

STATE OF NEW YORK

5811

2011-2012 Regular Sessions

IN SENATE

June 17, 2011

Introduced by Sen. SEWARD - (at request of the New York State Insurance Department) - read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the insurance law, in relation to exempting insurers from certain rate and policy form approval requirements with respect to policies issued to large commercial insureds and from certain policy form filing and approval requirements with respect to certain inland marine insurance policies

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

Section 1. Subsections (a) and (b) of section 6301 of the insurance law are amended to read as follows:

(a) Notwithstanding any provision of this chapter, the superintendent shall, pursuant to regulations promulgated by ~~him~~ the superintendent, permit exemption from filing requirements only with respect to rates and policy forms, where applicable, for any of the kinds of insurance ~~authorized to be written in this state specified in subsection (b) of this section.~~

(b) ~~No~~ An exemption pursuant to subsection (a) hereof shall be permitted in relation to the kinds of insurance set forth in ~~paragraph one, two, three, fifteen, eighteen or twenty-three~~ paragraphs four through fourteen, sixteen, seventeen, nineteen through twenty-two, twenty-seven and twenty-nine, of subsection (a) of section one thousand one hundred thirteen of this chapter, ~~or to~~ and such insurance as the superintendent deems to be substantially similar to one of the foregoing kinds, except no exemption may be permitted for: (1) coverage for personal lines to natural persons for non-business purposes; (2) insurance specified in subsection (b) of section two thousand three hundred five of this chapter, except medical malpractice insurance, or section two thousand three hundred twenty-eight of this chapter; (3) insurance required to satisfy any financial responsibility requirement of this state; or (4) a policy written on a group basis. However, any risk pursuant to paragraph one, two or three of such subsection of such section of this chapter or personal lines risk (except ~~private passenger, non-fleet automobile~~ motor vehicle



insurance coverage to natural persons for non-business purposes) shall be exempt pursuant to subsection (a) hereof if it is included by the superintendent on the list maintained by ~~him~~ the superintendent pursuant to subsection (a) of section six thousand three hundred three of this article.

Section 2. Section 6301 of the insurance law is amended by adding two new subsections (d) and (e) to read as follows:

(d) Nothing in this article shall exempt any insurer, or any policy issued pursuant to this article, from any applicable provision or standard in this chapter, regulations promulgated thereunder, or other requirements of state law.

(e) In this article, "medical malpractice insurance" has the meaning set forth in subsection (b) of section five thousand five hundred one of this chapter.

Section 3. Section 6302 of the insurance law, paragraph 3 of subsection (c) as amended by chapter 534 of the laws of 1985, is amended to read as follows:

Section 6302. Special license. (a) An authorized insurer, as a condition precedent to the obtaining of such exemption, shall obtain a special license from the superintendent.

(b) Before such special license shall be issued or renewed the prospective licensee shall file in the office of the superintendent an application in such form and supplements thereto as the superintendent prescribes. Such license shall be subject to annual renewal with an annual fee of ~~one~~ two thousand dollars.

(c) Such license may only be issued to:

(1) an authorized insurer ~~which that~~ maintains at all times a surplus to policyholders of at least ~~twice the minimum surplus to policyholders required to be maintained for the kinds of insurance which it is authorized to write in this state~~ two hundred percent of the authorized control level as set forth in article thirteen of this chapter, except that with respect to a policy issued pursuant to paragraph three of subsection (a) of section six thousand three hundred three of this article, an authorized insurer that maintains at all times a surplus to policyholders of at least two hundred fifty percent of the authorized control level as set forth in article thirteen of this chapter; or

(2) a United States branch ~~which that~~ maintains at all times a trusted surplus of at least ~~twice the minimum trusted surplus required to be maintained for the kinds of insurance which it is authorized to write in this state~~ two hundred percent of the authorized control level as set forth in article thirteen of this chapter, except that with respect to a policy issued pursuant to paragraph three of subsection (a) of section six thousand three hundred three of this article, a United States branch that maintains at all times a trusted surplus of at least two hundred fifty percent of the authorized control level as set forth in article thirteen of this chapter; or

(3) ~~an insurer initially licensed on or after July first, nineteen hundred eighty-two pursuant to article forty-one of this chapter, or pursuant to article forty-two~~

