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

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I N S E N A T E

June 5, 2014

Introduced by Sen. SEWARD -- 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 expanding the definition of a domestic insurer and the applicability of risk-based capital to certain health organizations (Part A); and to amend the insurance law, in relation to extending prior approval for certain motor vehicle insurance rates, adding an additional date for the superintendent to collect, analyze and compile periodic reports regarding certain property/casualty insurance policies, extending the date for exemptions on certain property/casualty insurance policies, and extending certain rate periods, in relation to extending additional powers of the New York property insurance underwriting association and in relation to extending the authority for certain domestic property/casualty insurers to write in the free trade zone; and to repeal section 2341 of such law relating to the consumers advisory council; business advisory council (Part B)

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

Section 1. This act enacts into law components of legislation relating to risk-based capital, property/casualty insurance provisions that sunset. Each component is wholly contained within a Part identified as Parts A and B. The effective date for each particular provision contained within such Part is set forth in the last section of such Part. Any provision in any section contained within a Part, including the effective date of the Part, which makes a reference to a section "of this act", when used in connection with that particular component, shall be deemed to mean and refer to the corresponding section of the Part in which it is found. Section three of this act sets forth the general effective date of this act.

PART A

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

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Section 1. Subsection (a) of section 1109 of the insurance law, as amended by chapter 246 of the laws of 2005, is amended to read as follows:

(a) An organization complying with the provisions of article forty-four of the public health law may operate without being licensed under this chapter and without being subject to any provisions of this chapter, except: (1) to the extent that such organization must comply with the provisions of this chapter by virtue of such article, and (2) the provisions of sections three hundred eight, [three hundred thirteen, three hundred thirty-two,] one thousand three hundred one, one thousand three hundred two, one thousand three hundred seven, ONE THOUSAND THREE HUNDRED TWENTY-TWO, WITH REGARD TO HEALTH MAINTENANCE ORGANIZATIONS THAT ARE DOMICILED IN THIS STATE AND CERTIFIED OR OPERATING IN AT LEAST ONE OTHER STATE, two thousand one hundred three, two thousand one hundred twelve, two thousand one hundred fourteen, two thousand one hundred fifteen, two thousand one hundred seventeen, two thousand one hundred twenty-three, two thousand six hundred eight-a, two thousand six hundred twelve, three thousand two hundred twenty-four-a, four thousand three hundred eight, four thousand three hundred seventeen, four thousand three hundred eighteen, four thousand three hundred twenty, four thousand three hundred twenty-one, four thousand three hundred twenty-two and four thousand three hundred twenty-three of this chapter.

S 2. The section heading of section 1322 of the insurance law, as added by chapter 215 of the laws of 1993, is amended to read as follows:

Risk-based capital for life [and] INSURANCE COMPANIES, accident and health insurance companies, CORPORATIONS ORGANIZED PURSUANT TO ARTICLE FORTY-THREE OF THIS CHAPTER, AND CERTAIN HEALTH MAINTENANCE ORGANIZATIONS.

S 3. Paragraph 3 of subsection (a) of section 1322 of the insurance law, as added by chapter 215 of the laws of 1993, is amended to read as follows:

(3) "Domestic insurer" means any authorized life insurance company or accident and health insurance company incorporated or organized under any law of this state; CORPORATION ORGANIZED PURSUANT TO ARTICLE FORTY-THREE OF THIS CHAPTER; OR HEALTH MAINTENANCE ORGANIZATION DOMICILED IN THIS STATE AND CERTIFIED OR OPERATING IN AT LEAST ONE OTHER STATE.

S 4. Subsection (b) and paragraph 1 of subsection (c) of section 1322 of the insurance law, as added by chapter 215 of the laws of 1993, are amended to read as follows:

(b) Applicability. This section shall apply to every authorized life insurance company and accident and health insurance company INCORPORATED OR ORGANIZED UNDER ANY LAW OF THIS STATE; CORPORATION ORGANIZED PURSUANT TO ARTICLE FORTY-THREE OF THIS CHAPTER; OR HEALTH MAINTENANCE ORGANIZATION DOMICILED IN THIS STATE AND CERTIFIED OR OPERATING IN AT LEAST ONE OTHER STATE.

