STATE OF NEW YORK

4356

2019-2020 Regular Sessions

IN ASSEMBLY

February 4, 2019

Introduced by M. of A. WEPRIN -- read once and referred to the Committee on Insurance

AN ACT to amend the insurance law, in relation to removing the exemption of the state insurance fund from licensing and other requirements; to amend the workers' compensation law, in relation to requiring the superintendent of insurance to approve the rules adopted by the state insurance fund for the conduct of its business; to amend the workers' compensation law, in relation to the requirement for policyholders to provide 30 days notice to withdraw from the state insurance fund; and to permit the state insurance fund to compensate licensed insurance brokers for services provided to clients insured by the fund

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 1108 of the insurance law, subsection (c) as amended by section 38 of part SS of chapter 54 of the laws of 2016, subsection (j) as added by section 2 of part R of chapter 56 of the laws of 2010, subsection (k) as added by chapter 181 of the laws of 2012, subsection (k) as added by chapter 246 of the laws of 2012 and subsection (n) as added by chapter 454 of the laws of 2014, is amended to read as follows:

§ 1108. Insurers exempt from licensing and other requirements. The following insurers, their officers, agents, representatives and employees shall be exempt from licensing and other requirements imposed by the provisions of this chapter (except article seventy-four hereof) to the extent specified below:

(a) Any charitable annuity society which complies with the requirements of section one thousand one hundred ten of this article, to the extent therein stated.

(b) Any fraternal benefit society, membership corporation or other organization exempted under the provisions of article forty-five of this chapter, to the extent therein stated.

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

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(c) [~~The state insurance fund of this state, except as to the provisions of subsection (d) of section two thousand three hundred thirty-nine, section three thousand one hundred ten, subsection (a), paragraph one of subsection (b), paragraph three of subsection (c) and subsection (d) of section three thousand two hundred one, sections three thousand two hundred two, three thousand two hundred four, subsections (a) through (d) of section three thousand two hundred twenty-one, subsections (b) and (c) of section four thousand two hundred twenty-four, section four thousand two hundred twenty-six and subsections (a) and (b), (g) through (j), and (n) of section four thousand two hundred thirty-five of this chapter and except as otherwise specifically provided by the laws of this state.~~

~~(d)~~] Any corporate trustee or board of trustees acting pursuant to the banking law in relation to the fund for insurance of deposits in savings banks or the fund for insurance of shares of savings and loan associations.

[~~(e)~~] **(d)** Any corporation, organized under the laws of any state, solely to provide gratuitously for support or relief of the priests, clergy or ministers of any religious denomination, or their dependents, is exempt from all provisions of this chapter, except that any such corporation, created by special act of incorporation of this state, which by the provisions of such act is subject to the requirement of examination by, and making annual reports to, the superintendent, shall be subject to the provisions of article three of this chapter relating to examinations and statements or reports by insurers.

[~~(f)~~] **(e)** Any retirement system or pension fund that was doing business on January first, nineteen hundred forty under the education law, the civil service law, the mental hygiene law, any special act of incorporation of this state, or any municipal charter adopted under the laws of this state, exclusively for the benefit of the members of such system or fund or for all or any classes of the employees of this state or any municipality thereof, shall be exempt from the provisions of this chapter, except that if the law under which such system or fund was organized subjects it to examination by, and the making of annual reports to, the superintendent, such system or fund shall be subject to the provisions of article three of this chapter relating to examinations and statements or reports by insurers.

[~~(g)~~] **(f)** Any membership corporation or voluntary association organized and operating in this state prior to January first, nineteen hundred thirty-nine and its members may act as indemnitors of a licensed property/casualty insurance company in respect to surety bonds or policies of insurance required to be filed by such members pursuant to section three hundred seventy of the vehicle and traffic law and are exempted from the requirement of having an insurer's license; but no such membership corporation or association shall become a surety on any such bond or otherwise do an insurance business.

[~~(h)~~] **(g)** Any relief department or pension plan of any common carrier subject to the the Railroad Retirement Act of 1974 (45 U.S.C. § 31), whose privileges and membership are confined to employees or former employees of such carrier or its affiliated or subsidiary companies, or to any association of such common carriers which administers any such department or plan.

[~~(i)~~] **(h)** Every blood credit system established by a city, pursuant to section twenty-one-d of the general city law.

[~~(j)~~] **(i)** Any group of employers authorized by the workers' compensation board to provide workers' compensation benefits for the employees

of all member employers pursuant to subdivision three-a of section fifty of the workers' compensation law.

[~~(k)~~] **(j)** A charitable bail organization holding a certificate issued by the superintendent pursuant to section six thousand eight hundred five of this chapter.

