

4526

2013-2014 Regular Sessions

I N S E N A T E

April 8, 2013

Introduced by Sens. HANNON, SAVINO, BRESLIN -- 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 creating the freelancers health plan demonstration program; and providing for the repeal of such provision 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 1125
2 to read as follows:
3 S 1125. FREELANCERS HEALTH PLAN DEMONSTRATION PROGRAM. (A) FOR
4 PURPOSES OF THIS SECTION:
5 (1) "FREELANCERS ASSOCIATION" MEANS AN ENTITY THAT: (A) IS EXEMPT FROM
6 FEDERAL TAXATION UNDER SECTION 501(C)(3) OR (C)(4) OF THE INTERNAL
7 REVENUE CODE; AND (B) PRIOR TO JANUARY FIRST, TWO THOUSAND THIRTEEN, HAS
8 BEEN ISSUED ONE OR MORE HEALTH INSURANCE POLICIES BY AN INSURER UNDER
9 SECTION ONE THOUSAND ONE HUNDRED TWENTY-THREE OF THIS ARTICLE.
10 (2) "FREELANCERS HEALTH PLAN" OR "PLAN" MEANS A SELF-FUNDED PLAN
11 MAINTAINED BY A FREELANCERS ASSOCIATION FOR THE PURPOSE OF PROVIDING
12 MEDICAL, SURGICAL, OR HOSPITAL SERVICES TO INDEPENDENT WORKERS WHO ARE
13 MEMBERS OF THE FREELANCERS ASSOCIATION AND A MEMBER'S SPOUSE, DOMESTIC
14 PARTNER AND DEPENDENTS.
15 (3) "INDEPENDENT WORKER" MEANS AN INDIVIDUAL WHO: (A) IS AN INDEPENDENT
16 CONTRACTOR; (B) IS SELF-EMPLOYED; (C) WORKS PART-TIME; (D) OBTAINS
17 TEMPORARY WORK THROUGH AN EMPLOYMENT AGENCY; (E) PERFORMS TEMPORARY WORK
18 FOR TWO OR MORE EMPLOYERS SIMULTANEOUSLY; (F) IS A DOMESTIC CHILD CARE
19 WORKER; OR (G) IS HIRED TO WORK FULL-TIME FOR A SINGLE EMPLOYER FOR A
20 PERIOD NOT TO EXCEED EIGHTEEN MONTHS IF SUCH EMPLOYER DOES NOT OFFER
21 GROUP HEALTH INSURANCE TO EMPLOYEES EMPLOYED ON A TEMPORARY BASIS. AN
22 INDIVIDUAL IS NOT AN INDEPENDENT WORKER IF HE OR SHE IS EMPLOYED
23 FULL-TIME BY A SINGLE EMPLOYER, WITH THE EXCEPTION OF AN INDIVIDUAL WHO

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

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1 MEETS THE REQUIREMENTS OF SUBPARAGRAPH (D), (F) OR (G) OF THIS PARA-
2 GRAPH.

3 (4) "MEMBER CONTRACT" MEANS EVIDENCE OF COVERAGE FURNISHED TO AN INDE-
4 PENDENT WORKER WHO IS A MEMBER OF A FREELANCERS ASSOCIATION THAT SETS
5 FORTH ALL BENEFITS AND TERMS AND CONDITIONS WITH REGARD TO A FREELANCERS
6 HEALTH PLAN.

7 (5) "QUALIFIED ACTUARY" MEANS AN ACTUARY WHO IS A MEMBER IN GOOD
8 STANDING OF THE AMERICAN ACADEMY OF ACTUARIES OR SOCIETY OF ACTUARIES,
9 WITH EXPEDIENCE IN ESTABLISHING RATES FOR SELF-INSURED TRUSTS PROVIDING
10 HEALTH BENEFITS OR OTHER SIMILAR EXPERIENCE.

11 (B) A FREELANCERS ASSOCIATION SHALL NOT ESTABLISH, MAINTAIN, OR OTHER-
12 WISE PARTICIPATE IN A FREELANCERS HEALTH PLAN UNLESS THE FREELANCERS
13 ASSOCIATION OBTAINS AND MAINTAINS A DEMONSTRATION PROGRAM WAIVER FROM
14 THE SUPERINTENDENT PURSUANT TO THE PROVISIONS OF THIS SECTION.

