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

9243--B

2009-2010 Regular Sessions

I N A S S E M B L Y

November 9, 2009

Introduced by M. of A. O'DONNELL -- read once and referred to the Committee on Insurance -- recommitted to the Committee on Insurance in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the insurance law, in relation to providing enhanced consumer protections in the event of an insurer's discontinuance of coverage

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

Section 1. Short title. This act shall be known and may be cited as "Ian's law".

S 2. Paragraph 3 of subsection (p) of section 3221 of the insurance law, as added by chapter 661 of the laws of 1997, is amended to read as follows:

(3)(A) In any case in which an insurer decides to discontinue offering a particular class of group or blanket policy of hospital, surgical or medical expense insurance offered in the small or large group market, the policy of such class may be discontinued by the insurer in accordance with this chapter in such market only if:

(i) the insurer provides written notice to each policyholder provided coverage of this class in such market (and to all [participants] EMPLOYEES and [beneficiaries] MEMBER INSUREDS covered under such coverage) of such discontinuance at least ninety days prior to the date of discontinuance of such coverage. IN ADDITION TO ANY OTHER INFORMATION REQUIRED OF NOTICES BY THE SUPERINTENDENT, THIS WRITTEN NOTICE SHALL CONSPICUOUSLY INCLUDE AN EXPLANATION, IN PLAIN LANGUAGE, OF THE POLICYHOLDER'S AND COVERED EMPLOYEE'S OR MEMBER INSURED'S RIGHTS UNDER THIS SUBPARAGRAPH AND (B) OF THIS PARAGRAPH, INCLUDING:

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

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(I) A STATEMENT THAT IF THE SUPERINTENDENT DETERMINES THAT THE COVERED EMPLOYEE, MEMBER INSURED, OR A DEPENDENT HAS A SERIOUS MEDICAL CONDITION, AND THE COVERED EMPLOYEE, MEMBER INSURED OR DEPENDENT WITHIN THE PREVIOUS TWELVE MONTHS UTILIZED A BENEFIT UNDER THE POLICY RELATED TO THE SERIOUS MEDICAL CONDITION THAT IS NOT COVERED BY THE REPLACEMENT COVERAGE OFFERED TO THE POLICYHOLDER AS A RESULT OF THE DISCONTINUANCE, THEN THE SUPERINTENDENT SHALL REQUIRE THE INSURER TO OFFER THE POLICYHOLDER REPLACEMENT COVERAGE THAT INCLUDES A BENEFIT THAT IS THE SAME AS OR SUBSTANTIALLY SIMILAR TO THE BENEFIT SET FORTH IN THE POLICY THAT THE INSURER DISCONTINUED; AND

(II) AN EXPLANATION AS TO HOW TO CONTACT THE SUPERINTENDENT, AND THE DATE BY WHICH THE SUPERINTENDENT SHALL BE CONTACTED, IF THE POLICYHOLDER, COVERED EMPLOYEE OR MEMBER INSURED BELIEVES THAT THE COVERED EMPLOYEE, MEMBER INSURED OR A DEPENDENT HAS A SERIOUS MEDICAL CONDITION, AND THE COVERED EMPLOYEE, MEMBER INSURED OR DEPENDENT WITHIN THE PREVIOUS TWELVE MONTHS UTILIZED A BENEFIT RELATED TO THE SERIOUS MEDICAL CONDITION THAT MAY NOT BE COVERED BY THE REPLACEMENT COVERAGE OFFERED TO THE POLICYHOLDER AS A RESULT OF THE DISCONTINUANCE;

(ii) the insurer offers to each policyholder provided coverage of this class in such market, the option to purchase all (or, in the case of the large group market, any) other hospital, surgical and medical expense coverage currently being offered by the insurer to a group in such market; [and]

(iii) in exercising the option to discontinue coverage of this class and in offering the option of coverage under item (ii) of this subparagraph, the insurer acts uniformly without regard to the claims experience of those policyholders or any health status-related factor relating to any [insureds covered or new insureds] PARTICULAR COVERED EMPLOYEE, MEMBER INSURED OR DEPENDENT OR PARTICULAR NEW EMPLOYEE, MEMBER INSURED OR DEPENDENT who may become eligible for such coverage, AND THE INSURER IS NOT DISCONTINUING THE COVERAGE OF THIS CLASS WITH THE INTENT OR AS A PRETEXT TO DISCONTINUING THE COVERAGE OF ANY SUCH EMPLOYEE, MEMBER INSURED OR DEPENDENT; AND

