

4602

2009-2010 Regular Sessions

I N S E N A T E

April 24, 2009

Introduced by Sens. BRESLIN, DUANE -- read twice and ordered printed,
and when printed to be committed to the Committee on Insurance

AN ACT to amend the insurance law, in relation to a health insurance demonstration program for independent workers and providing for the repeal of such provisions upon expiration thereof

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

1 Section 1. The insurance law is amended by adding a new section 1123
2 to read as follows:
3 S 1123. HEALTH INSURANCE DEMONSTRATION PROGRAM FOR INDEPENDENT WORK-
4 ERS. (A) PURPOSE OF THE DEMONSTRATION PROGRAM. THE LEGISLATURE RECOG-
5 NIZES THAT INDEPENDENT CONTRACTORS, PART-TIME WORKERS, TEMPORARY WORKERS
6 AND OTHER INDIVIDUALS WHO PERFORM WORK OUTSIDE THE SCOPE OF A FULL-TIME
7 EMPLOYMENT RELATIONSHIP WITH AN EMPLOYER FREQUENTLY LACK ACCESS TO
8 EMPLOYMENT-BASED GROUP HEALTH INSURANCE COVERAGE. AS A RESULT, THESE
9 INDEPENDENT WORKERS, WHO COMPRISE A GROWING PORTION OF THE WORKFORCE,
10 ARE MORE LIKELY THAN TRADITIONAL EMPLOYEES TO BE UNINSURED. THE DEMON-
11 STRATION PROGRAM AUTHORIZED BY THIS SECTION IS INTENDED TO TEST NEW
12 MODELS FOR ENABLING INDEPENDENT WORKERS TO CREATE THEIR OWN HEALTH
13 INSURANCE PROGRAMS THAT MEET THEIR SPECIAL NEEDS, WHILE ENSURING COMPLI-
14 ANCE WITH SOLVENCY REQUIREMENTS, BENEFIT MANDATES AND OTHER OBLIGATIONS
15 IMPOSED ON INSURERS UNDER THIS CHAPTER AND ANY REGULATIONS ISSUED BY THE
16 SUPERINTENDENT. THE DEMONSTRATION PROGRAM WILL ENABLE THE LEGISLATURE
17 AND THE SUPERINTENDENT TO EVALUATE WHETHER THESE NEW MODELS FOR DELIVER-
18 ING HEALTH INSURANCE BENEFITS TO INDEPENDENT WORKERS ARE EFFECTIVE AND
19 SHOULD BE EXPANDED TO OTHER SEGMENTS OF THE POPULATION THAT LACK ACCESS
20 TO EMPLOYMENT-BASED HEALTH INSURANCE.
21 (B) DEFINITIONS. FOR THE PURPOSES OF THIS SECTION, UNLESS THE CONTEXT
22 CLEARLY REQUIRES OTHERWISE:
23 (1) "ELIGIBLE ASSOCIATION" MEANS AN ENTITY THAT: (A) IS EXEMPT FROM
24 FEDERAL TAXATION UNDER SECTION 501(C)(3) OR (C)(4) OF THE INTERNAL

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

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1 REVENUE CODE, (B) WAS INCORPORATED ON OR BEFORE JANUARY FIRST, TWO THOU-
2 SAND NINE, (C) MEETS THE CRITERIA OF SUBPARAGRAPH (K) OF PARAGRAPH ONE
3 OF SUBSECTION (C) OF SECTION FOUR THOUSAND TWO HUNDRED THIRTY-FIVE OF
4 THIS CHAPTER, AND (D) HAS BEEN ISSUED ONE OR MORE GROUP HEALTH INSURANCE
5 POLICIES BY AN ELIGIBLE INSURER THAT COLLECTIVELY COVER AT LEAST TEN
6 THOUSAND INDEPENDENT WORKERS FROM DIVERSE AND UNRELATED INDUSTRIES OR
7 OCCUPATIONS RESIDING AND/OR WORKING IN NEW YORK STATE, INCLUDING SPOUSES
8 AND DEPENDENTS.

