§ 3426. Commercial lines insurance; cancellation and renewal provisions. (a) Definitions. As used in this section:

(1) "Covered policy" means, for purposes of this section, a policy of commercial risk insurance, professional liability insurance or public entity insurance, and shall include any contract, certificate or other evidence of such insurance.

(2) "Required policy period" means a period of one year from the date as of which a covered policy is renewed or first issued.

(3) "Nonpayment of premium" means the failure of the named insured to discharge any obligation in connection with the payment of premiums on a policy of insurance or any installment of such premium, whether the premium is payable directly to the insurer or its agent, or indirectly under any premium finance plan or extension of credit. Payment to the insurer, or to an agent or broker authorized to receive such payment, shall be timely for the purpose of this section if made within fifteen days after the mailing to the insured of a notice of cancellation for nonpayment of premium.

(4) "Renewal" or "to renew" means the issuance or offer to issue by an insurer of a policy superseding a policy previously issued and delivered by the same insurer, or another insurer under common control, or the issuance or delivery of a certificate or notice extending the term of a policy beyond its policy period or term; provided, however, that any policy with a policy period or term of less than one year shall, for the purpose of this section, be considered as if written for a policy period or term of one year, and any policy with no fixed expiration date shall, for the purpose of this section, be considered as if written for successive policy periods or terms of one year.

(5) "Administrative suspension" means a temporary suspension of a driver's license pending a hearing, prosecution or investigation, or an indefinite suspension of a driver's license because of the failure of the person suspended to perform an act, which suspension will be terminated by the performance of the act by the person suspended.

(6) "Excess liability policy" means a policy of commercial risk, public entity or professional liability insurance, including a commercial umbrella policy, when written over one or more underlying liability policies that provide with respect to the same risk coverage of at least five hundred thousand dollars in the aggregate.

(7) "Hyper limits excess liability policy" means an excess liability policy of commercial risk, public entity or professional liability insurance, including a commercial umbrella policy, when written over one or more underlying liability policies issued by authorized insurers that provide with respect to the same risk coverage of at least ten million dollars in the aggregate.

(8) "Jumbo risk" means a business entity that generates gross revenues exceeding one hundred million dollars annually and that develops an annual liability premium for the policy of at least five hundred thousand dollars, but shall not include any public entity or not-for-profit corporation.

(9) "Renewal date" means the date specified in a conditional renewal notice, renewal certificate or in the renewal policy itself, for coverage under a renewal policy to take effect.

(10) "Blanket" or "mass" nonrenewal means a situation where the insurer within a six month period is nonrenewing policies representing more than one percent of a market.

(11) "Market" shall have the meaning ascribed by paragraph one of subsection (a) of section two thousand three hundred forty-four of this chapter.

(b) During the first sixty days a covered policy is initially in effect, except for the bases for cancellation set forth in paragraph one, two or three of subsection (c) of this section, no cancellation shall become effective until twenty days after written notice is mailed or delivered to the first-named insured at the mailing address shown in the policy and to such insured's authorized agent or broker.

(c) After a covered policy has been in effect for sixty days unless cancelled pursuant to subsection (b) of this section, or on or after the effective date if such policy is a renewal, no notice of cancellation shall become effective until fifteen days after written notice is mailed or delivered to the first-named insured and to such insured's authorized agent or broker, and such cancellation is based on one or more of the following:

(1) With respect to covered policies:

(A) nonpayment of premium provided, however, that a notice of cancellation on this ground shall inform the insured of the amount due;

(B) conviction of a crime arising out of acts increasing the hazard

insured against;

(C) discovery of fraud or material misrepresentation in the obtaining of the policy or in the presentation of a claim thereunder;

(D) after issuance of the policy or after the last renewal date, discovery of an act or omission, or a violation of any policy condition, that substantially and materially increases the hazard insured against, and which occurred subsequent to inception of the current policy period;