(IV) AT LEAST NINETY DAYS PRIOR TO THE DATE OF DISCONTINUANCE OF SUCH COVERAGE, THE INSURER PROVIDES WRITTEN NOTICE TO THE SUPERINTENDENT OF SUCH DISCONTINUANCE, INCLUDING THE REASON FOR THE DISCONTINUANCE, AND AN OFFICER OR DIRECTOR OF THE INSURER CERTIFIES TO THE SUPERINTENDENT THAT THE INSURER HAS COMPLIED WITH ITEMS (I), (II) AND (III) OF THIS PARAGRAPH. IF SUCH NOTICE DOES NOT INCLUDE THE DATE OR DATES THAT THE INSURER MAILED OR DELIVERED THE NOTICE TO ALL POLICYHOLDERS, COVERED EMPLOYERS AND MEMBER INSUREDS, THE INSURER SHALL NOTIFY THE SUPERINTENDENT OF SUCH DATE WITHIN SEVEN DAYS OF THE COMPLETION OF THE MAILING OR DELIVERY.

(B) IF THE SUPERINTENDENT DETERMINES THAT THE INSURER HAS NOT COMPLIED WITH ITEM (III) OF SUBPARAGRAPH (A) OF THIS PARAGRAPH, THEN THE SUPERINTENDENT MAY PROHIBIT THE INSURER FROM DISCONTINUING THE CLASS OF POLICIES AND REQUIRE THE INSURER TO PROMPTLY NOTIFY EVERY POLICYHOLDER, COVERED EMPLOYEE AND MEMBER INSURED THAT THE INSURER IS NOT DISCONTINUING THE POLICIES. IF THE SUPERINTENDENT DETERMINES THAT THE INSURER WRONGFULLY DISCONTINUED THE CLASS OF POLICIES PURSUANT TO ITEM (III) OF SUBPARAGRAPH (A), THEN THE SUPERINTENDENT SHALL REQUIRE THAT THE INSURER TAKE REMEDIAL ACTION, INCLUDING OFFERING TO GROUP POLICYHOLDERS THE OPTION OF REINSTATING THE DISCONTINUED POLICY FORMS. IF THE SUPERINTENDENT DETERMINES THAT THE INSURER DISCONTINUED THE CLASS OF POLICIES WITHOUT COMPLIANCE WITH ITEMS (I), (II), OR (IV) OF SUBPARAGRAPH (A), AND AN EMPLOYEE, MEMBER INSURED OR DEPENDENT COVERED UNDER THE DISCON-

TINUED POLICY WOULD HAVE BEEN ENTITLED TO RELIEF UNDER THIS PARAGRAPH, THEN THE SUPERINTENDENT MAY REQUIRE THAT THE INSURER OFFER REPLACEMENT COVERAGE TO AN AFFECTED POLICYHOLDER CONSISTENT WITH ITEM (II) OF SUBPARAGRAPH (C) OF THIS PARAGRAPH.

