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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:

1 Section 1. Section 6109 of the insurance law, subsection (a) as
2 amended by chapter 138 of the laws of 1987, is amended to read as
3 follows:
4 S 6109. Subscriber's operating reserve. (a) (1) Every subscriber of an
5 authorized reciprocal insurer in which subscribers are subject to
6 contingent liability shall accumulate a minimum operating reserve, to be
7 credited to such subscriber on the books and records of such reciprocal
8 insurer, by authorizing the attorney-in-fact to credit to such account
9 at the end of the fiscal year of such reciprocal insurer, an amount not
10 less than one quarter of such subscriber's underwriting earnings during
11 such period.
12 (2) Such accumulation shall be made so long as such subscriber's oper-
13 ating reserve is less than twice the amount of annual premiums in force.
14 (3) Notwithstanding the foregoing, the superintendent may, upon appli-
15 cation from the attorney-in-fact[,]:
16 (A) approve other methods for accumulating such subscriber's operating
17 reserve; OR
18 (B) PERMIT THE SUSPENSION OF THE ACCUMULATION OF THE OPERATING RESERVE
19 FOR A FISCAL YEAR PROVIDED THAT THOSE EARNINGS ARE RETURNED TO THE
20 SUBSCRIBER IN ACCORDANCE WITH SUBPARAGRAPH (B) OF PARAGRAPH TWO OF
21 SUBSECTION (C) OF THIS SECTION.
22 (b) Any authorized reciprocal insurer may, pursuant to the terms of
23 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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1 authorized thereunder, require its subscribers to accumulate subscrib-
2 er's operating reserves in excess of the minimum specified in subsection
3 (a) [hereof] OF THIS SECTION and may require a longer period of notice
4 for the withdrawal of all or any part of such reserve than that herein
5 specified.

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

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

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

20 (B) WHERE THE SUPERINTENDENT HAS DETERMINED THAT THE SUSPENSION OF THE
21 ACCUMULATION OF THE OPERATING RESERVE WOULD NOT BE HARMFUL TO POLICY-
22 HOLDERS OR THE PEOPLE OF THIS STATE, THE ATTORNEY-IN-FACT MAY, IN THE
23 FISCAL YEAR FOLLOWING THE YEAR FOR WHICH THE SUSPENSION OF THE ACCUMU-
24 LATION OF THE OPERATING RESERVE WAS AUTHORIZED, RETURN TO EACH SUBSCRIB-
25 ER AN AMOUNT EQUAL TO THE UNDERWRITING EARNINGS THAT WOULD HAVE OTHER-
26 WISE BEEN CREDITED TO THE SUBSCRIBER'S OPERATING RESERVE.

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

33 S 2. This act shall take effect immediately.