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

10801

I N A S S E M B L Y

July 20, 2012

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Goodell) -- read once and referred to the Committee on Insurance

AN ACT to amend the insurance law, the public health law and the tax law, in relation to establishing the New York state small business affordable health care insurance act; to amend the New York Health Care Reform Act of 2000, in relation to the effectiveness thereof; and to repeal section 1502-b of the tax law relating to computation of tax for captive insurance companies

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 50 to read as follows:

ARTICLE 50

THE NEW YORK STATE SMALL BUSINESS AFFORDABLE HEALTH CARE INSURANCE ACT

SECTION 5001. SHORT TITLE.
5002. STATEMENT OF LEGISLATIVE FINDINGS AND INTENT.
5003. DEFINITIONS.
5004. REQUIREMENTS OF SMALL BUSINESS HEALTH INSURANCE.
5005. CORE BENEFITS.
5006. NOTICE REQUIREMENTS.
5007. REPORTING REQUIREMENTS.

S 5001. SHORT TITLE. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS "THE NEW YORK STATE SMALL BUSINESS AFFORDABLE HEALTH CARE INSURANCE ACT".

S 5002. STATEMENT OF LEGISLATIVE FINDINGS AND INTENT. THE LEGISLATURE HEREBY FINDS THAT NEW YORK STATE HAS A SIGNIFICANT NUMBER OF UNINSURED RESIDENTS.

THE LEGISLATURE FURTHER FINDS THAT ALTHOUGH MANY OF THE WORKING UNINSURED AND THEIR DEPENDENTS ARE FOUND IN SMALL BUSINESSES, THESE FIRMS ARE INTERESTED IN PROVIDING HEALTH BENEFITS TO THEIR EMPLOYEES BUT ARE UNABLE TO AFFORD SUCH COVERAGE BECAUSE OF THE HIGH COST OF HEALTH CARE COVERAGE. THE ELIMINATION OF ASSESSMENTS, SURCHARGES AND TAXES UNDER SECTIONS TWENTY-EIGHT HUNDRED SEVEN-T AND TWENTY-EIGHT HUNDRED SEVEN-J OF THE PUBLIC HEALTH LAW RESPECTIVELY WILL REDUCE THE COST OF HEALTH

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

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CARE BY APPROXIMATELY FOUR BILLION DOLLARS THEREBY ALLOWING MORE BUSINESSES TO OFFER COVERAGE TO EMPLOYEES.

THE LEGISLATURE RECOGNIZES THE NEED TO ENABLE AND ENCOURAGE GREATER NUMBERS OF SMALL EMPLOYERS TO PROVIDE HEALTH CARE COVERAGE TO THEIR EMPLOYEES.

THE LEGISLATURE THEREFORE DECLARES IT TO BE IN THE PUBLIC INTEREST TO ESTABLISH THE SMALL BUSINESS HEALTH INSURANCE PROGRAM TO HELP REDUCE THE COSTS OF HEALTH INSURANCE.

S 5003. DEFINITIONS. FOR PURPOSES OF THIS ARTICLE, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "SMALL BUSINESS" MEANS ANY BUSINESS WHICH IS RESIDENT IN THIS STATE, INDEPENDENTLY OWNED AND OPERATED, NOT DOMINANT IN ITS FIELD AND WHICH EMPLOYS FIFTY OR FEWER EMPLOYEES ON A REGULAR BASIS.

(B) "INSURER" MEANS ANY INSURANCE COMPANY LICENSED TO WRITE HEALTH INSURANCE IN THIS STATE, INCLUDING CORPORATIONS ORGANIZED UNDER ARTICLE FORTY-THREE OF THIS CHAPTER AND HEALTH MAINTENANCE ORGANIZATIONS AUTHORIZED PURSUANT TO ARTICLE FORTY-THREE OF THIS CHAPTER OR ARTICLE FORTY-FOUR OF THE PUBLIC HEALTH LAW.

(C) "SUPERINTENDENT" MEANS THE SUPERINTENDENT OF FINANCIAL SERVICES.