(C) (I) IF, WITHIN FORTY-FIVE DAYS AFTER THE INSURER MAILS OR DELIVERS THE WRITTEN NOTICE OF DISCONTINUANCE REQUIRED BY ITEM (I) OF SUBPARAGRAPH (A) OF THIS PARAGRAPH, THE SUPERINTENDENT IS NOTIFIED BY A POLICYHOLDER OR COVERED EMPLOYEE OR MEMBER INSURED THAT A COVERED EMPLOYEE, MEMBER INSURED OR DEPENDENT HAS A SERIOUS MEDICAL CONDITION AND THAT A BENEFIT UTILIZED BY THE COVERED EMPLOYEE, MEMBER INSURED OR DEPENDENT WITHIN THE PREVIOUS TWELVE MONTHS RELATED TO THE SERIOUS MEDICAL CONDITION MAY NOT BE COVERED BY THE REPLACEMENT COVERAGE OFFERED TO THE POLICYHOLDER AS A RESULT OF THE DISCONTINUANCE, THEN THE SUPERINTENDENT SHALL, WITHIN TWENTY DAYS OF THE NOTIFICATION, ASK THE INSURER TO CONFIRM THAT THE COVERED EMPLOYEE, MEMBER INSURED OR DEPENDENT UTILIZE A BENEFIT WITHIN THE PREVIOUS TWELVE MONTHS TO TREAT THE MEDICAL CONDITION THAT THE COVERED EMPLOYEE, MEMBER INSURED OR DEPENDENT ASSERTS IS A SERIOUS MEDICAL CONDITION, AND THAT THE BENEFIT IS NOT COVERED BY THE REPLACEMENT COVERAGE. THE SUPERINTENDENT MAY REQUEST SUCH ADDITIONAL INFORMATION AS THE SUPERINTENDENT MAY REQUIRE. THE INSURER SHALL PROVIDE ALL REQUESTED INFORMATION TO THE SUPERINTENDENT WITHIN FIVE DAYS OF RECEIPT OF THE REQUEST.

(II) IF, WITHIN TWENTY DAYS OF THE SUPERINTENDENT'S RECEIPT OF ALL ADDITIONAL INFORMATION REQUESTED FROM THE INSURER, THE SUPERINTENDENT DETERMINES THAT (I) THE COVERED EMPLOYEE, MEMBER INSURED OR DEPENDENT HAS A SERIOUS MEDICAL CONDITION; AND (II) THE BENEFIT UTILIZED BY THE COVERED EMPLOYEE, MEMBER INSURED OR DEPENDENT WITHIN THE PREVIOUS TWELVE MONTHS RELATED TO THE SERIOUS MEDICAL CONDITION IS NOT COVERED BY THE REPLACEMENT COVERAGE OFFERED TO THE POLICYHOLDER AS A RESULT OF THE DISCONTINUANCE, THEN THE SUPERINTENDENT SHALL REQUIRE THE INSURER TO OFFER TO THE POLICYHOLDER REPLACEMENT COVERAGE THAT INCLUDES A BENEFIT THAT IS THE SAME AS OR SUBSTANTIALLY SIMILAR TO THE BENEFIT SET FORTH IN THE POLICY THAT THE INSURER DISCONTINUED. IF THE REPLACEMENT COVERAGE IS NOT AVAILABLE, AT THE TIME THAT THE POLICY WOULD OTHERWISE BE DISCONTINUED, THEN THE INSURER SHALL KEEP THE EXISTING POLICY IN FORCE FOR THE AFFECTED POLICYHOLDER UNTIL THE REPLACEMENT COVERAGE WITH THE SUBSTANTIALLY SIMILAR BENEFIT IS AVAILABLE.

(D) THE REMEDIES AS PROVIDED IN THIS PARAGRAPH SHALL BE IN ADDITION TO AND NOT IN LIEU OF ANY OTHER AUTHORITY OR POWER OF THE SUPERINTENDENT TO IMPOSE MONETARY OR OTHER PENALTIES FOR VIOLATIONS OF THIS PARAGRAPH.

[(B)] (E) In any case in which an insurer elects to discontinue offering all hospital, surgical and medical expense coverage in the small group market or the large group market, or both markets, in this state, health insurance coverage may be discontinued by the insurer only if:

(i) the insurer provides written notice to the superintendent and to each policyholder (and [participants and beneficiaries] ALL EMPLOYEES AND MEMBER INSUREDS covered under such coverage) of such discontinuance at least one hundred eighty days prior to the date of the discontinuance of such coverage;

(ii) all hospital, surgical and medical expense coverage issued or delivered for issuance in this state in such market (or markets) is discontinued and coverage under such policies in such market (or markets) is not renewed; and

(iii) in addition to the notice to the superintendent referred to in item (i) of this subparagraph, the insurer [must] SHALL provide the superintendent with a written plan to minimize potential disruption in the marketplace occasioned by [its] THE INSURER'S withdrawal from the market.

[(C)] (F) In the case of a discontinuance under subparagraph [(B)] (E of this paragraph in a market, the insurer may not provide for the issuance of any group or blanket policy of hospital, surgical or medical expense insurance in that market in this state during the five year period beginning on the date of the discontinuance of the last health insurance policy not so renewed.