(1) Every domestic insurer OTHER THAN A HEALTH MAINTENANCE ORGANIZATION DOMICILED IN THIS STATE AND CERTIFIED OR OPERATING IN AT LEAST ONE OTHER STATE shall, on or prior to each March fifteenth, AND EVERY SUCH HEALTH MAINTENANCE ORGANIZATION, ON OR PRIOR TO EACH APRIL FIFTEENTH (the "filing date"), prepare and submit to the superintendent a report of its RBC levels as of the end of the calendar year just ended, in a form and containing such information as is required by the RBC instructions. In addition, the insurer shall file the RBC report:

(A) With the National Association of Insurance Commissioners in accordance with the RBC instructions; and

(B) With the insurance commissioner in any state in which the insurer is authorized to do business, upon the written request of the insurance commissioner. The insurer shall file the RBC report by the later of:

(i) The filing date; or

(ii) Fifteen days after the date of the request.

S 5. Subparagraph (D) of paragraph 2 of subsection (c) of section 1322 of the insurance law, as added by chapter 215 of the laws of 1993, is amended to read as follows:

(D) All other business risks and such other [relevent] RELEVANT risks as are set forth in the RBC instructions.

S 6. Paragraph 1 of subsection (d) of section 1322 of the insurance law, as added by chapter 215 of the laws of 1993, is amended to read as follows:

(1) "Company action level event" means, with respect to a domestic insurer:

(A) The filing by the insurer of a RBC report indicating that: (i) The insurer's total adjusted capital is greater than or equal to its regulatory action level RBC but less than its company action level RBC; or

(ii) (I) The insurer has total adjusted capital [which] THAT is greater than or equal to its company action level RBC but less than the product of [2.5] 3.0 and its authorized control level RBC; and

(II) there is a negative trend;

(B) The notification by the superintendent to the insurer of an adjusted RBC report that indicates the occurrence of an event described in item (i) or (ii) of subparagraph (A) of this paragraph, provided the insurer does not challenge the adjusted RBC report under subsection (h) of this section; or

(C) If, under subsection (h) of this section, the insurer challenges an adjusted RBC report that indicates the occurrence of an event described in item (i) or (ii) of subparagraph (A) of this paragraph, THEN the notification by the superintendent to the insurer that the superintendent has, after a hearing, rejected the insurer's challenge.

S 7. Paragraphs 2 and 3 of subsection (l) of section 1322 of the insurance law, as added by chapter 215 of the laws of 1993, are amended to read as follows:

(2) In the event of [an] A regulatory action level event under subparagraph (A), (B) or (C) of paragraph one of subsection (e) of this section the superintendent shall take the actions required under subsection (d) of this section.

(3) In the event of [an] A regulatory action level event under subparagraph (D), (E), (F), (G), (H) or (I) of paragraph one of subsection (e) of this section or an authorized control level event, the superintendent shall take the actions required under subsection (e) of this section with respect to the insurer.

S 8. This act shall take effect immediately.

PART B

Section 1. Sections 2328 and 2329 of the insurance law, as amended by chapter 102 of the laws of 2011, are amended to read as follows:

S 2328. Certain motor vehicle insurance rates; prior approval. For the periods February first, nineteen hundred seventy-four through August second, two thousand one, and the effective date of the property/casualty insurance availability act through June thirtieth, two thousand [fourteen] SEVENTEEN, no changes in rates, rating plans, rating rules and rate manuals applicable to motor vehicle insurance, including

no-fault coverages under article fifty-one of this chapter, shall be made effective until approved by the superintendent, notwithstanding any inconsistent provisions of this article; provided, however, that changes in such rates, rating plans, rating rules and rate manuals may be made effective without such approval if the rates [which] THAT result from such changes are no higher than the insurer's rates last approved by the superintendent. This section shall apply only to policies covering losses or liabilities arising out of ownership of a motor vehicle used principally for the transportation of persons for hire, including a bus or a school bus as defined in sections one hundred four and one hundred forty-two of the vehicle and traffic law.