(D) "ELIGIBLE EMPLOYEE" MEANS AN EMPLOYEE OF A SMALL BUSINESS WHO HAS WORKED NINETY DAYS OR MORE AT AN AVERAGE OF THIRTY-FIVE HOURS OR MORE PER WEEK. A SMALL BUSINESS MAY, IN ITS SOLE DISCRETION, REDUCE THIS REQUIREMENT OF AN EMPLOYEE WORKING AN AVERAGE OF THIRTY-FIVE HOURS OR MORE PER WEEK IN ORDER FOR ADDITIONAL EMPLOYEES TO QUALIFY AS AN ELIGIBLE EMPLOYEE. AN ELIGIBLE EMPLOYEE MAY ALSO BE A SOLE PROPRIETOR OR A PARTNER OF A PARTNERSHIP PROVIDED SUCH SOLE PROPRIETOR OR PARTNER IS INCLUDED AS AN EMPLOYEE UNDER THE HEALTH CARE PLAN OF THE SMALL BUSINESS.

S 5004. REQUIREMENTS OF SMALL BUSINESS HEALTH INSURANCE. (A) ALL INSURERS SHALL BE AUTHORIZED TO WRITE SMALL BUSINESS HEALTH INSURANCE POLICIES FOR QUALIFIED SMALL BUSINESSES TO PROVIDE ONLY SUCH BENEFITS AS ARE REQUIRED BY SECTION FIVE THOUSAND FIVE OF THIS ARTICLE AND AS MAY MUTUALLY BE AGREED UPON BETWEEN THE POLICYHOLDER AND THE INSURER. THE SUPERINTENDENT SHALL ONLY APPROVE A POLICY WHICH MEETS THE FOLLOWING CRITERIA:

(1) THE POLICY PROVISIONS ARE NOT MISLEADING OR CONFUSING;

(2) THE POLICY CLEARLY STATES THE BENEFITS, LIMITATIONS AND EXCLUSIONS;

(3) THE BENEFITS PROVIDED BY THE POLICY MEET THE STANDARDS SPECIFIED IN THIS SECTION AND SECTION FIVE THOUSAND FIVE OF THIS ARTICLE;

(4) THE PREMIUM RATES ARE REASONABLY RELATED TO THE BENEFITS PROVIDED AND ARE SUFFICIENT TO SUPPORT THE POLICY;

(5) THE POLICY PROVISIONS INCLUDE CONVERSION AND CONTINUATION RIGHTS AS DEFINED IN SUBSECTIONS (E), (M) AND (N) OF SECTION THREE THOUSAND TWO HUNDRED TWENTY-ONE AND SUBSECTIONS (D), (E) AND (G) OF SECTION FOUR THOUSAND THREE HUNDRED FIVE OF THIS CHAPTER; AND

(6) THE POLICY PROVIDES BOTH INDIVIDUAL AND, IF ELECTED BY THE EMPLOYEE, FAMILY COVERAGE. THE POLICY SHALL COVER ALL ELIGIBLE SPOUSES AND DEPENDENT CHILDREN OF COVERED EMPLOYEES, IN ACCORDANCE WITH POLICY PARTICIPATION REQUIREMENTS, EXCEPT THAT COVERAGE MAY BE WAIVED FOR SPOUSES AND DEPENDENT CHILDREN WHO HAVE COVERAGE UNDER ANOTHER HEALTH PLAN. THE EMPLOYEE SHALL PAY THE ENTIRE PREMIUM COST FOR SUCH DEPENDENT COVERAGE UNLESS THE EMPLOYER, AT HIS OR HER OPTION, CHOOSES TO CONTRIBUTE TO THE EXPENSE OF SUCH ADDITIONAL PREMIUM.

(B) THE PREMIUM FOR A SMALL BUSINESS HEALTH INSURANCE POLICY SHALL BE PAID BY THE SMALL BUSINESS FROM THE EMPLOYER'S FUNDS, FROM FUNDS

CONTRIBUTED BY THE INSURED EMPLOYEES OR FROM FUNDS CONTRIBUTED JOINTLY BY THE EMPLOYER AND THE EMPLOYEE.