9 (2) "ELIGIBLE INSURER" MEANS AN INSURER LICENSED UNDER ARTICLE FORTY-
10 TWO OF THIS CHAPTER THAT IS PRIMARILY OWNED OR CONTROLLED BY AN ELIGIBLE
11 ASSOCIATION. FOR PURPOSES OF THIS PARAGRAPH, AN INSURER WILL BE DEEMED
12 TO BE PRIMARILY OWNED OR CONTROLLED BY AN ELIGIBLE ASSOCIATION IF THE
13 ELIGIBLE ASSOCIATION OR A WHOLLY OWNED SUBSIDIARY THEREOF OWNS MORE THAN
14 FIFTY PERCENT OF THE STOCK OF THE INSURER OR HAS THE RIGHT TO APPOINT
15 MORE THAN FIFTY PERCENT OF THE MEMBERS OF THE INSURER'S GOVERNING BODY.

16 (3) "INDEPENDENT WORKER" MEANS AN INDIVIDUAL WHO, AT THE TIME OF
17 APPLICATION FOR HEALTH INSURANCE: (A) WORKS AS A FREELANCER, INDEPENDENT
18 CONTRACTOR OR CONSULTANT, (B) IS SELF-EMPLOYED, (C) WORKS PART-TIME, (D)
19 WORKS FOR A TEMPORARY EMPLOYMENT OR PLACEMENT AGENCY, OR (E) WORKS FOR
20 MORE THAN ONE EMPLOYER SIMULTANEOUSLY. AN INDIVIDUAL IS NOT AN INDEPEND-
21 ENT WORKER IF HE OR SHE WORKS FULL-TIME AS AN EMPLOYEE OF A SINGLE
22 EMPLOYER OTHER THAN A TEMPORARY OR PLACEMENT AGENCY.

23 (4) "GROUP HEALTH INSURANCE" MEANS HOSPITAL, SURGICAL OR MEDICAL
24 EXPENSE COVERAGE OR OTHER SIMILAR COMPREHENSIVE HEALTH INSURANCE COVER-
25 AGE.

26 (C) DEMONSTRATION PROGRAM FOR INDEPENDENT WORKERS. (1) THE SUPERINTEN-
27 DENT IS AUTHORIZED TO APPROVE A DEMONSTRATION PROGRAM UNDER WHICH AN
28 ELIGIBLE INSURER ISSUES GROUP HEALTH INSURANCE POLICIES TO AN ELIGIBLE
29 ASSOCIATION. BOTH THE ELIGIBLE INSURER AND THE GROUP HEALTH INSURANCE
30 POLICIES ISSUED TO THE ELIGIBLE ASSOCIATION UNDER THE DEMONSTRATION
31 PROGRAM SHALL BE SUBJECT TO THE PROVISIONS OF THIS CHAPTER AND ANY REGU-
32 LATIONS ISSUED BY THE SUPERINTENDENT, EXCEPT THAT, NOTWITHSTANDING ANY
33 OTHER PROVISION OF THIS CHAPTER OR ANY REGULATIONS ISSUED BY THE SUPER-
34 INTENDENT, THE ELIGIBLE INSURER SHALL NOT BE REQUIRED TO OFFER GROUP
35 HEALTH INSURANCE POLICIES TO ANY GROUP OTHER THAN THE ELIGIBLE ASSOCI-
36 ATION THAT OWNS OR CONTROLS FIFTY PERCENT OR MORE OF THE ELIGIBLE INSUR-
37 ER.

38 (2) SUBJECT TO PARAGRAPH THREE OF THIS SUBSECTION, THE SUPERINTENDENT
39 MAY ISSUE AN APPROVAL TO AN ELIGIBLE INSURER UNDER PARAGRAPH ONE OF THIS
40 SUBSECTION IF THE ELIGIBLE INSURER DEMONSTRATES THAT IT SATISFIES ALL
41 FINANCIAL, OPERATIONAL AND OTHER REQUIREMENTS OF THIS CHAPTER AND THE
42 DEPARTMENT'S REGULATIONS APPLICABLE TO THE ELIGIBLE INSURER, OTHER THAN
43 ANY REQUIREMENTS EXPRESSLY WAIVED BY THIS SECTION, AND WILL OPERATE THE
44 DEMONSTRATION PROGRAM IN ACCORDANCE WITH THE REQUIREMENTS OF THIS
45 SECTION.