S 2329. Motor vehicle insurance rates; excess profits. In accordance with regulations prescribed by the superintendent, each insurer issuing policies [which] THAT are subject to article fifty-one of this chapter, including policies of motor vehicle personal injury liability insurance or policies of motor vehicle property damage liability insurance or insurance for loss or damage to a motor vehicle, shall establish a fair, practicable, and nondiscriminatory plan for refunding or otherwise crediting to those purchasing such policies their share of the insurer's excess profit, if any, on such policies. An excess profit shall be a profit beyond a percentage rate of return on net worth attributable to such policies, computed in accordance with the regulation required by section two thousand three hundred twenty-three of this article, and determined by the superintendent to be so far above a reasonable average profit as to amount to an excess profit, taking into consideration the fact that losses or profits below a reasonable average profit will not be recouped from such policyholders. Each plan shall apply to policy periods for the periods January first, nineteen hundred seventy-four through August second, two thousand one, and the effective date of the property/casualty insurance availability act through June thirtieth, two thousand [fourteen] SEVENTEEN. In prescribing such regulations the superintendent may limit the duration of such plans, waive any requirement for refund or credit [which] THAT he or she determines to be de minimis or impracticable, adopt forms of returns [which] THAT shall be made to him or her in order to establish the amount of any refund or credit due, establish periods and times for the determination and distribution of refunds and credits, and shall provide that insurers receive appropriate credit against any refunds or credits required by any such plan for policyholder dividends and for return premiums [which] THAT may be due under rate credit or retrospective rating plans based on experience.

S 2. Paragraph 2 of subsection (l) of section 3425 of the insurance law, as amended by chapter 102 of the laws of 2011, is amended to read as follows:

(2) The superintendent shall collect, analyze and compile such reports with regard to the number of new insureds, non-renewed insureds and business written by each insurer in each rating territory of each such insurer and, in each case, the class of insureds (including age and sex) affected so that a statistical analysis of the results obtained pursuant to subsections (f) and (m) of this section shall be provided to each house of the legislature by March fifteenth, in the years nineteen hundred ninety-two, nineteen hundred ninety-six, nineteen hundred ninety-eight, two thousand one, two thousand six, two thousand seven, two thousand eight, two thousand eleven [and], two thousand fourteen, AND TWO THOUSAND SEVENTEEN.

S 3. Paragraphs 1 and 2 and the opening paragraph of paragraph 3 of subsection (m) of section 3425 of the insurance law, as amended by chapter 102 of the laws of 2011, are amended to read as follows:

(1) Paragraphs eight and nine of subsection (a), subsection (f) and subparagraphs (B) and (E) of paragraph one of subsection (j) of this section shall not apply to any new covered policy of automobile insurance voluntarily written on or after August first, nineteen hundred eighty-five and prior to January first, nineteen hundred eighty-six, and on or after August second, two thousand one and prior to the effective date of the property/casualty insurance availability act, and on or after June thirtieth, two thousand [fourteen] SEVENTEEN, but the legal rights granted to insurers or policyholders under such provisions shall not be extinguished or impaired thereby.

(2) In lieu of such provisions, paragraph seven of subsection (a), subparagraph (A) of paragraph one of subsection (j) and paragraph three of this subsection shall apply to such automobile insurance policies [which] THAT are newly and voluntarily written to have an effective date on or after August first, nineteen hundred eighty-five and prior to January first, nineteen hundred eighty-six, and on or after August second, two thousand one and prior to the effective date of the property/casualty insurance availability act, and on or after June thirtieth, two thousand [fourteen] SEVENTEEN.