S 5005. CORE BENEFITS. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, SMALL BUSINESS HEALTH INSURANCE POLICIES ISSUED PURSUANT TO THIS ARTICLE SHALL NOT BE SUBJECT TO ANY OTHER MANDATED COVERAGES OR SERVICES, EXCEPT FOR:

(A) AMBULATORY CARE AND FOR INPATIENT AND OUTPATIENT ACUTE MEDICAL AND SURGICAL CARE. THE HOSPITAL AND MEDICAL SERVICES TO BE COVERED SHALL INCLUDE, BUT NOT BE LIMITED TO:

(1) NO LESS THAN THIRTY DAYS HOSPITAL CONFINEMENT;

(2) DEDUCTIBLE AND CO-PAYMENT AMOUNTS WHICH MAY BE GREATER THAN THOSE SPECIFIED IN THE DEPARTMENT REGULATIONS, PROVIDED THAT NO ANNUAL DEDUCTIBLE FOR AN INDIVIDUAL SHALL EXCEED ONE THOUSAND TWO HUNDRED DOLLARS, AND NO ANNUAL DEDUCTIBLE FOR A FAMILY SHALL EXCEED TWO THOUSAND DOLLARS; AND

(3) NO FEWER THAN SIX PHYSICIAN OFFICE VISITS PER YEAR PER COVERED MEMBER.

(B) (1) MATERNITY CARE, AS DEFINED IN PARAGRAPH FIVE OF SUBSECTION (K) OF SECTION THREE THOUSAND TWO HUNDRED TWENTY-ONE AND SUBSECTION (C) OF SECTION FOUR THOUSAND THREE HUNDRED THREE OF THIS CHAPTER;

(2) NEWBORN CARE, AS DEFINED IN PARAGRAPH TWO OF SUBSECTION (F) OF SECTION FOUR THOUSAND TWO HUNDRED THIRTY-FIVE AND PARAGRAPH ONE OF SUBSECTION (C) OF SECTION FOUR THOUSAND THREE HUNDRED FIVE OF THIS CHAPTER;

(3) EMERGENCY MEDICAL SERVICES, AS DEFINED IN PARAGRAPH FOUR OF SUBSECTION (K) OF SECTION THREE THOUSAND TWO HUNDRED TWENTY-ONE AND PARAGRAPH TWO OF SUBSECTION (A) OF SECTION FOUR THOUSAND THREE HUNDRED THREE OF THIS CHAPTER; AND

(4) MAMMOGRAPHY SCREENING, AS DEFINED IN SUBPARAGRAPH (C) OF PARAGRAPH ELEVEN OF SUBSECTION (L) OF SECTION THREE THOUSAND TWO HUNDRED TWENTY-ONE AND PARAGRAPH THREE OF SUBSECTION (P) OF SECTION FOUR THOUSAND THREE HUNDRED THREE OF THIS CHAPTER.

(C) A SMALL BUSINESS HEALTH INSURANCE POLICY ISSUED PURSUANT TO THIS ARTICLE MAY INCLUDE LIMITATIONS ON BENEFITS GREATER THAN THOSE SPECIFIED IN THE DEPARTMENT REGULATIONS AND MAY INCLUDE PROVISIONS DESIGNED TO CONTROL POLICY COSTS AND ENCOURAGE COST EFFECTIVE UTILIZATION OF MEDICALLY NECESSARY HEALTH CARE SERVICES. SUCH PROVISIONS MAY INCLUDE, BUT NEED NOT BE LIMITED TO:

(1) PREVENTIVE CARE SERVICES;

(2) PRIOR APPROVAL OF ELECTIVE HOSPITAL ADMISSIONS;

(3) SECOND SURGICAL OPINIONS;

(4) UTILIZATION REVIEW OF HEALTH CARE SERVICES;

(5) USE OF A PREFERRED PROVIDER PLAN, WHICH: (I) LIMITS THE PAYMENT OF THE BENEFITS TO PROVIDERS OF SERVICES WHO HAVE SIGNED AN AGREEMENT WITH THE INSURER, OR ANY INTERMEDIARY ORGANIZATION REPRESENTING THOSE PROVIDERS IN NEGOTIATIONS WITH THE INSURER, REGARDING THE AMOUNT OF SUCH PAYMENTS, OR (II) OFFERS DIFFERENT BENEFITS TO THE PERSON COVERED WHEN PROCURED THROUGH SUCH ORGANIZATION;

(6) PRE-ADMISSION TESTING; AND

(7) ANNUAL AND LIFETIME BENEFIT MAXIMUMS AS DETERMINED BY THE INSURER AND THE SMALL BUSINESS.

