any other provision of law, the superintendent shall not establish or approve any increase in rates for the period commencing July 1, 2009 and ending June 30, 2010. The superintendent shall direct insurers to establish segregated accounts for premiums, payments, reserves and investment income attributable to such premium periods and shall require periodic reports by the insurers regarding claims and expenses attributable to such periods to monitor whether such accounts will be sufficient to meet incurred claims and expenses. On or after July 1, 1989, the superintendent shall impose a surcharge on premiums to satisfy a projected deficiency that is attributable to the premium levels established pursuant to this section for such periods; provided, however, that such annual surcharge shall not exceed eight percent of the established rate until July 1, 2014, at

which time and thereafter such surcharge shall not exceed twenty-five percent of the approved adequate rate, and that such annual surcharges shall continue for such period of time as shall be sufficient to satisfy such deficiency. The superintendent shall not impose such surcharge during the period commencing July 1, 2009 and ending June 30, 2010. On and after July 1, 1989, the surcharge prescribed by this section shall be retained by insurers to the extent that they insured physicians and surgeons during the July 1, 1985 through June 30, 2014 policy periods; in the event and to the extent physicians and surgeons were insured by another insurer during such periods, all or a pro rata share of the surcharge, as the case may be, shall be remitted to such other insurer in accordance with rules and regulations to be promulgated by the superintendent. Surcharges collected from physicians and surgeons who were not insured during such policy periods shall be apportioned among all insurers in proportion to the premium written by each insurer during such policy periods; if a physician or surgeon was insured by an insurer subject to rates established by the superintendent during such policy periods, and at any time thereafter a hospital, health maintenance organization, employer or institution is responsible for responding in damages for liability arising out of such physician's or surgeon's practice of medicine, such responsible entity shall also remit to such prior insurer the equivalent amount that would then be collected as a surcharge if the physician or surgeon had continued to remain insured by such prior insurer. In the event any insurer that provided coverage during such policy periods is in liquidation, the property/casualty insurance security fund shall receive the portion of surcharges to which the insurer in liquidation would have been entitled. The surcharges authorized herein shall be deemed to be income earned for the purposes of section 2303 of the insurance law. The superintendent, in establishing adequate rates and in determining any projected deficiency pursuant to the requirements of this section and the insurance law, shall give substantial weight, determined in his discretion and judgment, to the prospective anticipated effect of any regulations promulgated and laws enacted and the public benefit of stabilizing malpractice rates and minimizing rate level fluctuation during the period of time necessary for the development of more reliable statistical experience as to the efficacy of such laws and regulations affecting medical, dental or podiatric malpractice enacted or promulgated in 1985, 1986, by this act and at any other time. Notwithstanding any provision of the insurance law, rates already established and to be established by the superintendent pursuant to this section are deemed adequate if such rates would be adequate when taken together with the maximum authorized annual surcharges to be imposed for a reasonable period of time whether or not any such annual surcharge has been actually imposed as of the establishment of such rates.

S 4. This act shall take effect immediately.