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

7708--A

I N S E N A T E

May 12, 2016

Introduced by Sen. LITTLE -- read twice and ordered printed, and when printed to be committed to the Committee on Cultural Affairs, Tourism, Parks and Recreation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the navigation law and the insurance law, in relation to requiring the owners of certain public vessels intending to operate on the navigable waters of the state to obtain marine protection and indemnity insurance

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

Section 1. The navigation law is amended by adding a new section 51 to read as follows:

S 51. OWNERS TO OBTAIN INSURANCE. 1. FOR THE PURPOSES OF THIS SECTION, "PUBLIC VESSEL" SHALL MEAN AND INCLUDE EVERY VESSEL WHICH IS PROPELLED IN WHOLE OR IN PART BY MECHANICAL POWER AND IS USED OR OPERATED FOR COMMERCIAL PURPOSES ON THE NAVIGABLE WATERS OF THIS STATE; THAT IS PRIMARILY CARRYING PASSENGERS; FOR WHICH COMPENSATION IS RECEIVED, EITHER DIRECTLY OR WHERE PROVIDED AS AN ACCOMMODATION, ADVANTAGE, FACILITY OR PRIVILEGE AT ANY PLACE OF PUBLIC ACCOMMODATION, RESORT OR AMUSEMENT.

2. PRIOR TO THE OPERATION OF A PUBLIC VESSEL, IT SHALL BE THE DUTY OF THE OWNER OF A PUBLIC VESSEL WHICH HE OR SHE INTENDS TO OPERATE ON THE NAVIGABLE WATERS OF THE STATE TO OBTAIN, FROM AN INSURANCE CARRIER AUTHORIZED TO DO BUSINESS IN THIS STATE OR THROUGH AN EXCESS LINE BROKER, PURSUANT TO SECTION TWO THOUSAND ONE HUNDRED EIGHTEEN OF THE INSURANCE LAW, MARINE PROTECTION AND INDEMNITY INSURANCE, AS DEFINED IN PARAGRAPH TWENTY-ONE OF SUBSECTION (A) OF SECTION ONE THOUSAND ONE HUNDRED THIRTEEN OF THE INSURANCE LAW. NO OWNER OF A PUBLIC VESSEL SHALL OPERATE OR PERMIT THE SAME TO BE OPERATED UPON NAVIGABLE WATERWAYS OF THE STATE WITHOUT HAVING IN FULL FORCE AND EFFECT THE LIABILITY INSURANCE COVERAGE REQUIRED BY THIS SECTION, AND NO PERSON SHALL OPERATE A PUBLIC VESSEL UPON THE NAVIGABLE WATERWAYS OF THIS STATE WITH KNOWLEDGE THAT SUCH INSURANCE IS NOT IN FULL FORCE AND EFFECT.

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

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3. THE OWNER OF SUCH PUBLIC VESSEL SHALL FILE WITH THE COMMISSIONER, FOR EACH PUBLIC VESSEL INTENDED TO BE SO OPERATED, EVIDENCE OF INSURANCE AS REQUIRED PURSUANT TO SUBDIVISION ONE OF THIS SECTION, AS PRESCRIBED BY THE COMMISSIONER.

4. THE MINIMUM COVERAGE FOR SUCH INSURANCE AS REQUIRED PURSUANT TO SUBDIVISION ONE OF THIS SECTION SHALL BE EQUAL TO ONE MILLION DOLLARS PER OCCURRENCE. OWNERS MAY VOLUNTARILY PROCURE COVERAGE IN EXCESS OF SUCH AMOUNT.

5. A VIOLATION OF THIS SECTION IS A MISDEMEANOR PUNISHABLE AS SET FORTH IN SUBDIVISION TWO OF SECTION SEVENTY-THREE-B OF THIS ARTICLE.

S 2. Section 50 of the navigation law, as amended by chapter 672 of the laws of 1962, is amended to read as follows:

S 50. Owners to notify inspector and apply for inspection. It shall be the duty of the owner of a public vessel which he OR SHE intends to operate on the navigable waters of the state to notify the inspector of such intention at least one month before it is desired to place the vessel in operation and to request an inspection of such vessel. PROOF OF INSURANCE ON A PUBLIC VESSEL, AS DEFINED AND REQUIRED BY SECTION FIFTY-ONE OF THIS PART, SHALL ACCOMPANY SUCH NOTIFICATION. Upon receipt of such notification AND, IF REQUIRED, PROOF OF INSURANCE, the inspector shall enter the application on the records of his OR HER office. A temporary permit to operate such vessel pending inspection may be issued by the inspector, if he OR SHE finds through documentary evidence that such vessel is properly INSURED PURSUANT TO THIS SECTION, AND equipped and manned for the safety of life and property. No public vessel shall be used or operated without a certificate of inspection or a temporary permit as herein provided.