On and after August first, nineteen hundred eighty-five and prior to January first, nineteen hundred eighty-six, and on or after August second, two thousand one and prior to the effective date of the property/casualty insurance availability act, and on or after June thirtieth, two thousand [fourteen] SEVENTEEN, no notice of nonrenewal or conditional renewal of such covered automobile insurance policies referred to in this subsection shall be issued to become effective during the required policy period unless it is based upon a ground for which the policy could have been cancelled or unless it is based upon one or more of the following grounds [which] THAT occurred during the thirty-six month period ending on the last day of the fourth month preceding the month of the effective date of such notice of nonrenewal or conditional renewal:

S 4. Subsection (f) of section 2305 of the insurance law, as amended by chapter 102 of the laws of 2011, is amended to read as follows:

(f) Subsection (a) of this section shall be of no force or effect during the period August third, two thousand one through the day before the effective date of the property/casualty insurance availability act, and after June thirtieth, two thousand [fourteen] SEVENTEEN. During the period August third, two thousand one through the day before the effective date of the property/casualty insurance availability act, and again commencing on July first, two thousand [fourteen] SEVENTEEN, all rates previously subject to subsection (a) of this section, other than rates [which] THAT are not required to be filed pursuant to subsection (b) of section two thousand three hundred ten of this article or [which] THAT have been suspended from the filing requirement pursuant to section two thousand three hundred eleven of this article, shall become subject to subsections (b), (c) and (d) of this section. All other provisions of this article applicable to kinds of insurance or insurance activities the rates for which are subject to prior approval under subsection (b) of this section shall apply to kinds of insurance the rates for which were previously subject to subsection (a) of this section or the rates for which are not required to be filed pursuant to subsection (b) of section two thousand three hundred ten of this article or the rates for

which have been suspended from the filing requirement pursuant to section two thousand three hundred eleven of this article.

S 5. Section 2341 of the insurance law is REPEALED.

S 6. Section 2342 of the insurance law, as amended by chapter 102 of the laws of 2011, is amended to read as follows:

S 2342. Expiration of certain provisions. The provisions of subsection (c) of section two thousand three hundred seven, section two thousand three hundred eight, subsection (a) of section two thousand three hundred ten, sections two thousand three hundred sixteen, two thousand three hundred twenty, two thousand three hundred twenty-three, two thousand three hundred twenty-six, and two thousand three hundred thirty-five, AND subsection (b) of section two thousand three hundred thirty-six [and section two thousand three hundred forty-one] of this article shall cease to be of any force or effect during the period August third, two thousand one through the day before the effective date of the property/casualty insurance availability act, and after June thirtieth, two thousand [fourteen] SEVENTEEN.

S 7. Subsection (h) of section 2344 of the insurance law, as amended by chapter 102 of the laws of 2011, is amended to read as follows:

(h) This section shall cease to be of any force or effect during the period August third, two thousand one through the day before the effective date of the property/casualty insurance availability act, and after June thirtieth, two thousand [fourteen] SEVENTEEN, except that rates shall reflect the likely reductive cost effects reasonably attributable to the statutory provisions specified in paragraph one of subsection (g) of this section.

S 8. Subsection (g) of section 5412 of the insurance law, as amended by chapter 102 of the laws of 2011, is amended to read as follows:

(g) The provisions of this section shall cease to be of any force or effect on or after June thirtieth, two thousand [fourteen] SEVENTEEN, except that policies issued or other obligations incurred by the association shall not be impaired by the expiration of this section and the association shall continue for the purpose of servicing such policies and performing such obligations.

S 9. Paragraph 3 of subsection (c) of section 6302 of the insurance law, as amended by chapter 490 of the laws of 2011, is amended to read as follows:

(3) until [June thirtieth, two thousand fourteen] DECEMBER THIRTY-FIRST, TWO THOUSAND SIXTEEN, a domestic property/casualty insurance company 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 that it is authorized to write in this state, or an insurer licensed pursuant to article sixty-one of this chapter as a reciprocal insurer that maintains at all times a surplus to policyholders of at least the minimum surplus to policyholders required to be maintained for the kinds of insurance that it is authorized to write in this state, provided that the domestic property/casualty insurance company or reciprocal insurer: (A) has total direct premiums comprised of at least ninety percent medical malpractice insurance; (B) assumes reinsurance premiums in an amount that is less than five percent of total direct premiums written; and (C) writes ninety percent of its total direct premiums in this state.

S 10. This act shall take effect immediately.

S 2. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair,

or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

S 3. This act shall take effect immediately provided, however, that the applicable effective date of Parts A and B of this act shall be as specifically set forth in the last section of such Parts.