(E) material physical change in the property insured, occurring after issuance or last annual renewal anniversary date of the policy, which results in the property becoming uninsurable in accordance with the insurer's objective, uniformly applied underwriting standards in effect at the time the policy was issued or last renewed; or material change in the nature or extent of the risk, occurring after issuance or last annual renewal anniversary date of the policy, which causes the risk of loss to be substantially and materially increased beyond that contemplated at the time the policy was issued or last renewed;

(F) a determination by the superintendent that continuation of the present premium volume of the insurer would jeopardize that insurer's solvency or be hazardous to the interests of policyholders of the insurer, its creditors or the public;

(G) a determination by the superintendent that the continuation of the policy would violate, or would place the insurer in violation of, any provision of this chapter; or

(H) where the insurer has reason to believe, in good faith and with sufficient cause, that there is a probable risk or danger that the insured will destroy, or permit to be destroyed, the insured property for the purpose of collecting the insurance proceeds, provided, however, that:

(i) a notice of cancellation on this ground shall inform the insured in plain language that the insured must act within ten days if review by the department of the ground for cancellation is desired pursuant to item (iii) of this subparagraph (H);

(ii) notice of cancellation on this ground shall be provided simultaneously by the insurer to the department; and

(iii) upon written request of the insured made to the department within ten days from the insured's receipt of notice of cancellation on this ground, the department shall undertake a review of the ground for

cancellation to determine whether or not the insurer has satisfied the criteria for cancellation specified in this subparagraph; if after such review the department finds no sufficient cause for cancellation on this ground, the notice of cancellation on this ground shall be deemed null and void.

(2) With respect to that portion of a covered policy providing motor vehicle coverage, in addition to the basis for cancellation set forth in paragraph one of this subsection, suspension or revocation during the required policy period of the driver's license of any person who continues to operate a motor vehicle insured under the policy, other than a suspension issued pursuant to subdivision one of section five hundred ten-b of the vehicle and traffic law or one or more administrative suspensions arising from the same incident which has or have been terminated prior to the effective date of cancellation.

(3) With respect to professional liability insurance policies, in addition to the bases for cancellation set forth in paragraph one of this subsection, revocation or suspension of the insured's license to practice his profession or, if the insured is a hospital, it no longer possesses a valid operating certificate under section twenty-eight hundred one-a of the public health law.

(4) With respect to an excess liability policy, in addition to the basis for cancellation set forth in paragraph one of this subsection, cancellation of one or more of the underlying policies providing primary or intermediate coverage, where: (A) such cancellation is based upon paragraph one, two or three of this subsection; and (B) such policies are not replaced without lapse.

(5) Written notice of cancellation in accordance with this subsection shall be mailed or delivered to the first-named insured, at the address shown on the policy, and to the insured's authorized agent or broker.

(d) (1) After a covered policy has been in effect for sixty days, or on and after the effective date if such policy is a renewal, no premium increase for the term of the policy shall be made to become effective unless due to and commensurate with insured value added, subsequent to issuance or the last renewal date, pursuant to the policy or at the insured's request or, in lieu of cancellation, where such increase is based upon one or more of the grounds for cancellation set forth in subparagraph (D) or (E) of paragraph one of subsection (c) of this

section.

(2) No covered policy which provides for a policy term of less than one year may be issued, or issued for delivery, in this state, except:

(A) a policy issued to an insured for a seasonal purpose;

(B) a policy issued to cover a specific event or particular project that will be performed in less than one year;

(C) a new policy where the specific term is made to coincide with the term of an insured's already existing policy with the same insurer, with any insurer at the insured's written request or, in the case of an excess liability policy, with different insurers;

(D) a group property/casualty policy or certificates, policies issued pursuant to a safety group or mass merchandising program, or a medical malpractice or for-hire vehicle policy whose expiration date is common to all other policies issued by an insurer; in any of which events the first policy period may be for a period of less than one year with subsequent renewals requiring at least a one year policy period, and any such policies issued since the effective date of this section may be amended to conform to a common expiration date; or