46 (3) ANY ELIGIBLE INSURER SEEKING THE SUPERINTENDENT'S APPROVAL UNDER
47 PARAGRAPH ONE OF THIS SUBSECTION SHALL SUBMIT A WRITTEN REQUEST TO THE
48 SUPERINTENDENT WITHIN THIRTY DAYS OF THE EFFECTIVE DATE OF THIS SECTION.
49 THE ELIGIBLE INSURER'S APPLICATION SHALL SPECIFY THE IDENTITY AND COMPO-
50 SITION OF THE ELIGIBLE ASSOCIATION, THE ELIGIBLE ASSOCIATION'S MEMBER-
51 SHIP RULES, AND THE TERMS UNDER WHICH THE ELIGIBLE INSURER INTENDS ON
52 PROVIDING GROUP HEALTH INSURANCE TO THE ELIGIBLE ASSOCIATION. IN NO
53 EVENT SHALL THE SUPERINTENDENT ISSUE AN APPROVAL TO MORE THAN ONE ELIGI-
54 BLE INSURER. IF MORE THAN ONE ELIGIBLE INSURER SUBMITS AN APPLICATION
55 WITHIN THE TIME PERIOD SPECIFIED IN THIS PARAGRAPH, THE SUPERINTENDENT
56 SHALL PROCESS SUCH APPLICATIONS IN THE ORDER IN WHICH THEY ARE RECEIVED.

1 (4) THE SUPERINTENDENT MAY REVOKE AN APPROVAL ISSUED UNDER PARAGRAPH
2 ONE OF THIS SUBSECTION IF THE INSURER THAT RECEIVED SUCH APPROVAL NO
3 LONGER QUALIFIES AS AN ELIGIBLE INSURER OR IS OTHERWISE OPERATING IN A
4 MANNER INCONSISTENT WITH THE PROVISIONS OF THIS SECTION. AN ELIGIBLE
5 INSURER APPROVED UNDER PARAGRAPH ONE OF THIS SUBSECTION SHALL SUBMIT
6 PERIODIC REPORTS TO THE SUPERINTENDENT SUFFICIENT TO ENABLE THE SUPER-
7 INTENDENT TO EVALUATE THE EFFECTIVENESS OF THE DEMONSTRATION PROGRAM.
8 SUCH REPORTS SHALL INCLUDE A COMPARISON OF THE COST OF HEALTH INSURANCE
9 OBTAINED UNDER THE PROGRAM TO OTHER AVAILABLE INSURANCE OPTIONS, AN
10 ANALYSIS OF THE PERCENTAGE OF INDIVIDUALS COVERED BY THE PROGRAM WHO
11 WERE UNINSURED OR RECEIVING HEALTH BENEFITS UNDER THE 1985 CONSOLIDATED
12 OMNIBUS BUDGET RECONCILIATION ACT (COBRA) AT THE TIME OF ENROLLMENT, A
13 DEMOGRAPHIC AND GEOGRAPHIC ANALYSIS OF THE ENROLLED POPULATION AND OTHER
14 INFORMATION DEEMED APPROPRIATE BY THE SUPERINTENDENT.

15 (5) NOTHING IN THIS SECTION SHALL PROHIBIT AN ELIGIBLE ASSOCIATION
16 FROM ESTABLISHING ELIGIBILITY RULES GOVERNING MEMBERSHIP IN THE ASSOCI-
17 ATION AND/OR ACCESS TO GROUP HEALTH INSURANCE THROUGH THE ELIGIBLE ASSO-
18 CIATION, INCLUDING BUT NOT LIMITED TO, RULES GOVERNING MINIMUM EARNINGS
19 OR HOURS WORKED, RETROSPECTIVE TIME PERIODS FOR MEASURING EARNINGS OR
20 HOURS, RENEWAL OF ELIGIBILITY AND TYPES OF COVERED INDUSTRIES OR OCCUPA-
21 TIONS; PROVIDED, HOWEVER, THAT NO SUCH RULES MAY BE INCONSISTENT WITH
22 THE PROVISIONS OF THIS SECTION. AN ELIGIBLE ASSOCIATION SHALL NOTIFY THE
23 SUPERINTENDENT OF ANY PROPOSED CHANGES TO SUCH RULES AT LEAST THIRTY
24 DAYS IN ADVANCE OF THEIR EFFECTIVE DATE. AN ELIGIBLE ASSOCIATION SHALL
25 NOT IMPLEMENT ANY SUCH CHANGES IF THE SUPERINTENDENT NOTIFIES THE ELIGI-
26 BLE ASSOCIATION DURING SUCH THIRTY-DAY PERIOD THAT THE CHANGES ARE
27 INCONSISTENT WITH THE PROVISIONS OF THIS SECTION.

28 S 2. This act shall take effect immediately and shall expire and be
29 deemed repealed December 31, 2014.