15 (C) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION OR A REGULATION
16 PROMULGATED BY THE SUPERINTENDENT, A FREELANCERS ASSOCIATION OPERATING A
17 FREELANCERS HEALTH PLAN SHALL:

18 (1) PROVIDE ALL MANDATED BENEFITS THAT CORPORATIONS ORGANIZED UNDER
19 ARTICLE FORTY-THREE OF THIS CHAPTER ARE REQUIRED TO PROVIDE; AND

20 (2) PROVIDE THAT ITS PLAN WILL HAVE AN EXPECTED LOSS RATIO OF NOT LESS
21 THAN EIGHTY-TWO PERCENT. IN REVIEWING A RATE FILING OR APPLICATION BY A
22 PLAN, THE SUPERINTENDENT MAY MODIFY THE EIGHTY-TWO PERCENT EXPECTED
23 MINIMUM LOSS RATIO REQUIREMENT IF THE SUPERINTENDENT DETERMINES THE
24 MODIFICATION TO BE IN THE INTERESTS OF THE PEOPLE OF THIS STATE OR IF
25 THE SUPERINTENDENT DETERMINES THAT A MODIFICATION IS NECESSARY TO MAIN-
26 TAIN PLAN SOLVENCY. NO LATER THAN ONE HUNDRED TWENTY DAYS AFTER THE
27 CLOSE OF A PLAN'S FISCAL YEAR, A PLAN SHALL ANNUALLY REPORT THE ACTUAL
28 LOSS RATIO FOR THE PREVIOUS PLAN FISCAL YEAR IN A FORMAT ACCEPTABLE TO
29 THE SUPERINTENDENT. IF THE EXPECTED LOSS RATIO IS NOT MET, THE SUPER-
30 INTENDENT MAY DIRECT THE PLAN TO TAKE CORRECTIVE ACTION.

31 (D) A FREELANCERS ASSOCIATION SHALL FILE AN APPLICATION FOR A DEMON-
32 STRATION PROGRAM WAIVER ON SUCH FORM AS THE SUPERINTENDENT MAY
33 PRESCRIBE, AND SHALL PROVIDE TO THE SATISFACTION OF THE SUPERINTENDENT
34 THE FOLLOWING:

35 (1) A COPY OF THE MEMBER CONTRACT, INCLUDING A TABLE OF THE PREMIUM
36 RATES CHARGED OR PROPOSED TO BE CHARGED;

37 (2) A REPORT INDICATING THE BENEFIT PROVISIONS, PREMIUM RATES, AND
38 INCURRED MEDICAL LOSSES ASSOCIATED WITH THE FREELANCERS ASSOCIATION'S
39 MEMBERS UNDER THE INSURANCE POLICIES INSURING THE FREELANCERS ASSOCI-
40 ATION'S MEMBERS PURSUANT TO SECTION ONE THOUSAND ONE HUNDRED
41 TWENTY-THREE OF THIS ARTICLE FOR THE THREE YEARS PRIOR TO THE DATE OF
42 THE APPLICATION;

43 (3) THE MOST RECENT CERTIFIED INDEPENDENTLY-AUDITED FINANCIAL STATE-
44 MENT FOR THE FREELANCERS ASSOCIATION;

45 (4) A REPORT PREPARED BY A QUALIFIED ACTUARY THAT SUPPORTS THE
46 PROPOSED PREMIUMS FOR THE PLAN;

47 (5) A COPY OF ALL AGREEMENTS BETWEEN THE FREELANCERS ASSOCIATION AND
48 ANY PLAN ADMINISTRATOR, WITH REGARD TO THE FREELANCERS HEALTH PLAN;

49 (6) A PRO-FORMA BALANCE SHEET, INCLUDING ACTUARIALLY DETERMINED CLAIMS
50 LIABILITIES, AND STATEMENT OF REVENUE AND EXPENSES, INCLUDING REASONABLY
51 PROJECTED EXPENSES, MEDICAL LOSSES, AND PREMIUMS TO BE CHARGED TO
52 MEMBERS OF THE PLAN DURING THE FIRST THREE YEARS;

53 (7) A NARRATIVE DESCRIPTION OF THE:

54 (A) ACCOUNTING METHODOLOGY THAT THE FREELANCERS ASSOCIATION WILL
55 UTILIZE, INCLUDING A DESCRIPTION OF THE SEPARATE ACCOUNTS FOR REVENUES
56 AND EXPENSES, INCLUDING MEDICAL AND HOSPITAL EXPENSES AND ADMINISTRATION

EXPENSES, RESERVES FOR CLAIMS AND EXPENSES THEREON, INCLUDING INCURRED-BUT-NOT-REPORTED, UNEARNED PREMIUM RESERVES, CONTINGENT RESERVES, AND ANY ASSET ACCOUNTS (CASH, PREMIUMS RECEIVABLE, INVESTMENTS) RELEVANT TO THE PLAN. THE ACCOUNTS MAY BE ESTABLISHED WITHIN THE FREELANCERS ASSOCIATION'S GENERAL ACCOUNTING LEDGER SYSTEM, PROVIDED THE GENERAL LEDGER ACCOUNTS ARE CLEARLY IDENTIFIABLE AS PERTAINING TO THE PLAN, INCLUDING ANY SUCH ACCOUNTS ALLOCATED TO THE PLAN;

(B) BILLING AND CLAIM PAYMENT PROCEDURES, INCLUDING THE NAMES AND CONTACT INFORMATION FOR THOSE PERSONS CHARGED WITH HANDLING ACCOUNTING AND CLAIMS ISSUES; AND

(C) ANY COMPENSATION THE FREELANCERS ASSOCIATION WILL RECEIVE IN CONNECTION WITH THE PLAN.