S 3. Paragraph 3 of subsection (j) of section 4305 of the insurance law, as added by chapter 661 of the laws of 1997, is amended to read as follows:

(3) (A) In any case in which a corporation decides to discontinue offering a particular class of group or blanket contract of hospital, surgical or medical expense insurance offered in the small or large group market, the contract of such class may be discontinued by the corporation in accordance with this chapter in such market only if:

(i) the corporation provides written notice to each contract holder provided coverage of this class in such market (and to all [participants] EMPLOYEES and [beneficiaries] MEMBER INSUREDS covered under such coverage) of such discontinuance at least ninety days prior to the date of discontinuance of such coverage. IN ADDITION TO ANY OTHER INFORMATION REQUIRED OF NOTICES BY THE SUPERINTENDENT, THIS WRITTEN NOTICE SHALL CONSPICUOUSLY INCLUDE AN EXPLANATION, IN PLAIN LANGUAGE, OF THE CONTRACT HOLDER'S AND COVERED EMPLOYEE'S OR MEMBER INSURED'S RIGHTS UNDER THIS SUBPARAGRAPH AND SUBPARAGRAPH (B) OF THIS PARAGRAPH, INCLUDING:

(I) A STATEMENT THAT IF THE SUPERINTENDENT DETERMINES THAT THE COVERED EMPLOYEE, MEMBER INSURED, OR A DEPENDENT HAS A SERIOUS MEDICAL CONDITION, AND THE COVERED EMPLOYEE, MEMBER INSURED OR DEPENDENT WITHIN THE PREVIOUS TWELVE MONTHS UTILIZED A BENEFIT UNDER; THE CONTRARY RELATED TO THE SERIOUS MEDICAL CONDITION THAT IS NOT COVERED BY THE REPLACEMENT COVERAGE OFFERED TO THE CONTRACT HOLDER AS A RESULT OF THE DISCONTINUANCE, THEN THE SUPERINTENDENT SHALL REQUIRE THE CORPORATION TO OFFER THE CONTRACT HOLDER REPLACEMENT COVERAGE THAT INCLUDES A BENEFIT THAT IS THE SAME AS OR SUBSTANTIALLY SIMILAR TO THE BENEFIT SET FORTH IN THE CONTRACT THAT THE CORPORATION DISCONTINUED; AND

(II) AN EXPLANATION AS TO HOW TO CONTACT THE SUPERINTENDENT, AND THE DATE BY WHICH THE SUPERINTENDENT SHALL BE CONTACTED, IF THE CONTRACT HOLDER, COVERED EMPLOYEE OR MEMBER INSURED BELIEVES THAT THE COVERED EMPLOYEE, MEMBER INSURED OR A DEPENDENT HAS A SERIOUS MEDICAL CONDITION, AND THE COVERED EMPLOYEE, MEMBER INSURED OR DEPENDENT WITHIN THE PREVIOUS TWELVE MONTHS UTILIZED A BENEFIT RELATED TO THE SERIOUS MEDICAL CONDITION THAT MAY NOT BE COVERED BY THE REPLACEMENT COVERAGE OFFERED TO THE CONTRACT HOLDER AS A RESULT OF THE DISCONTINUANCE;

(ii) the corporation offers to each contract holder provided coverage of this class in such market, the option to purchase all (or, in the case of the large group market, any) other hospital, surgical and medical expense coverage currently being offered by the corporation to a group in such market; [and]

(iii) in exercising the option to discontinue coverage of this class and in offering the option of coverage under item (ii) of this subparagraph, the corporation acts uniformly without regard to the claims experience of those contract holders or any health status-related factor relating to any [subscribers covered or new subscribers] PARTICULAR COVERED EMPLOYEE, MEMBER INSURED OR DEPENDENT who may become eligible for such coverage, AND THE CORPORATION IS NOT DISCONTINUING THE COVERAGE

OF THIS CLASS WITH THE INTENT OR AS A PRETEXT TO DISCONTINUING THE COVERAGE OF ANY SUCH EMPLOYEE, MEMBER INSURED OR DEPENDENT; AND

