§ 3102. Requirements for the use of readable and understandable insurance policies. (a) Definitions. In this section "insurance policy" means any:

(1) form subject to approval under either section three thousand two hundred one or four thousand three hundred eight of this chapter;

(2) comprehensive health services plan as defined in section four thousand four hundred one of the public health law;

(3) contract of insurance for owners of dwellings consisting of not more than four dwelling units, and for household furnishings and personal property contained in any household unit, written for a divisible or indivisible premium which provides coverage for the peril of fire and extended coverage with or without any other kind of insurance as provided pursuant to subsection (a) of section one thousand one hundred thirteen of this chapter;

(4) contract of insurance insuring against losses or liabilities arising out of the ownership, operation, or use of a motor vehicle predominantly used for non-business purposes, when a natural person is the named insured.

(b) Exclusions. (1) This section shall not apply to:

(A) any insurance policy which has been determined to be a security subject to federal jurisdiction;

(B) certificates issued pursuant to a group life or accident and health insurance policy or group annuity contract issued to an employer covering persons employed in more than one state;

(C) any group insurance policy covering a group of one hundred or more lives, other than dependents, at date of issue, and a group credit life insurance policy or a group credit accident and health insurance policy; provided, however, this shall not exempt any certificate issued pursuant to a group insurance policy delivered or issued for delivery in this state;

(D) any group annuity contract which serves as a funding vehicle for pension, profit sharing or deferred compensation plans; provided, however, this shall not exempt any certificate issued pursuant to such group annuity contract;

(E) any insurance policy of life and accident and health insurance used in connection with, as a conversion from, as an addition to, or in exchange pursuant to a contractual provision for, an insurance policy

approved prior to October first, nineteen hundred eighty-two;

(F) the renewal of an insurance policy of life and accident and health insurance made, issued or delivered on a form provided prior to October first, nineteen hundred eighty-two;

(G) any insurance policy issued pursuant to article sixty-three of this chapter;

(H) any funding agreement issued pursuant to section three thousand two hundred twenty-two of this chapter; or

(I) any service contract issued pursuant to article seventy-nine of this chapter.

(2) No other statute of this state or provision of this chapter establishing language simplification standards shall apply to any insurance policy.

(3) Any non-English language insurance policy made, issued or delivered in this state on a risk located or resident in this state shall be deemed to be in compliance with subparagraph (D) of paragraph one of subsection (c) of this section if the insurer certifies that such insurance policy is translated from an English language insurance policy which does comply with such subparagraph.

(c) Readability requirements. (1) In addition to any other requirements of law, no insurance policy, except as set forth in subsection (b) of this section, shall be made, issued or delivered in this state on a risk located or resident in this state, unless:

(A) it is written in a clear and coherent manner;

(B) wherever practicable, it uses words with common and everyday meanings to facilitate readability and to aid the insured or policyholder in understanding the coverage provided;

(C) it has been filed with and approved by the superintendent;

(D) the text achieves a minimum score of forty-five on the Flesch reading ease test or an equivalent score on any other comparable test as provided in paragraph three of this subsection;

(E) it is printed, except for specification pages, schedules and tables, in not less than ten point type, and except for applications, specification pages, schedules and tables, such type is at least one point leaded;

(F) it is appropriately divided and captioned and presented in meaningful sequence; each section to contain an underlined, boldface or

otherwise conspicuous title or caption at the beginning that indicates the nature of the subject matter included in or covered by the section;

(G) it contains a table of contents or an index of the principal sections of the insurance policy if the insurance policy has more than three thousand words or if the insurance policy has more than three pages regardless of the number of words;

(H) it has margins that are adequate for the purposes of readability; and

(I) it is printed in such manner that it includes sufficient contrast of ink and paper to be legible.

(2) For the purposes of this subsection, a Flesch reading ease test score shall be measured by the following method:

(A) For an insurance policy containing ten thousand words or less of text, the entire form shall be analyzed. For an insurance policy containing more than ten thousand words, the readability of two hundred word samples per page may be analyzed instead of the entire form. The samples shall be separated by at least twenty printed lines.

(B) The number of words and sentences in the text shall be counted and the total number of words divided by the total number of sentences. The figure obtained shall be multipled by a factor of 1.015.

(C) The total number of syllables shall be counted and divided by the total number of words. The figure obtained shall be multiplied by a factor of 84.6.

(D) The sum of the figures computed under subparagraphs (B) and (C) hereof subtracted from 206.835 equals the Flesch reading ease score for the insurance policy.

(E) For purposes of subparagraphs (B), (C) and (D) hereof, the following procedures shall be used:

(i) a contraction, hyphenated word, or numbers and letters, when separated by spaces, shall be counted as one word;

(ii) a unit of words ending with a period, semicolon, or colon, but excluding headings and captions, shall be counted as a sentence; and

(iii) a syllable means a unit of spoken language consisting of one or more letters of a word as divided by an accepted dictionary. Where the dictionary shows two or more equally acceptable pronunciations of a word, the pronunciation containing fewer syllables may be used.

(F) In this subsection "text" includes all printed matter except the

following:

(i) the name and address of the insurer; the name, number or title of the policy; the table of contents or index; captions and subcaptions; specification pages, schedules or tables; and

(ii) any language which is drafted to conform to the requirements of any state or federal law, regulation or agency interpretation; any language required by any collectively bargained agreement; any medical terminology; and words which are defined in the insurance policy; and any language required by law or regulation; provided, however, the insurer identifies the language or terminology excepted by this subparagraph and certifies in writing that the language or terminology is entitled to be excepted by this subparagraph.

(3) Any other reading test may be designated by the superintendent for use as an alternative to the Flesch reading ease test.

(4) Filings subject to this subsection shall be certified by an officer of the insurer that they meet the minimum reading ease score on the test used or state that the score is lower than the minimum required but should be approved in accordance with subsection (d) of this section. To confirm the accuracy of any certification, the superintendent may require the submission of further information to verify the certification in question.

(5) At the option of the insurer, riders, endorsements, applications and other forms may be scored as separate forms or as part of the insurance policy with which they may be used.

(d) Lower score permitted. The superintendent may authorize a lower score than the Flesch reading ease score required in subparagraph (D) of paragraph one of subsection (c) of this section whenever, in the superintendent's sole discretion, he finds that a lower score:

(1) nevertheless reflects a readable and an understandable insurance policy which is consistent with the purposes of this section;

(2) is warranted by the nature of a particular insurance policy or type or class of insurance policies; or

(3) is caused by certain language which is drafted to conform to the requirements of any state law, regulation, agency or departmental interpretation.

(e) Other laws. (1) Any insurance policy meeting the requirements of subparagraphs (D) through (I) of paragraph one of subsection (c) of this

section may be approved notwithstanding the provisions of any other laws which specify the content of insurance policies, if in the opinion of the superintendent the insurance policy provides the policyholders and claimants protection not less favorable than they would be entitled to under such laws.

(2) This section shall not prohibit the use of words or phrases or contractual provisions required by state or federal law, rule or regulation or by a governmental instrumentality or by any collectively bargained agreement.

(f) Prohibition of non-conforming policies. Except as provided in subsection (b) of this section:

(1) no insurance policy described in paragraph one or two of subsection (a) of this section shall be made, issued or delivered in this state on a risk located or resident in this state, unless the policy complies with the requirements of this section;

(2) no insurance policy described in paragraph three or four of subsection (a) of this section and no renewal or extension certificate in connection therewith shall be made, issued or delivered in this state unless the insurance policy complies with the requirements of this section.