(8) A COPY OF ANY STOP-LOSS INSURANCE POLICY ISSUED OR PROPOSED TO BE ISSUED BY AN INSURER AUTHORIZED TO DO THE BUSINESS OF ACCIDENT AND HEALTH INSURANCE IN THIS STATE OR IS A HEALTH SERVICE CORPORATION ORGANIZED UNDER ARTICLE FORTY-THREE OF THIS CHAPTER; AND

(9) SUCH OTHER INFORMATION AS THE SUPERINTENDENT MAY REQUIRE.

(E) UPON COMPLIANCE WITH THIS SECTION, THE SUPERINTENDENT SHALL ISSUE A DEMONSTRATION PROGRAM WAIVER TO AN APPLICANT. IF A FREELANCERS ASSOCIATION SUBMITS A MATERIALLY SATISFACTORY AND COMPLETE APPLICATION WITHIN SIXTY DAYS OF THE EFFECTIVE DATE OF THIS SECTION, THE SUPERINTENDENT SHALL ISSUE THE FREELANCERS ASSOCIATION A DEMONSTRATION PROGRAM WAIVER THAT IS EFFECTIVE ON OR BEFORE JANUARY FIRST, TWO THOUSAND FOURTEEN. EVERY DEMONSTRATION PROGRAM WAIVER SHALL CONTAIN THE NAME OF THE CERTIFIED ENTITY AND ITS HOME OFFICE ADDRESS. THE SUPERINTENDENT SHALL REFUSE TO GRANT A DEMONSTRATION PROGRAM WAIVER TO AN APPLICANT THAT FAILS TO MEET THE REQUIREMENTS OF THIS SECTION. NOTICE OF REFUSAL SHALL BE IN WRITING AND SHALL SET FORTH THE BASIS FOR REFUSAL. IF THE APPLICANT SUBMITS A WRITTEN REQUEST WITHIN THIRTY DAYS AFTER RECEIPT OF THE NOTICE OF REFUSAL, THEN THE SUPERINTENDENT SHALL CONDUCT A HEARING TO GIVE THE APPLICANT THE OPPORTUNITY TO SHOW CAUSE WHY THE REFUSAL SHOULD NOT BE MADE FINAL.

(F) IN ORDER TO OBTAIN AND MAINTAIN A DEMONSTRATION PROGRAM WAIVER, A FREELANCERS ASSOCIATION SHALL:

(1) FILE A COMPLETE APPLICATION WITH THE SUPERINTENDENT IN ACCORDANCE WITH SUBSECTION (D) OF THIS SECTION;

(2) HAVE WITHIN ITS OWN ORGANIZATION ADEQUATE RESOURCES AND COMPETENT PERSONNEL TO ADMINISTER THE FREELANCERS HEALTH PLAN OR, IN ORDER TO PROVIDE SUCH ADMINISTRATIVE SERVICES, IN WHOLE OR PART, HAS CONTRACTED WITH A PERSON OR ENTITY TO SERVE AS A PLAN ADMINISTRATOR, DETERMINED BY THE FREELANCERS ASSOCIATION TO BE QUALIFIED BASED UPON WRITTEN DOCUMENTATION FURNISHED TO THE FREELANCERS ASSOCIATION, PROVIDED THAT THE DOCUMENTATION SHALL BE MADE AVAILABLE TO THE SUPERINTENDENT UPON REQUEST;

(3) ESTABLISH AND MAINTAIN PREMIUM RATES SUFFICIENT TO MEET ITS CONTRACTUAL OBLIGATIONS AND TO SATISFY THE RESERVE REQUIREMENTS SET FORTH IN SUBSECTION (H) OF THIS SECTION;

(4) ESTABLISH AND MAINTAIN A FAIR AND EQUITABLE PROCESS FOR CLAIMS REVIEW, DISPUTE RESOLUTION, AND APPEAL PROCEDURES, INCLUDING ARBITRATION OF REJECTED CLAIMS, AND PROCEDURES FOR HANDLING CLAIMS FOR BENEFITS IN THE EVENT OF PLAN DISSOLUTION, THAT ARE SATISFACTORY TO THE SUPERINTENDENT AND ARE SUBJECT TO ARTICLE FORTY-NINE OF THIS CHAPTER;

(5) PROVIDE MEMBERS WITH A MEMBER CONTRACT; AND

(6) FILE ALL PLAN DOCUMENTS AND ANY AMENDMENTS THERETO WITH THE SUPERINTENDENT AND RECEIVE THE SUPERINTENDENT'S APPROVAL IN ACCORDANCE WITH THIS SECTION.