(D) A SMALL BUSINESS MAY SELECT COVERAGE FOR ADDITIONAL BENEFITS, INCLUDING BUT NOT LIMITED TO OPTICAL AND DENTAL CARE, FOR ALL ELIGIBLE EMPLOYEES AND DEPENDENTS, IF AVAILABLE FROM THE INSURER. THE PROVISIONS OF SUBSECTION (A) OF THIS SECTION MAY, AT THE OPTION OF THE INSURER, BE APPLIED TO ANY ADDITIONAL BENEFITS FOR WHICH COVERAGE IS PROVIDED.

(E) ANY MARKETING OR ADVERTISING MATERIAL UTILIZED TO FACILITATE ENROLLMENT OR PURCHASE OF A SMALL BUSINESS HEALTH INSURANCE POLICY MUST BE APPROVED BY THE SUPERINTENDENT AND MUST CLEARLY STATE WHICH CORE BENEFITS ARE COVERED AND WHICH ARE NOT. THIS SHALL INCLUDE, BUT NOT BE LIMITED TO A REQUIREMENT TO LIST ANY STATUTORILY REQUIRED COVERAGE UNDER SECTIONS THREE THOUSAND TWO HUNDRED TWENTY-ONE OR FOUR THOUSAND THREE HUNDRED THREE OF THIS CHAPTER WHICH IS NOT COVERED UNDER THE POLICY.

S 5006. NOTICE REQUIREMENTS. POLICIES APPROVED FOR USE PURSUANT TO THIS ARTICLE SHALL HAVE PROMINENTLY STAMPED ON THE FACE OF EACH POLICY AND CERTIFICATE THE FOLLOWING NOTICE: "THIS IS A SMALL BUSINESS LIMITED BENEFITS HEALTH INSURANCE POLICY."

S 5007. REPORTING REQUIREMENTS. THE SUPERINTENDENT MAY ISSUE REGULATIONS TO FACILITATE DATA COLLECTION CONCERNING THE POLICIES ISSUED PURSUANT TO THIS ARTICLE AND SHALL REPORT ANNUALLY TO THE LEGISLATURE ON THE PROGRESS OF POLICIES ISSUED PURSUANT TO THIS ARTICLE.

S 2. Paragraphs (b), (c) and (d) of subdivision 2 of section 2807-j of the public health law, as amended by section 50 of part B of chapter 58 of the laws of 2009, are amended to read as follows:

(b) The total percentage allowance for each payor, other than governmental agencies, or health maintenance organizations for services provided to subscribers eligible for medical assistance pursuant to title eleven of article five of the social services law, or approved organizations for services provided to subscribers eligible for the family health plus program pursuant to title eleven-D of article five of the social services law, and other than payments for a patient that has no third-party coverage in whole or in part for services provided by a designated provider of services, shall be:

