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

1639--A

2009-2010 Regular Sessions

I N S E N A T E

February 3, 2009

Introduced by Sen. VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the insurance law and the state finance law, in relation to establishing the small business insurance pool

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

Section 1. The insurance law is amended by adding a new article 43-A to read as follows:

ARTICLE 43-A

SMALL BUSINESS INSURANCE POOL PROGRAM

SECTION 4351. DEFINITIONS.
4352. SMALL BUSINESS INSURANCE BOARD.
4353. SMALL BUSINESS INSURANCE POOL PROGRAM.

S 4351. DEFINITIONS. AS USED IN THIS ARTICLE:

(A) "SMALL BUSINESS INSURANCE BOARD" OR "SBIB" MEANS THE BOARD ESTABLISHED PURSUANT TO SECTION FOUR THOUSAND THREE HUNDRED FIFTY-TWO OF THIS ARTICLE TO ESTABLISH AND MAINTAIN THE SMALL BUSINESS INSURANCE POOL PROGRAM.

(B) "SMALL BUSINESS INSURANCE POOL PROGRAM" MEANS THE PROGRAM ESTABLISHED PURSUANT TO SECTION FOUR THOUSAND THREE HUNDRED FIFTY-THREE UNDER THE DIRECTION OF THE SBIB.

(C) "QUALIFIED BUSINESS" MEANS ANY PERSON, PROPRIETARY OR NONPROFIT FIRM, CORPORATION OR PARTNERSHIP THAT IS ACTIVELY ENGAGED IN BUSINESS IN THE STATE AND EMPLOYS AT LEAST ONE BUT NO MORE THAN ONE HUNDRED ELIGIBLE EMPLOYEES, AS DEFINED IN THIS SECTION, AT LEAST FIFTY PERCENT OF THE TIME SUCH BUSINESS IS IN OPERATION. ANY BUSINESS THAT ELECTS TO LEAVE THE SMALL BUSINESS INSURANCE POOL PROGRAM SHALL BE PRECLUDED FROM RE-ENTERING THE PROGRAM WITHIN TWELVE MONTHS THEREAFTER.

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

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(D) "ELIGIBLE EMPLOYEE" MEANS AN EMPLOYEE WHO IS EMPLOYED AT LEAST FIFTY PERCENT OF THE TIME AND IS EMPLOYED WITHIN THE STATE. ELIGIBILITY SHALL ALSO EXTEND TO THE DEPENDENTS, SPOUSE OR DOMESTIC PARTNER OF THE ELIGIBLE EMPLOYEE.

S 4352. SMALL BUSINESS INSURANCE BOARD. (A) THERE IS HEREBY ESTABLISHED WITHIN THE DEPARTMENT THE SMALL BUSINESS INSURANCE BOARD (SBIB). THE BOARD SHALL CONSIST OF FIVE MEMBERS: ONE EACH TO BE CHOSEN BY THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE, THE SPEAKER OF THE ASSEMBLY, THE MINORITY LEADER OF THE SENATE AND THE MINORITY LEADER OF THE ASSEMBLY PROVIDED THAT NO MEMBER OF THE BOARD SHALL BE AN EMPLOYEE, CONSULTANT OR A MEMBER OF THE BOARD OF DIRECTORS OF ANY INSURER, HOSPITAL SERVICE PLAN OR HEALTH CARE SERVICE PLAN, OR AN INSURANCE BROKER OR AGENT DOING BUSINESS IN THE STATE.

(B) THE BOARD SHALL HAVE THE FOLLOWING RESPONSIBILITIES:

(1) APPOINT AN ADMINISTRATOR WHO SHALL HIRE APPROPRIATE STAFF AS NEEDED.

(2) ENTER INTO CONTRACTS WITH CARRIERS TO PROVIDE HEALTH BENEFITS COVERAGE TO ELIGIBLE EMPLOYEES AND THEIR DEPENDENTS.

(3) DEFINE THE HEALTH BENEFITS COVERAGE, WHICH THE PROGRAM WILL CONTRACT TO PURCHASE FROM PARTICIPATING CARRIERS, AND APPROVE THE PLANS SOLD BY PARTICIPATING CARRIERS.

(4) UNDERTAKE ACTIVITIES NECESSARY TO ADMINISTER THE SMALL BUSINESS INSURANCE POOL PROGRAM, INCLUDING MARKETING AND PUBLICIZING THE PROGRAM, AND ASSURING CARRIER, EMPLOYER, AND ENROLLEE COMPLIANCE WITH PROGRAM REQUIREMENTS.

(5) ESTABLISH RULES, CONDITIONS, AND PROCEDURES FOR SMALL BUSINESS EMPLOYERS AND PARTICIPATING CARRIERS.

(6) ESTABLISH A FINANCIAL RELATIONSHIP DIRECTLY WITH AGENTS OR BROKERS TO PROVIDE SERVICES UNDER THE SMALL BUSINESS INSURANCE POOL.

(7) ESTABLISH A MECHANISM TO COLLECT PREMIUMS FROM SMALL EMPLOYERS AND PAY PARTICIPATING CARRIERS.

S 4353. SMALL BUSINESS INSURANCE POOL PROGRAM. (A) THE SMALL BUSINESS INSURANCE BOARD SHALL ESTABLISH THE SMALL BUSINESS INSURANCE POOL PROGRAM TO BE OPEN TO QUALIFIED BUSINESSES AS DEFINED IN SECTION FOUR THOUSAND THREE HUNDRED FIFTY-ONE OF THIS ARTICLE.