(k) An institution of higher education, as defined in paragraph two of subsection (a) of section one thousand one hundred twenty-four of this article, that has a certificate of authority from the superintendent and complies with the requirements of section one thousand one hundred twenty-four of this article, to the extent therein stated.

[~~(n)~~] **(l)** A resolution facility established pursuant to section seven thousand seven hundred nineteen of this chapter.

§ 2. Paragraph 2 of subsection (a) of section 4522 of the insurance law is amended to read as follows:

(2) Organizations which limit their membership to the employees of a particular city or town, or of a designated business corporation or firm, or of one or more business corporations or firms having business interests in common, except as otherwise provided in subsection [~~(f)~~] **(e)** of section one thousand one hundred eight of this chapter. Any such organization which limits its membership to the employees of a corporation having more than five thousand employees may provide for hospital, surgical and medical benefits for the employee, his or her spouse, and his or her child or children not over eighteen years of age.

§ 3. Section 83 of the workers' compensation law, as amended by chapter 34 of the laws of 2010, is amended to read as follows:

§ 83. Rules. The [~~commissioner~~] **commissioners** shall adopt rules for the conduct of the business of the state fund, and may from time to time alter, amend or repeal any rule therefore adopted. At least six affirmative votes shall be required for the adoption of any rule, or the amendment or repeal of any rule. No rule, and no resolution proposing to alter, amend or repeal any rule, shall be effective unless approved by the [~~commissioner of labor. If the commissioner of labor fails to act upon any such rule or resolution within thirty days after it is communicated to him or her, such rule or resolution shall be deemed to have been approved~~] **superintendent of financial services**.

The rules of the commissioners shall provide for the conduct of the business of the state insurance fund, including the issuance of policies and their terms and conditions, the fixing of premium rates, the keeping of records, auditing of payrolls, and the billing and collection of premiums therefor, the inspection of risks and the setting of the standards of safety, the adjustment and payment of claims and awards, and the investigation of all matters relating thereto, the medical examination of persons claiming compensation and the furnishing and supervision of medical and surgical treatment to persons injured as set forth in this chapter, the conduct of the legal business of the fund and the enforcement of the subrogated rights of the fund against third parties, the investment of the surplus and reserves of the fund, **the compensation of insurance producers through commissions,** and the collection and analysis of statistics of payrolls, premiums, losses and expenses and the actuarial consideration thereof.

§ 4. Subdivision a of section 94 of the workers' compensation law, as amended by chapter 635 of the laws of 1996, is amended to read as follows:

a. Any employer may, upon complying with subdivision two or three of section fifty of this chapter, withdraw from the fund by turning in his insurance contract for cancellation, [~~provided he has given written~~

~~notice to the fund of his intention to withdraw not less than thirty days before the effective date of such cancellation~~] along with written notice of the effective date of the cancellation. Upon receipt of such notice the fund shall[~~, at least ten days prior to the effective date~~] file in the office of the chairman a notice of such cancellation date.

[~~In no event shall the insurance contract be deemed cancelled until at least ten days after the date of such filing, any earlier date mentioned in the notice to the contrary notwithstanding.~~]

If an employer withdraws from the fund upon complying with subdivision two of section fifty of this chapter, the new insurance contract with the stock corporation, mutual corporation or reciprocal insurer shall be deemed not to take effect until the cancellation of such employer's contract with the state insurance fund has become effective.

§ 5. Subdivision 1 of section 89 of the workers' compensation law, as amended by chapter 135 of the laws of 1998, is amended to read as follows:

1. Employments and employees in the state fund shall be divided into such groups and classes as shall be equitable based upon differences of industry or hazard for the purpose of establishing premium rates for workers' compensation insurance, and for such purpose a system of merit rating may be employed which shall take account of the peculiar hazard of each individual risk. Such premiums in the state fund shall be fixed at the lowest possible rates consistent with the maintenance of a solvent fund and of reasonable reserves and surplus, notwithstanding the payment of broker commission arrangements as provided for in this article.

§ 6. Subdivision 5 of section 76 of the workers' compensation law is renumbered subdivision 6 and a new subdivision 5 is added to read as follows:

5. The purposes of such state insurance fund are hereby further enlarged to permit it to compensate licensed insurance brokers for the services they provide their clients who are insured in the fund through the payment of commissions. The commissioners of the state insurance fund are hereby authorized and directed to establish, within the existing rate structure, a factor to compensate licensed insurance producers for the services provided to their clients who obtain coverage through the fund.

§ 7. This act shall take effect on the ninetieth day after it shall have become a law.