(i) the sum of (A) eight and eighteen-hundredths percent, provided, however, that for services provided on and after July first, two thousand three, the percentage shall be eight and eighty-five hundredths percent, and further provided that for services provided on and after January first, two thousand six, the percentage shall be eight and ninety-five hundredths percent, [and further] provided that for services provided on and after April first, two thousand nine, the percentage shall be nine and sixty-three hundredths percent, PROVIDED THAT FOR SERVICES PROVIDED ON OR AFTER APRIL FIRST, TWO THOUSAND THIRTEEN, THE PERCENTAGE SHALL BE SIX AND FORTY-TWO HUNDREDTHS PERCENT, PROVIDED THAT FOR SERVICES PROVIDED ON OR AFTER APRIL FIRST, TWO THOUSAND FOURTEEN, THE PERCENTAGE SHALL BE THREE AND TWENTY-ONE HUNDREDTHS PERCENT, AND FURTHER PROVIDED, THAT FOR SERVICES PROVIDED ON OR AFTER APRIL FIRST, TWO THOUSAND FIFTEEN, THE PERCENTAGE SHALL BE ZERO plus (B) twenty-four percent, provided, however, that for services provided on and after July first, two thousand three, the percentage shall be twenty-five and ninety-seven hundredths percent, and further provided that for services provided on and after January first, two thousand six, the percentage shall be twenty-six and twenty-six hundredths percent, [and further] provided that for services provided on and after April first, two thousand nine, the percentage shall be twenty-eight and twenty-seven hundredths percent, PROVIDED THAT FOR SERVICES PROVIDED ON OR AFTER APRIL FIRST, TWO THOUSAND THIRTEEN, THE PERCENTAGE SHALL BE EIGHTEEN AND EIGHTY-FIVE HUNDREDTHS PERCENT, PROVIDED THAT FOR SERVICES PROVIDED ON OR AFTER APRIL FIRST, TWO THOUSAND FOURTEEN, THE PERCENTAGE SHALL BE NINE AND FORTY-THREE HUNDREDTHS PERCENT, AND FURTHER PROVIDED, THAT FOR SERVICES PROVIDED ON OR AFTER APRIL FIRST, TWO THOUSAND FIFTEEN, THE PERCENTAGE SHALL BE ZERO and plus (C) for a specified third-party payor as defined in subdivision one-a of section twenty-eight hundred seven-s

of this article the percentage allowance applicable for a general hospital for inpatient hospital services pursuant to subdivision two of section twenty-eight hundred seven-s of this article;

(ii) unless (A) an election in accordance with paragraph (a) of subdivision five of this section to pay the allowance directly to the commissioner or the commissioner's designee is in effect for a third-party payor, and in addition (B) for a specified third-party payor an election to pay the assessment in accordance with section twenty-eight hundred seven-t of this article is in effect.

(c) If an election in accordance with subdivision five of this section is in effect for a third-party payor and in addition in accordance with section twenty-eight hundred seven-t of this article for a specified third-party payor, the total percentage allowance factor shall be reduced to eight and eighteen-hundredths percent, provided, however, that for services provided on and after July first, two thousand three the total percentage allowance factor shall be reduced to eight and eighty-five hundredths percent, [and further] provided that for services provided on and after January first, two thousand six, the total percentage allowance factor shall be reduced to eight and ninety-five hundredths percent, and further provided that for services provided on and after April first, two thousand nine, the total percentage allowance factor shall be reduced to nine and sixty-three hundredths percent PROVIDED THAT FOR SERVICES PROVIDED ON OR AFTER APRIL FIRST, TWO THOUSAND THIRTEEN, THE PERCENTAGE SHALL BE SIX AND FORTY-TWO HUNDREDTHS PERCENT, PROVIDED THAT FOR SERVICES PROVIDED ON OR AFTER APRIL FIRST, TWO THOUSAND FOURTEEN, THE PERCENTAGE SHALL BE THREE AND TWENTY-ONE HUNDREDTHS PERCENT, AND FURTHER PROVIDED, THAT FOR SERVICES PROVIDED ON OR AFTER APRIL FIRST, TWO THOUSAND FIFTEEN, THE PERCENTAGE SHALL BE ZERO.