(E) where an insured requests a liability insurance policy with a term of less than one year from an insurer that offers such policies; provided that the insurer also offers the insured the option of purchasing a policy with a term of one year, and:

(i) the insurer writes the policy on an occurrence basis;

(ii) the insurer writes the policy on a defense cost outside limits basis;

(iii) the insurer may extend the policy, provided that:

(a) the coverage remains in effect at the same terms and conditions;

(b) the rate accords with the rates filed with the superintendent at the policy's inception; and

(c) the extension does not result in the policy period exceeding eleven months in total;

(iv) the policy has no annual aggregate liability limit but may have aggregate limits for the term of the policy, and such aggregate limits shall continue with any policy extension provided pursuant to item (iii) of this subparagraph;

(v) the policy does not provide medical malpractice coverage; liability insurance required by articles six, eight, or forty-four-B of

the vehicle and traffic law or under any other financial responsibility law of this state; or public entity insurance;

(vi) the policy provides for a term of at least one month;

(vii) the policy does not contain a clause limiting the timely filing of a claim;

(viii) the policy provides for a return of premium on a pro-rata basis if the insured cancels or otherwise terminates the policy before the policy's expiration; and

(ix) the insurer provides a written disclosure to the insured that explains that a policy issued pursuant to this subparagraph may be more expensive than a policy with a term of one year.

(e) (1) A covered policy shall remain in full force and effect pursuant to the same terms, conditions and rates unless written notice is mailed or delivered by the insurer to the first-named insured, at the address shown on the policy, and to such insured's authorized agent or broker, indicating the insurer's intention:

(A) not to renew such policy; or

(B) to condition its renewal upon change of limits, change in type of coverage, reduction of coverage, increased deductible or addition of exclusion, or upon increased premiums in excess of ten percent (exclusive of any premium increase generated as a result of increased exposure units, pursuant to subsection (d) of this section, or as a result of experience rating, loss rating, retrospective rating or audit), except that with respect to an excess liability policy, the insurer may also, consistent with regulations promulgated by the superintendent, condition its renewal upon requirements relating to the underlying coverage, in which event the conditional renewal notice shall be treated as an effective notice of nonrenewal if such requirements are not satisfied as of the later of the expiration date of the policy or sixty days after mailing or delivery of such notice; or

(C) that the policy will not be renewed or will not be renewed upon the same terms, conditions or rates; such alternative renewal notice must be mailed or delivered on a timely basis and advise the insured that a second notice shall be mailed or delivered at a later date indicating the insurer's intention as specified in subparagraph (A) or (B) of this paragraph and that coverage shall continue on the same terms, conditions and rates as the expiring policy, until the later of

the expiration date or sixty days after the second notice is mailed or delivered; such alternative renewal notice also shall advise the insured of the availability of loss information pursuant to subsection (g) of this section and, upon written request, the insurer shall furnish such loss information within ten days consistent with the provisions of such subsection.

(2) A nonrenewal notice as specified in subparagraph (A), a conditional renewal notice as specified in subparagraph (B), and the second notice described in subparagraph (C) of paragraph one of this subsection shall contain the specific reason or reasons for nonrenewal or conditional renewal, set forth the amount of any premium increase (or, where such amount cannot reasonably be determined as of the time the notice is provided, a reasonable estimate of the premium increase based upon the information available to the insurer at that time), and describe in plain and concise terms the nature of any other proposed changes specified in paragraph one of this subsection. The superintendent shall by regulation specify the permissible range of such estimate (which shall not exceed five percent of the actual amount) and the permissible methods by which an insurer may satisfy the notice requirements of this section.

(3) The notice required by paragraph one of this subsection shall be mailed or delivered at least sixty, but not more than one hundred twenty, days in advance of the expiration date of the policy, except that for an excess liability policy or a policy issued to a jumbo risk, the notice shall be mailed or delivered at least thirty, but not more than one hundred twenty, days in advance of the expiration date of the policy.

(4) Paragraphs one, two and three of this subsection shall not apply when the named insured, an agent or broker authorized by the named insured, or another insurer of the named insured has mailed or delivered written notice that the policy has been replaced or is no longer desired.