(B) WITHIN THE FIRST FIVE YEARS AFTER ESTABLISHING THE PROGRAM, THE SBIB SHALL ENTER INTO CONTRACTS WITH CARRIERS, ACCEPT APPLICATIONS FROM SMALL BUSINESSES AND GRANT OR DECLINE PARTICIPATION IN THE PROGRAM PURSUANT TO REGULATIONS ESTABLISHED BY THE SBIB.

(C) UPON ESTABLISHMENT OF THE INITIAL POOL OF SMALL BUSINESSES, THE SBIB SHALL CONTRACT WITH ELIGIBLE HEALTH INSURANCE CARRIERS FOR A SET OF BENEFITS. SUCH SET OF BENEFITS SHALL INCLUDE, BUT NOT NECESSARILY BE LIMITED TO, HOSPITAL AND PHYSICIAN VISITS, PRESCRIPTION DRUG BENEFITS, MENTAL HEALTH SERVICES, AND DURABLE MEDICAL EQUIPMENT.

(D) UPON CONTRACTUAL AGREEMENT BETWEEN THE STATE AND PARTICIPATING CARRIERS AND HEALTH CARE PROVIDERS, NOTIFICATION SHALL BE SENT TO PARTICIPATING SMALL BUSINESSES AND THEIR EMPLOYEES REGARDING PLANS AVAILABLE.

(E) PREMIUMS PAID BY PARTICIPATING SMALL BUSINESSES AND THEIR EMPLOYEES SHALL BE PAID DIRECTLY TO PARTICIPATING CARRIERS.

(F) THE PREMIUMS PAID BY PARTICIPATING SMALL BUSINESSES AND THEIR EMPLOYEES SHALL ALSO INCLUDE A SURCHARGE SUFFICIENT TO COVER THE COST OF THE PROGRAM BUT NOT TO EXCEED ONE PERCENT OF SUCH PREMIUMS. SUCH SURCHARGES SHALL BE DEPOSITED IN THE SMALL BUSINESS INSURANCE POOL FUND ESTABLISHED PURSUANT TO SECTION NINETY-SEVEN-JJJJ OF THE STATE FINANCE LAW.

(G) THE SBIB SHALL HAVE THE AUTHORITY TO ADJUST PAYMENTS TO A CARRIER SHOULD THE SBIB FIND THAT A CARRIER HAS A SIGNIFICANTLY DISPROPORTIONATE SHARE OF HIGH- OR LOW-RISK ENROLLEES. PRIOR TO MAKING SUCH A FINDING, THE SBIB IS REQUIRED TO OBTAIN VALID DATA FROM PARTICIPATING CARRIERS AND REPORTING REQUIREMENTS SHALL BE MADE ADMINISTRATIVELY COMPATIBLE WITH THE METHODS OF OPERATION OF THE CARRIER. ANY ADJUSTMENTS TO PAYMENTS SHALL BE PROSPECTIVE AND SHALL UTILIZE DEMOGRAPHIC AND OTHER FACTORS ACTUARIALLY RELATED TO RISK.

(H) BENEFITS PROVIDED UNDER THE SMALL BUSINESS INSURANCE POOL PROGRAM SHALL BE EQUAL TO OR GREATER THAN THE BENEFITS PROVIDED, AND CO-PAYMENTS SHALL BE EQUAL TO OR LESS THAN THE CO-PAYMENTS, UNDER THE HEALTHY NEW YORK PROGRAM ESTABLISHED IN SECTION FOUR THOUSAND THREE HUNDRED TWENTY-SIX AND FOUR THOUSAND THREE HUNDRED TWENTY-SEVEN OF THIS CHAPTER.

S 2. The state finance law is amended by adding a new section 97-jjjj to read as follows:

S 97-JJJJ. SMALL BUSINESS INSURANCE POOL FUND. 1. THERE IS HEREBY ESTABLISHED IN THE JOINT CUSTODY OF THE STATE COMPTROLLER AND THE SUPERINTENDENT OF THE DEPARTMENT OF INSURANCE A FUND TO BE KNOWN AS THE SMALL BUSINESS INSURANCE POOL FUND.

2. THE FUND SHALL CONSIST OF THOSE MONEYS RECEIVED FROM THE SURCHARGES PAID BY PARTICIPATING SMALL BUSINESSES IN THE SMALL BUSINESS INSURANCE POOL PROGRAM PURSUANT TO SUBSECTION (F) OF SECTION FOUR THOUSAND THREE HUNDRED FIFTY-THREE OF THE INSURANCE LAW.

3. MONEYS IN THE SMALL BUSINESS INSURANCE POOL FUND SHALL NOT BE COMMINGLED WITH MONEYS IN ANY OTHER FUND UNDER THE CUSTODY OF THE STATE COMPTROLLER.

4. MONEYS OF THE FUND SHALL BE EXPENDED TO COVER THE ADMINISTRATIVE COSTS OF THE SMALL BUSINESS INSURANCE POOL PROGRAM. THE SUPERINTENDENT OF INSURANCE SHALL CERTIFY TO THE STATE COMPTROLLER THE AMOUNTS FROM SUCH FUND WHICH ARE TO BE PAID TO SUCH CARRIERS AND ANY APPROPRIATIONS PROVIDED THEREFOR. ANY CARRY-OVER BALANCE IN THE FUND SHALL BE REAPPROPRIATED EACH YEAR BY AN ACT OF THE LEGISLATURE.

5. MONEYS SHALL BE PAID OUT OF THE FUND UPON AUDIT AND WARRANT OF THE STATE COMPTROLLER ON VOUCHERS CERTIFIED AND APPROVED BY THE SUPERINTENDENT OF INSURANCE.

S 3. This act shall take effect January 1, 2010; provided, however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date.