(d) The total percentage allowance for payments by governmental agencies, as determined in accordance with paragraphs (a) and (a-1) of subdivision one of section twenty-eight hundred seven-c of this article as in effect on December thirty-first, nineteen hundred ninety-six, or health maintenance organizations for services provided to subscribers eligible for medical assistance pursuant to title eleven of article five of the social services law, or approved organizations for services provided to subscribers eligible for the family health plus program pursuant to title eleven-D of article five of the social services law, shall be five and ninety-eight-hundredths percent, provided, however, that for services provided on and after July first, two thousand three the total percentage allowance shall be six and forty-seven hundredths percent, and further provided that for services provided on and after January first, two thousand six, the total percentage allowance shall be six and fifty-four hundredths percent, and [further] provided that for services provided on and after April first, two thousand nine, the total percentage allowance shall be seven and four hundredths percent PROVIDED THAT FOR SERVICES PROVIDED ON OR AFTER APRIL FIRST, TWO THOUSAND THIRTEEN, THE PERCENTAGE SHALL BE SIX AND FORTY-TWO HUNDREDTHS PERCENT, PROVIDED THAT FOR SERVICES PROVIDED ON OR AFTER APRIL FIRST, TWO THOUSAND FOURTEEN, THE PERCENTAGE SHALL BE THREE AND TWENTY-ONE HUNDREDTHS PERCENT, AND FURTHER PROVIDED, THAT FOR SERVICES PROVIDED ON OR AFTER APRIL FIRST, TWO THOUSAND FIFTEEN, THE PERCENTAGE SHALL BE ZERO.

S 3. Subdivision 1 of section 138 of chapter 1 of the laws of 1999, constituting the New York Health Care Reform Act of 2000, as amended by section 2 of part C of chapter 59 of the laws of 2011, is amended to read as follows:

1. sections 2807-c, 2807-j, 2807-s, and 2807-t of the public health law, as amended by this act, shall expire on December 31, [2014] 2015, and shall be thereafter effective only in respect to any act done before such date or action or proceeding arising out of such act including continued collections of funds from assessments and allowances and surcharges established pursuant to sections 2807-c, 2807-j, 2807-s and 2807-t of the public health law, and administration and distributions of funds from pools established pursuant to sections 2807-c, 2807-j, 2807-k, 2807-l, 2807-m, 2807-s, 2807-t, 2807-v and 2807-w of the public health law, as amended or added by this act, related to patient services provided before December 31, [2014] 2015, and continued expenditure of funds authorized for programs and grants until the exhaustion of funds therefor;

S 4. Section 2807-t of the public health law is amended by adding a new subdivision 1-a to read as follows:

1-A. FINANCING. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY ALL ASSESSMENTS AUTHORIZED BY THIS SECTION SHALL BE COLLECTED IN COMPLIANCE WITH THE PROVISIONS OF THIS SECTION FROM GENERAL HOSPITALS THROUGH APRIL FIRST, TWO THOUSAND FIFTEEN; THE FISCAL COSTS ASSOCIATED WITH THE OPERATION OF ALL PROGRAMS PREVIOUSLY FUNDED THROUGH THE ASSESSMENT SHALL BE FUNDED THROUGH THE SUBMISSION OF FUNDS IN THE EXECUTIVE BUDGET. THE COMMISSIONER SHALL DEVELOP ANY LEGISLATION NECESSARY TO ACCOMPLISH SUCH CHANGES.

S 5. Section 1502-b of the tax law is REPEALED.

S 6. Subparagraph (i) of paragraph 5 of subdivision (f) of section 1515 of the tax law, as amended by section 16 of part FF-1 of chapter 57 of the laws of 2008, is amended to read as follows:

(i) In the case of a combined return, the tax shall be measured by the combined entire net income or combined capital of all the corporations included in the return, including any captive REIT or captive RIC. In computing combined entire net income intercorporate dividends shall be eliminated, in computing combined business and investment capital intercorporate stockholdings and intercorporate bills, notes and accounts receivable and payable and other intercorporate indebtedness shall be eliminated and in computing combined subsidiary capital intercorporate stockholdings shall be eliminated. No taxpayer subject to the tax imposed by section fifteen hundred two-a [or section fifteen hundred two-b] of this article may be required or permitted to be included in a combined return.

S 7. Paragraph 6 of subsection (a) of section 7008 of the insurance law, as added by section 146 of part A of chapter 389 of the laws of 1997, is amended to read as follows:

(6) refusal or failure to pay the taxes as required by section seven thousand twelve of this article [and section fifteen hundred two-b of the tax law];

S 8. This act shall take effect immediately; provided however that the amendments to section 2807-j of the public health law made by section two of this act shall not affect the expiration of such section and shall be deemed to expire therewith provided, further, that the amendments to section 2807-t of the public health law made by section four of this act shall not affect the expiration of such section and shall be deemed to expire therewith.