~~of this chapter as an accident and health insurer, or pursuant to article sixty-one of this chapter as a reciprocal insurer, if such insurer is at least meeting the minimum surplus to policyholders requirement or the minimum trustee surplus requirement imposed upon such insurer by the provisions of the article pursuant to which it was initially licensed until June thirtieth, two thousand fourteen, a domestic property/casualty insurance company that maintains at all times a surplus to policyholders of at least twice the minimum surplus to policyholders required to be maintained for the kinds of insurance that it is authorized to write in this state, or an insurer licensed pursuant to article sixty-one of this chapter as a reciprocal insurer that maintains at all times a surplus to policyholders of at least the minimum surplus to policyholders required to be maintained for the kinds of insurance that it is authorized to write in this state, provided that the domestic property/casualty insurance company or reciprocal insurer: (A) has total direct premiums comprised of at least ninety percent medical malpractice insurance; (B) assumes reinsurance premiums in an amount that is less than five percent of total direct premiums written; and (C) writes ninety percent of its total direct premiums in this state.~~

(d) The superintendent may revoke, suspend, or refuse to renew such license if, after notice and a hearing, ~~he~~ the superintendent finds that such action will protect the best interests of the people of this state.

Section 4. Section 6303 of the insurance law is amended to read as follows:

Section 6303. Limitations. (a) The exemption ~~which that~~ may be granted pursuant to this article shall apply only if the business is underwritten and transacted from an office within this state; and ~~(i)~~ :

(1) the risk, as defined in regulations of the superintendent, produces a minimum annual premium in excess of one hundred thousand dollars or such higher amount as the superintendent may prescribe by regulation; ~~or (ii)~~

(2) the coverage is for a risk or class of risks which is of an unusual nature, a high loss hazard, or difficult to place, pursuant to a list promulgated or amended by the superintendent; ~~or~~

(3) until June thirtieth, two thousand thirteen, the policy, other than a medical malpractice insurance policy, is issued to a large commercial insured that employs or retains a special risk manager to assist in the negotiation and purchase of a policy exempted under this article, provided, however, that:

(A)(i) the special risk manager is not employed by the insurer issuing the policy or any person in the insurer's holding company system; and

(ii) the special risk manager is licensed as an insurance producer in this state pursuant to article twenty-one of this chapter, unless exempted from licensing therein;

(B) the insurer shall file with the superintendent a certificate of insurance evidencing the existence and terms of the policy within one business day of binding the insurance coverage; and

(C) a policy form that has not been previously filed with the superintendent shall be filed with the superintendent for informational purposes within three business days after first delivery of a policy using such form, but no later than sixty calendar days after the inception date of such policy.

(b) All policies For the purposes of this section:

(1) "Large commercial insured" means an entity that generates annual commercial risk insurance premium, other than for medical malpractice insurance, in excess of twenty-five thousand dollars with respect to the kinds of insurance specified in paragraphs four through fourteen, sixteen, seventeen, nineteen through twenty-two, twenty-seven and twenty-nine of subsection (a) of section one thousand one hundred thirteen of this chapter and such insurance as the superintendent deems to be substantially similar to one of the foregoing kinds and:

(A) has a net worth of at least seven million five hundred thousand dollars as of the insured's fiscal year end immediately preceding the policy's effective date;

(B) has gross assets exceeding ten million dollars and a net worth of at least one million five hundred thousand dollars as of the insured's fiscal year end immediately preceding the policy's effective date;

(C) is a for-profit business entity that generates annual gross revenues exceeding fifteen million dollars, and has a net worth of at least one million five hundred thousand dollars as of the insured's fiscal year end immediately preceding the policy's effective date;

(D) is a for-profit business entity that has gross assets exceeding ten million dollars and generates annual gross revenues exceeding fifteen million dollars as of the insured's fiscal year end immediately preceding the policy's effective date;

(E) is a not-for-profit organization or public entity with an annual budget exceeding twenty million dollars for each of its three fiscal years immediately preceding the policy's effective date;

(F) has fifty employees or, together with its parent, subsidiaries and affiliates, one hundred employees, as of the insured's fiscal year end immediately preceding the policy's effective date; or

(G) is a municipality with a population of fifty thousand or more persons.

(2) "Special risk manager" means a person who meets all of the following requirements:

(A) the person is an employee of, or third-party consultant retained by, the large commercial insured;

(B) the person provides skilled services in loss prevention, loss reduction, or risk and insurance coverage analysis and assessment, and purchase of insurance; and

(C) the person:

(i)(I) has a bachelor's degree or higher from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by the superintendent to demonstrate minimum competence in risk management; and

(II)(aa) has five years of experience in risk financing, loss prevention, risk and insurance coverage analysis and assessment, or purchasing commercial risk insurance; and

(bb) has:

(aaa) a designation as a chartered property and casualty underwriter (in this clause referred to as a "CPCU") issued by the American Institute for CPCU/Insurance Institute of America;

(bbb) a designation as an associate in risk management (ARM) issued by the American Institute for CPCU/Insurance Institute of America;

(ccc) a designation as certified risk manager (CRM) issued by the National Alliance for Insurance Education & Research;