(IV) AT LEAST NINETY DAYS PRIOR TO THE DATE OF DISCONTINUANCE OF SUCH COVERAGE, THE CORPORATION PROVIDES WRITTEN NOTICE TO THE SUPERINTENDENT OF SUCH DISCONTINUANCE, INCLUDING THE REASON FOR THE DISCONTINUANCE, AND AN OFFICER OR DIRECTOR OF THE CORPORATION CERTIFIES TO THE SUPERINTENDENT THAT THE CORPORATION HAS COMPLIED WITH ITEMS (I), (II) AND (III) OF THIS PARAGRAPH. IF SUCH NOTICE DOES NOT INCLUDE THE DATE OR DATES THAT THE CORPORATION MAILED OR DELIVERED THE NOTICE TO ALL CONTRACT HOLDERS, COVERED EMPLOYERS AND MEMBER INSUREDS, THE CORPORATION SHALL NOTIFY THE SUPERINTENDENT OF SUCH DATE WITHIN SEVEN DAYS OF THE COMPLETION OF THE MAILING OR DELIVERY.

(B) IF THE SUPERINTENDENT DETERMINES THAT THE CORPORATION HAS NOT COMPLIED WITH ITEM (III) OF SUBPARAGRAPH (A) OF THIS PARAGRAPH, THEN THE SUPERINTENDENT MAY PROHIBIT THE CORPORATION FROM DISCONTINUING THE CLASS OF CONTRACTS AND REQUIRE THE CORPORATION TO PROMPTLY NOTIFY EVERY CONTRACT HOLDER, COVERED EMPLOYEE AND MEMBER INSURED THAT THE CORPORATION IS NOT DISCONTINUING THE CONTRACTS. IF THE SUPERINTENDENT DETERMINES THAT THE CORPORATION WRONGFULLY DISCONTINUED THE CLASS OF CONTRACTS PURSUANT TO ITEM (III) OF SUBPARAGRAPH (A), THEN THE SUPERINTENDENT SHALL REQUIRE THAT THE CORPORATION TAKE REMEDIAL ACTION, INCLUDING OFFERING TO GROUP CONTRACT HOLDERS THE OPTION OF REINSTATING THE DISCONTINUED CONTRACT FORMS. IF THE SUPERINTENDENT DETERMINES THAT THE CORPORATION DISCONTINUED THE CLASS OF CONTRACTS WITHOUT COMPLIANCE WITH ITEMS (I), (II), OR (IV) OF SUBPARAGRAPH (A), AND AN EMPLOYEE, MEMBER INSURED OR DEPENDENT COVERED UNDER THE DISCONTINUED CONTRACT WOULD HAVE BEEN ENTITLED TO RELIEF UNDER THIS PARAGRAPH, THEN THE SUPERINTENDENT MAY REQUIRE THAT THE CORPORATION OFFER REPLACEMENT COVERAGE TO AN AFFECTED CONTRACT HOLDER CONSISTENT WITH ITEM (II) OF SUBPARAGRAPH (C) OF THIS PARAGRAPH.

(C) (I) IF, WITHIN FORTY-FIVE DAYS AFTER THE CORPORATION MAILS OR DELIVERS THE WRITTEN NOTICE OF DISCONTINUANCE REQUIRED BY ITEM (I) OF SUBPARAGRAPH (A) OF THIS PARAGRAPH, THE SUPERINTENDENT IS NOTIFIED BY A CONTRACT HOLDER OR COVERED EMPLOYEE OR MEMBER INSURED THAT A COVERED EMPLOYEE, MEMBER INSURED OR DEPENDENT HAS A SERIOUS MEDICAL CONDITION AND THAT A BENEFIT UTILIZED BY THE COVERED EMPLOYEE, MEMBER INSURED OR DEPENDENT WITHIN THE PREVIOUS TWELVE MONTHS RELATED TO THE SERIOUS MEDICAL CONDITION MAY NOT BE COVERED BY THE REPLACEMENT COVERAGE OFFERED TO THE CONTRACT HOLDER AS A RESULT OF THE DISCONTINUANCE, THEN THE SUPERINTENDENT SHALL, WITHIN TWENTY DAYS OF THE NOTIFICATION, ASK THE CORPORATION TO CONFIRM THAT THE COVERED EMPLOYEE, MEMBER INSURED OR DEPENDENT UTILIZED A BENEFIT WITHIN THE PREVIOUS TWELVE MONTHS TO TREAT THE MEDICAL CONDITION THAT THE COVERED EMPLOYEE, MEMBER INSURED OR DEPENDENT ASSERTS IS A SERIOUS MEDICAL CONDITION, AND THAT THE BENEFIT IS NOT COVERED BY THE REPLACEMENT COVERAGE. THE SUPERINTENDENT MAY REQUEST SUCH ADDITIONAL INFORMATION AS THE SUPERINTENDENT MAY REQUIRE. THE CORPORATION SHALL PROVIDE ALL REQUESTED INFORMATION TO THE SUPERINTENDENT WITHIN FIVE DAYS OF RECEIPT OF THE REQUEST.