(5) (A) If the insurer employs an alternative renewal notice as authorized by subparagraph (C) of paragraph one of this subsection, the insurer shall provide coverage on the same terms, conditions, and rates as the expiring policy, until the later of the expiration date or sixty days after the mailing or delivery of the second notice described in

such subparagraph, except to the extent that, prior thereto, the insured has replaced the coverage or elects to cancel, in which event such cancellation shall be on a pro rata premium basis.

(B) In the event that a late conditional renewal notice or a late nonrenewal notice is provided by the insurer prior to the expiration date of the policy, coverage shall remain in effect, at the same terms and conditions of the expiring policy and at the lower of the current rates or the prior period's rates, until sixty days after such notice is mailed or delivered, except to the extent that, prior thereto, the insured has replaced the coverage or elects to cancel, in which event such cancellation shall be on a pro rata premium basis; provided, however, that if the insured elects to renew on the basis of the conditional renewal notice, then such terms, conditions and rates shall govern the policy upon expiration of such sixty day period unless such notice was provided at least thirty days prior to the expiration date of the policy, in which event the terms, conditions and rates set forth in the conditional renewal notice shall apply as of the renewal date.

(C) (i) In the event that a late conditional renewal notice or a late nonrenewal notice is provided by the insurer on or after the expiration date of the policy, coverage shall remain in effect on the same terms and conditions of the expiring policy for another required policy period, and at the lower of the current rates or the prior period's rates unless the insured during the additional required policy period has replaced the coverage or elects to cancel, in which event such cancellation shall be on a pro rata premium basis.

(ii) Every notice mailed or delivered pursuant to this subsection shall advise the insured of the insured's rights to coverage and the duration thereof.

(6) Paragraph five of this subsection shall not create a new annual aggregate liability limit (if any) for the covered policy, except that the annual aggregate limit of the expiring policy shall be increased in proportion to the policy extension pursuant to such paragraph five; provided, however, that if the insured elects to accept the terms, conditions and rates of the conditional renewal notice pursuant to subparagraph (B) of paragraph four of this subsection, a new annual aggregate limitation (if any) shall become effective as of the inception date of the renewal, subject to regulations promulgated by the

superintendent.

(7) Each insurer subject to this section shall adopt and implement reasonable standards and procedures to ensure compliance with the provisions of subparagraphs (A), (B) and (C) of paragraph one and paragraphs two and three of this subsection. Each such insurer shall maintain a written or electronic record of any notice not in compliance with such provisions. Such record shall indicate the expiration date of the policy, the date notice should have been sent, the date when notice was sent, the policy number, and the name and address of the insured. Such records shall be available for inspection upon request by the superintendent.

(8) No insurer may issue blanket or mass nonrenewal notices for any market, except upon submission to the superintendent, at least forty-five days in advance of mailing or delivery of such notices, of a plan for orderly withdrawal that describes the proposed nonrenewals, states the basis for such nonrenewals, and identifies any measures such insurer intends to take in order to minimize market disruption.

(9) This subsection shall not apply to a hyper limits excess liability policy except in regard to nonrenewal or to a policy of the type specified in subparagraph (A), (B), or (E) of paragraph two of subsection (d) of this section.

(f) If an insurer provides the notice described in paragraphs one, two and three of subsection (e) of this section, and thereafter the insurer extends the policy for ninety days or less, an additional notice of nonrenewal is not required with respect to the extension.

(g) (1) Every notice mailed or delivered by an insurer pursuant to this section shall advise the first-named insured and such insured's authorized agent or broker of the availability of loss information consistent with paragraph two of this subsection.

(2) Upon written request by the first-named insured or such insured's authorized agent or broker, the insurer shall mail or deliver the following loss information covering a period of years specified by the superintendent by regulation or the period of time coverage has been provided by the insurer, whichever is less, within ten days of such request:

(A) Information on closed claims, including date and description of occurrence, and any payments;

(B) Information on open claims, including date and description of occurrence, and amounts of any payments; and

(C) Information on notice of any occurrences, including date and description of occurrence.

