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

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Cal. No. 1285

I N S E N A T E

February 23, 2016

Introduced by Sen. BRESLIN -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the insurance law, in relation to authorizing the superintendent of financial services to suspend crediting of underwriting earnings for a fiscal year for the purpose of accumulating a subscriber's operating reserve

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

Section 1. Section 6109 of the insurance law, subsection (a) as amended by chapter 138 of the laws of 1987, is amended to read as follows:

S 6109. Subscriber's operating reserve. (a) (1) Every subscriber of an authorized reciprocal insurer in which subscribers are subject to contingent liability shall accumulate a minimum operating reserve, to be credited to such subscriber on the books and records of such reciprocal insurer, by authorizing the attorney-in-fact to credit to such account at the end of the fiscal year of such reciprocal insurer, an amount not less than one quarter of such subscriber's underwriting earnings during such period.

(2) Such accumulation shall be made so long as such subscriber's operating reserve is less than twice the amount of annual premiums in force.

(3) Notwithstanding the foregoing, the superintendent may, upon application from the attorney-in-fact[,]:

(A) approve other methods for accumulating such subscriber's operating reserve; OR

(B) PERMIT THE SUSPENSION OF THE ACCUMULATION OF THE OPERATING RESERVE FOR A FISCAL YEAR PROVIDED THAT THOSE EARNINGS ARE RETURNED TO THE SUBSCRIBER IN ACCORDANCE WITH SUBPARAGRAPH (B) OF PARAGRAPH TWO OF SUBSECTION (C) OF THIS SECTION.

(b) Any authorized reciprocal insurer may, pursuant to the terms of the subscriber's agreement and to any action of its advisory committee

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

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authorized thereunder, require its subscribers to accumulate subscriber's operating reserves in excess of the minimum specified in subsection (a) [hereof] OF THIS SECTION and may require a longer period of notice for the withdrawal of all or any part of such reserve than that herein specified.

(c) (1) No subscriber shall have a secured or preferred claim against any assets of the reciprocal insurer arising out of such operating reserve, but all assets held by such insurer shall be available for the payment of claims of policyholders and creditors of such reciprocal insurer in preference to any claim for withdrawal by a subscriber as such.

(2) Any subscriber's operating reserve accumulated by any such reciprocal insurer shall be maintained at all times, except that:

(A) a subscriber may, upon withdrawal from membership and cancellation of all insurance contracts held by [him] THE SUBSCRIBER in such insurer, and after giving to the attorney-in-fact written notice of withdrawal at least sixty days in advance, withdraw the amount of [his] THE SUBSCRIBER'S operating reserve less such surrender charges as may be deducted pursuant to the subscriber's agreement; OR

(B) WHERE THE SUPERINTENDENT HAS DETERMINED THAT THE SUSPENSION OF THE ACCUMULATION OF THE OPERATING RESERVE WOULD NOT BE HARMFUL TO POLICYHOLDERS OR THE PEOPLE OF THIS STATE, THE ATTORNEY-IN-FACT MAY, IN THE FISCAL YEAR FOLLOWING THE YEAR FOR WHICH THE SUSPENSION OF THE ACCUMULATION OF THE OPERATING RESERVE WAS AUTHORIZED, RETURN TO EACH SUBSCRIBER AN AMOUNT EQUAL TO THE UNDERWRITING EARNINGS THAT WOULD HAVE OTHERWISE BEEN CREDITED TO THE SUBSCRIBER'S OPERATING RESERVE.

(3) No [such] withdrawal shall be permitted after an order of liquidation of, or the appointment of a receiver or liquidating trustee for, any such reciprocal insurer OR, NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, WHERE THERE IS AN AUTHORIZED CONTROL LEVEL EVENT OR A MANDATORY CONTROL LEVEL EVENT AS DEFINED IN SECTION THIRTEEN HUNDRED TWENTY-FOUR OF THIS CHAPTER.

S 2. This act shall take effect immediately.