S 3. The navigation law is amended by adding a new section 63-a to read as follows:

S 63-A. PROOF OF INSURANCE. 1. PROOF OF INSURANCE AS REQUIRED BY THIS PART SHALL BE PRODUCED AND DISPLAYED BY THE OWNER OR OPERATOR OF A PUBLIC VESSEL, AS DEFINED IN SUBDIVISION ONE OF SECTION FIFTY-ONE OF THIS ARTICLE, UPON THE REQUEST OF ANY PERSON HAVING AUTHORITY TO ENFORCE THE PROVISIONS OF THIS CHAPTER. THE FAILURE TO PRODUCE SUCH PROOF UPON THE REQUEST OF ANY SUCH PERSON SHALL NOT BE AN OFFENSE BUT SHALL BE PRESUMPTIVE EVIDENCE THAT THE PUBLIC VESSEL IS BEING OPERATED WITHOUT HAVING SUCH INSURANCE IN FORCE AND EFFECT.

2. PROOF OF INSURANCE AS REQUIRED BY THIS SECTION SHALL BE PRODUCED AND DISPLAYED BY THE OWNER OR OPERATOR OF SUCH PUBLIC VESSEL TO ANY PERSON WHO HAS SUFFERED OR CLAIMS TO HAVE SUFFERED EITHER PERSONAL INJURY OR PROPERTY DAMAGE AS A RESULT OF THE OPERATION OF SUCH PUBLIC VESSEL BY THE OWNER OR OPERATOR. IT SHALL BE AN AFFIRMATIVE DEFENSE TO ANY PROSECUTION FOR A VIOLATION OF THIS SUBDIVISION THAT SUCH PROOF WAS SO PRODUCED OR DISPLAYED WITHIN TWENTY-FOUR HOURS OF RECEIVING NOTICE OF SUCH INJURY OR DAMAGE, OR THE CLAIM OF SUCH INJURY OR DAMAGE.

S 4. Section 73-b of the navigation law, as amended by chapter 320 of the laws of 2007, is amended to read as follows:

S 73-b. Misdemeanors. 1. Every person convicted of a misdemeanor pursuant to any of the provisions of this chapter for which another penalty is not provided shall for a first conviction thereof be punished by a fine of not less than two hundred fifty nor more than five hundred dollars or by a period of imprisonment of not more than thirty days or by both such fine and imprisonment; for a conviction of a second violation, both of which were committed within a period of twenty-four months, such person shall be punished by a fine of not less than five hundred nor more than one thousand five hundred dollars or by a period

of imprisonment of not more than sixty days or by both such fine and imprisonment; upon a conviction of a third or subsequent violation, all of which were committed within a period of twenty-four months, such person shall be punished by a fine of not less than one thousand five hundred nor more than two thousand five hundred dollars or by a period of imprisonment of not more than one hundred twenty days or by both such fine and imprisonment.

2. EVERY PERSON CONVICTED OF A MISDEMEANOR FOR A VIOLATION OF SECTION FIFTY-ONE OF THIS ARTICLE SHALL FOR A FIRST CONVICTION THEREOF BE PUNISHED BY A FINE OF NOT LESS THAN FIVE THOUSAND NOR MORE THAN TEN THOUSAND DOLLARS, OR BY A PERIOD OF IMPRISONMENT OF NOT MORE THAN NINETY DAYS, OR BY BOTH SUCH FINE AND IMPRISONMENT.

S 5. The navigation law is amended by adding a new section 73-d to read as follows:

S 73-D. OPERATING WITHOUT INSURANCE. IN ADDITION TO THE PENALTIES SET FORTH IN THIS PART, ANY OWNER FOUND TO BE OPERATING A PUBLIC VESSEL WITHOUT INSURANCE AS SET FORTH IN SECTION FIFTY-ONE OF THIS ARTICLE, SHALL HAVE THE CERTIFICATE OF INSPECTION OR TEMPORARY PERMIT FOR SUCH VESSEL REVOKED FOR A PERIOD OF NO LESS THAN ONE YEAR.