(II) IF, WITHIN TWENTY DAYS OF THE SUPERINTENDENT'S RECEIPT OF ALL ADDITIONAL INFORMATION REQUESTED FROM THE CORPORATION, THE SUPERINTENDENT DETERMINES THAT (I) THE COVERED EMPLOYEE, MEMBER INSURED OR DEPENDENT HAS A SERIOUS MEDICAL CONDITION; AND (II) THE BENEFIT UTILIZED BY THE COVERED EMPLOYEE, MEMBER INSURED OR DEPENDENT WITHIN THE PREVIOUS TWELVE MONTHS RELATED TO THE SERIOUS MEDICAL CONDITION IS NOT COVERED BY THE REPLACEMENT COVERAGE OFFERED TO THE CONTRACT HOLDER AS A RESULT OF THE DISCONTINUANCE, THEN THE SUPERINTENDENT SHALL REQUIRE THE CORPO-

RATION TO OFFER TO THE CONTRACT HOLDER REPLACEMENT COVERAGE THAT INCLUDES A BENEFIT THAT IS THE SAME AS OR SUBSTANTIALLY SIMILAR TO THE BENEFIT SET FORTH IN THE CONTRACT THAT THE CORPORATION DISCONTINUED. IF THE REPLACEMENT COVERAGE IS NOT AVAILABLE, AT THE TIME THAT THE CONTRACT WOULD OTHERWISE BE DISCONTINUED, THEN THE CORPORATION SHALL KEEP THE EXISTING POLICY IN FORCE FOR THE AFFECTED CONTRACT HOLDER UNTIL THE REPLACEMENT COVERAGE WITH THE SUBSTANTIALLY SIMILAR BENEFIT IS AVAILABLE.

(D) THE REMEDIES AS PROVIDED IN THIS PARAGRAPH SHALL BE IN ADDITION TO AND NOT IN LIEU OF ANY OTHER AUTHORITY OR POWER OF THE SUPERINTENDENT TO IMPOSE MONETARY OR OTHER PENALTIES FOR VIOLATIONS OF THIS PARAGRAPH.

[(B)] (E) In any case in which a corporation elects to discontinue offering all hospital, surgical and medical expense coverage in the small group market or the large group market, or both markets, in this state, health insurance coverage may be discontinued by the corporation only if:

(i) the corporation provides written notice to the superintendent and to each contract holder (and [participants and beneficiaries] ALL EMPLOYEES AND MEMBER INSUREDS covered under such coverage) of such discontinuance at least one hundred eighty days prior to the date of the discontinuance of such coverage;

(ii) all hospital, surgical and medical expense coverage issued or delivered for issuance in this state in such market or markets is discontinued and coverage under such contracts in such market or markets is not renewed; and

(iii) in addition to the notice to the superintendent referred to in item (i) of this subparagraph, the corporation [must] SHALL provide the superintendent with a written plan to minimize potential disruption in the marketplace occasioned by [its] THE CORPORATION'S withdrawal from the market.

[(C)] (F) In the case of a discontinuance under subparagraph [(B)] (E) of this paragraph in a market, the corporation may not provide for the issuance of any group or blanket contract of hospital, surgical or medical expense insurance in that market in this state during the five-year period beginning on the date of the discontinuance of the last health insurance contract not so renewed.

S 4. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.