(3) The insurer may charge a reasonable fee as determined by the superintendent only for such information provided upon request, but not for such information (even in the absence of a request therefor) required to be provided.

(4) For purposes of this subsection, the term first-named insured shall include an individual certificate holder under a property/casualty group policy with respect to such certificate holder's loss information.

(h) Every notice of cancellation issued pursuant to this section shall specify the grounds for cancellation and shall contain where applicable a reference to the pertinent paragraph or subparagraph of subsection (c) of this section. Every notice of nonrenewal issued pursuant to this section shall set forth or be accompanied by the reason for nonrenewal, and any such stated reason shall be valid and effective unless such reason violates this chapter or any other state or federal law.

(i) No cancellation, conditional renewal or nonrenewal notice that fails to include a provision required by this section shall be an effective notice for purposes of this section.

(j) The provisions of subsection (e) of this section, regarding conditional renewal shall apply to the master contract under a property/casualty group policy, but shall not apply to individual certificate holders under such group policy.

(k) (1) Subject to the rights of an insurer to cancel a policy pursuant to subsection (b) or (c) of this section, in the event that an insurer terminates the contract or account of a licensed agent or broker, the insurer shall offer in regard to any policy written through such terminated agent or broker to continue each such policy with that agent or broker for any remaining part of the required policy period.

(2) The terminated agent or broker shall be entitled to receive commissions on all business continued pursuant to paragraph one of this subsection at the commission rate applicable to such agent or broker at the time of termination.

(3) This subsection shall not apply to an agent or broker: (A) who exclusively represents one insurer or a group of insurers under common

management; (B) whose license has been revoked by the superintendent; or (C) whose contract or account has been terminated due to the agent's or broker's insolvency or gross misconduct.

(l) (1) This section shall apply to any policy issued or issued for delivery in this state covering risks with multi-state locations, where the insured is principally headquartered in this state or where the policy provides that this section, as a matter of choice of law, is to govern the policy in regard to such locations.

(2) This section shall not apply to policies issued pursuant to a plan established under article fifty-three, fifty-four or fifty-five of this chapter, surety policies, policies providing workers' compensation or employers' liability coverage, financial guaranty insurance, policies providing mortgage guaranty or credit insurance, policies principally marine insurance as defined by paragraph twenty of subsection (a) of section one thousand one hundred thirteen of this chapter, legal services insurance, reinsurance contracts, policies written on an excess line basis, or policies subject to section three thousand four hundred twenty-five of this chapter.

(m) Nothing in this section shall be construed to prohibit an insurer from providing terms more favorable to an insured or other party in interest with regard to cancellation, nonrenewal or conditional renewal; nor shall anything herein be construed to limit the grounds for which an insurer may lawfully rescind or suspend a policy or decline to pay a claim under a policy.

(n) (1) Except for subparagraphs (B) and (C) of paragraph five and paragraph seven of subsection (e), an insurer doing business in this state which violates the provisions of subsection (e) with such frequency as to indicate a general business practice shall be subject to the penalties provided in paragraph two of this subsection.

(2) If it is found, after notice and an opportunity to be heard, that an insurer has violated subsection (e) of this section, each instance of noncompliance with paragraph one of this subsection may be treated as a separate violation of this section for purposes of ordering a penalty pursuant to section one hundred nine of this chapter.

(o) The provisions of subsections (e) and (h) of this section shall not apply to a policy the term of which expires during the period commencing with the original effective date of this section and ending

on the sixtieth day after such effective date, provided, however, that in the interim the provisions of former sections three thousand four hundred twenty-six and three thousand four hundred twenty-seven of this article as in effect on the day preceding the original effective date of this section shall apply, as if such sections were not repealed by a chapter of the laws of nineteen hundred eighty-six, but in the event any such policy is at any time reexecuted, renewed, altered, modified or amended, such provisions shall apply to such policy.