S 6. Section 13 of the navigation law, as amended by chapter 843 of the laws of 1980, is amended to read as follows:

S 13. Inspector; duties. The inspector shall annually, and at such other times as he shall deem it expedient, or as the commissioner may direct, inspect every public vessel, except vessels which navigate on waters over which the United States exercises active control. The inspector shall carefully examine the hull, the propelling and auxiliary machinery, the electrical apparatus and the vessel's equipment. He shall require such changes, repairs and improvements to be made as he may deem expedient for the contemplated route. No vessel, or propelling machinery thereof shall be allowed to be used if constructed in whole, or in part, of defective material, or which because of its form, design, workmanship, age, use or for any other reason is unsafe. He shall also fix the number of passengers that may be transported. The inspector shall require that the boilers, on all public vessels which are propelled by steam engines, be inspected and approved for safety of operations by inspectors of the New York State Department of Labor, Bureau of Boilers. Every boiler and appurtenances thereof shall be constructed, maintained and operated in accordance with the Department of Labor rules and regulations pertaining to boilers. THE INSPECTOR SHALL ASCERTAIN WHETHER THE VESSEL HAS INSURANCE COVERAGE AS REQUIRED BY THIS CHAPTER. The inspector shall also, whenever he deems it expedient, visit any vessel licensed under this chapter and examine into her condition for the purpose of ascertaining whether or not any party thereon, having a certificate, or license, from the inspector, has conformed to and obeyed the conditions of such certificate, and the provisions of this chapter. The owner, master, pilot, engineer or joint pilot and engineer of such vessel, shall answer all reasonable questions and give all the information in his or their power in regard to said vessel, or its machinery or equipment and the manner of managing the same. The inspector provided for in this chapter is authorized to make further rules and regulations applying generally to all vessels, or especially to one or more of them. In framing rules for the government of managers and employees on vessels, the inspector shall, as far as practicable, be governed by the general rules and regulations prescribed by the United States coast guard. The inspector shall have the power to issue a uniform navigation

summons and/or complaint for violations of the provisions of article four of this chapter which are applicable to vessels.

S 7. Section 63 of the navigation law, as amended by chapter 672 of the laws of 1962, is amended to read as follows:

S 63. Certificate of inspection. The inspector, if satisfied that a public vessel is in all respects safe and conforms to the requirement of this chapter, shall make and subscribe duplicate certificates setting forth the name and number of the vessel, its age, the date of inspection, the name of the owner, the number of licensed officers and crew necessary to manage the vessel with safety, equipment required, NUMBER OF INSURANCE POLICY AS REQUIRED BY SECTION FIFTY-ONE OF THIS PART, AND NAME OF SUCH INSURER, and any special restrictions or remarks pertaining to the operation of the vessel and the number of passengers she can safely carry, and, if a steam vessel, the age of the boiler and the pressure of steam she is authorized to carry. One of said certificates shall be kept posted in some conspicuous place on the vessel to be designated by the inspector and the other copy shall be kept by the inspector and by him recorded in a book to be kept for that purpose. If the inspector refuses to grant a certificate of approval, he shall make a statement in writing, giving his reasons for such refusal, and deliver the same to the owner or master of the vessel. The posting of certificates of inspection shall not be required on vessels of less than ten tons burden. However said certificates must be aboard whenever the vessel is in operation.

S 8. Subsection (b) of section 1115 of the insurance law, as amended by chapter 727 of the laws of 2006, is amended to read as follows:

(b) This section shall not apply to the insurance of marine risks, marine protection and indemnity risks ASSOCIATED WITH MARINE PROTECTION AND INDEMNITY INSURANCE WHICH IS NOT REQUIRED UNDER ARTICLE FOUR OF THE NAVIGATION LAW, workers' compensation, employers' liability risks, mortgage guaranty risks, financial guaranty risks, risks insured for any dollar level of first party benefits provided pursuant to article fifty-one of this chapter, certificates of title, guaranties of title or policies of title insurance, or those insurers subject to the provisions of subsection (c) of section two thousand three hundred forty-three of this chapter.