(ddd) a designation as a Risk and Insurance Management Society (RIMS) fellow (RF) issued by the Global Risk Management Institute; or

(eee) any other designation, certification, or license determined by the superintendent to demonstrate minimum competency in risk management;

(ii)(I) has at least seven years of experience in risk financing, loss prevention, risk and insurance coverage analysis and assessment, or purchasing commercial risk insurance; and

(II) has any one of the designations specified in subclauses (aaa) through (eee) of subitem (bb) of clause (II) of item (i) of this subparagraph;

(iii) has at least ten years of experience in risk financing, loss prevention, risk and insurance coverage analysis and assessment, or purchasing commercial risk insurance; or

(iv) (I) has a graduate degree from an accredited college or university in risk management, business administration, finance, economics, or any

other field determined by the superintendent to demonstrate minimum competence in risk management; and

(II)(aa) has at least three years of experience in risk financing, loss prevention, risk and insurance coverage analysis and assessment, or purchasing commercial risk insurance; or

(bb) has any one of the designations specified in subclauses (aaa) through (eee) of subitem (bb) of clause (II) of item (i) of this subparagraph.

(3) "Municipality" shall mean any county, city, town or village.

(c) Effective on the fifth January first occurring after the date of the enactment of this subsection and each fifth January first occurring thereafter, the amounts specified in paragraph one of subsection (b) of this section may be adjusted to reflect the percentage change for such five-year period in the consumer price index for all urban consumers published by the Bureau of Labor Statistics of the United States Department of Labor. The superintendent may conduct a public hearing to determine whether such increase is necessary.

(d) (1) Except as provided in paragraph two of this subsection, every policy issued pursuant to the provisions of this article shall contain a notice to the policyholder that the rate and policy form are not subject to the filing requirements of this state and such other notices required by the superintendent pursuant to regulation.

(2) Every policy issued pursuant to paragraph three of subsection (a) of section six thousand three hundred three of this article shall contain a notice to the policyholder that the rates are not subject to the filing requirements of this state and the policy forms are not subject to the approval requirements of this state, and such other notices required by the superintendent pursuant to regulation.

~~(e)~~ (e) The superintendent may by regulation prescribe limitations on the total amount of business ~~which that~~ an insurer may transact pursuant to this article ~~or reimpose filing or approval requirements where and to the extent that the superintendent deems it in the interest of the policyholders.~~

Section 5. Section 2307 of the insurance law is amended by adding a new subsection (e) to read as follows:

(e) Policy forms for inland marine risks where the rates for such risks by general custom of the business are not written according to manual rates or rating plans shall not be filed pursuant to subsection (b) of this section, unless the superintendent directs that they be filed.

Section 6. Subsection (d) of section 2320 of the insurance law, as amended by chapter 235 of the laws of 1989, is amended to read as follows:

(d) This section shall be applicable to kinds of insurance or insurance activities the rates for which, pursuant to subsection (a) of section two thousand three hundred five, section two thousand three hundred twenty-eight or section two thousand three hundred forty-four of this article, are not subject to prior approval and which are subject to this article.

Section 7. Subsection (f) of section 2321 of the insurance law, as amended by chapter 235 of the laws of 1989, is amended to read as follows:

(f) This section shall be applicable to kinds of insurance or insurance activities the rates for which, pursuant to subsection (b) of section two thousand three hundred five, section two thousand three hundred twenty-eight or section two thousand three hundred forty-four of this article, are subject to prior approval and which are subject to this article.

Section 8. Section 3110 of the insurance law is amended to read as follows:

Section 3110. Withdrawal of ~~approval~~ of any policy form. (a) Whenever by the provisions of this chapter the superintendent is authorized to give his approval of any form of insurance policy or contract, he the superintendent may, after notice and hearing given to the insurer which that submitted such form for approval, withdraw an approval previously given, if the use of such form is contrary to the requirements applicable to such form at the time of such withdrawal. Any such withdrawal shall be effective at the expiration of such period, not less than ninety days after the giving of notice of withdrawal, as the superintendent shall in such notice prescribe.

(b) Whenever by the provisions of this chapter an insurer may use a policy form without obtaining the prior approval of the superintendent, the superintendent may, after notice and hearing given to the insurer, order the insurer to cease using such policy form, if the use of such form is contrary to the requirements applicable to such form at the time of the effective date of such order. Any such order shall be effective at the expiration of such period, not less than ninety days after the giving of a notice of cessation, as the superintendent shall in such notice prescribe.

Section 9. This act shall take effect on the ninetieth day after it shall have become a law; provided that the amendments to subsection (d) of section 2320 of the insurance law made by section six of this act shall not affect the expiration of such section and shall be deemed to expire therewith.