S 9. Paragraph 5 of subsection (a) of section 2302 of the insurance law, as amended by chapter 614 of the laws of 1997, is amended to read as follows:

(5) marine protection and indemnity insurance, WHICH IS NOT REQUIRED UNDER THE PROVISIONS OF ARTICLE FOUR OF THE NAVIGATION LAW;

S 10. Subsection (b) of section 3103 of the insurance law is amended to read as follows:

(b) No policy of insurance or contract of annuity delivered or issued for delivery in this state shall provide that the rights or obligations of the insured or of any person rightfully claiming thereunder, with respect to:

(1) a policy of life, accident and health insurance or contract of annuity upon a person resident in this state,

(2) a policy of insurance upon property then in this state, or

(3) the liabilities to be incurred by the insured as a result of activity then carried on by the insured in this state,

shall be governed by the laws of any jurisdiction other than this state. This subsection shall not apply to policies of marine AND INLAND MARINE insurance AS DEFINED IN PARAGRAPH TWENTY OF SUBSECTION (A) OF SECTION ONE THOUSAND ONE HUNDRED THIRTEEN OF THIS CHAPTER, BUT SHALL APPLY TO

THOSE POLICIES OF MARINE PROTECTION AND INDEMNITY INSURANCE, AS DEFINED IN PARAGRAPH TWENTY-ONE OF SUBSECTION (A) OF SECTION ONE THOUSAND ONE HUNDRED THIRTEEN OF THIS CHAPTER, THAT ARE REQUIRED UNDER ARTICLE FOUR OF THE NAVIGATION LAW.

S 11. Section 4101 of the insurance law, subsection (b) as amended by chapter 626 of the laws of 2006, is amended to read as follows:

S 4101. Definitions. In this article: (a) "Basic kinds of insurance" means the kinds of insurance described in the following paragraphs of subsection (a) of section one thousand one hundred thirteen of this chapter numbered therein as set forth in parentheses below:

fire (4);
burglary and theft (7);
glass (8);
boiler and machinery (9);
elevator (10);
animal (11);
personal injury liability (13);
property damage liability (14) - basic as to stock companies only;
workers' compensation and employers' liability (15);
fidelity and surety (16);
credit (17);
marine and inland marine (20);
marine protection and indemnity (21) [- basic as to mutual companies only].

(b) "Non-basic kinds of insurance" means the kinds of insurance described in the following paragraphs of subsection (a) of section one thousand one hundred thirteen of this chapter numbered therein as set forth in parentheses below:

accident and health (item (i) of (3));
non-cancellable disability (item (ii) of (3));
miscellaneous property (5);
water damage (6);
collision (12);
property damage liability (14) - non-basic as to mutual companies only;
motor vehicle and aircraft physical damage (19);
inland marine as specified in marine and inland marine (20);
[marine protection and indemnity (21) - non-basic as to stock companies only;]
residual value (22);
credit unemployment (24);
gap (26);
prize indemnification (27);
service contract reimbursement (28);
legal services insurance (29);
involuntary unemployment insurance (30);
salary protection insurance (31).

S 12. Subsection (a) of section 2105 of the insurance law, as amended by section 9 of part I of chapter 61 of the laws of 2011, is amended to read as follows:

(a) The superintendent may issue an excess line broker's license to any person, firm, association or corporation who or which is licensed as an insurance broker under section two thousand one hundred four of this article, or who or which is licensed as an excess line broker in the licensee's home state, provided, however, that the applicant's home state grants non-resident licenses to residents of this state on the

same basis, except that reciprocity is not required in regard to the placement of liability insurance on behalf of a purchasing group or any of its members; authorizing such person, firm, association or corporation to procure, subject to the restrictions herein provided, policies of insurance from insurers which are not authorized to transact business in this state of the kind or kinds of insurance specified in paragraphs four through fourteen, sixteen, seventeen, nineteen, twenty, TWENTY-ONE, twenty-two, twenty-seven, twenty-eight and thirty-one of subsection (a) of section one thousand one hundred thirteen of this chapter and in subsection (h) of this section, provided, however, that the provisions of this section and section two thousand one hundred eighteen of this article shall not apply to ocean marine insurance and other contracts of insurance enumerated in subsections (b) and (c) of section two thousand one hundred seventeen of this article. Such license may be suspended or revoked by the superintendent whenever in his or her judgment such suspension or revocation will best promote the interests of the people of this state.

S 13. This act shall take effect on the sixtieth day after it shall have become a law; provided, however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date.