(G) A FREELANCERS ASSOCIATION THAT HAS RECEIVED A DEMONSTRATION PROGRAM WAIVER SHALL FILE WITH THE SUPERINTENDENT, FOR THE SUPERINTENDENT'S PRIOR APPROVAL, ANY AMENDMENTS TO THE MEMBER CONTRACT, FREELANCERS HEALTH PLAN, OR PREMIUM RATES CHARGED FOR THE PLAN.

(H)(1) A FREELANCERS ASSOCIATION SHALL ESTABLISH RESERVES WITH THE AMOUNTS NECESSARY TO SATISFY ALL CONTRACTUAL OBLIGATIONS AND LIABILITIES OF THE PLAN, INCLUDING: (A) A RESERVE FOR PAYMENT OF CLAIMS AND EXPENSES THEREON REPORTED BUT NOT YET PAID, AND CLAIMS AND EXPENSES THEREON INCURRED BUT NOT YET REPORTED, WHICH SHALL NOT BE LESS THAN AN AMOUNT EQUAL TO TWELVE AND ONE-HALF PERCENT OF EXPECTED INCURRED CLAIMS AND EXPENSES THEREON FOR THE CURRENT PLAN YEAR, UNLESS A QUALIFIED ACTUARY HAS DEMONSTRATED TO THE SUPERINTENDENT'S SATISFACTION THAT A LESSER AMOUNT SHALL BE ADEQUATE; (B) A RESERVE FOR UNEARNED PREMIUM EQUIVALENTS, COMPUTED PRO-RATA ON THE BASIS OF THE UNEXPIRED PORTION OF THE POLICY PERIOD; AND (C) A CONTINGENT RESERVE FUND, ESTABLISHED AND MAINTAINED FOR THE SOLE PURPOSE OF SATISFYING UNEXPECTED OBLIGATIONS OF THE PLAN IN THE EVENT OF THE TERMINATION OF THE PLAN, WHICH SHALL NOT BE LESS THAN FIVE PERCENT OF THE ANNUALIZED EARNED PREMIUM EQUIVALENTS DURING THE CURRENT FISCAL YEAR OF THE PLAN.

(2) A QUALIFIED ACTUARY MAY DEMONSTRATE THAT A LESSER AMOUNT OF A RESERVE FOR PAYMENT OF CLAIMS AND EXPENSES THEREON REPORTED BUT NOT YET PAID, AND CLAIMS AND EXPENSES THEREON INCURRED-BUT-NOT-YET-REPORTED, SHALL BE ADEQUATE BY SHOWING THAT THE FREELANCERS ASSOCIATION HAS OBTAINED A MEDICAL STOP-LOSS INSURANCE POLICY ISSUED BY AN INSURER AUTHORIZED BY THE SUPERINTENDENT TO DO THE BUSINESS OF ACCIDENT AND HEALTH INSURANCE IN THIS STATE OR IS A HEALTH SERVICE CORPORATION ORGANIZED UNDER ARTICLE FORTY-THREE OF THIS CHAPTER. IF AT ANY TIME THE RESERVE FUNDS REQUIRED TO BE ESTABLISHED PURSUANT TO THIS SECTION FALL BELOW THE REQUIRED MINIMUM AMOUNTS, THEN THE FREELANCERS ASSOCIATION SHALL IMMEDIATELY NOTIFY THE SUPERINTENDENT OF SUCH IMPAIRMENT. THE FREELANCERS ASSOCIATION SHALL CURE THE IMPAIRMENT WITHIN FIVE BUSINESS DAYS.

(3) THE ASSETS CONSTITUTING THE FREELANCERS HEALTH PLAN'S CONTINGENT RESERVE FUND SHALL CONSIST SOLELY OF CERTIFICATES OF DEPOSIT ISSUED BY A UNITED STATES BANK AND PAYABLE IN UNITED STATES LEGAL TENDER, OR SECURITIES REPRESENTING INVESTMENTS OF THE TYPES SPECIFIED IN PARAGRAPHS ONE, TWO, THREE, EIGHT, AND TEN OF SUBSECTION (A) OF SECTION ONE THOUSAND FOUR HUNDRED FOUR OF THIS CHAPTER, OR AS OTHERWISE EXPRESSLY PERMITTED BY THE SUPERINTENDENT. ANY INTEREST EARNED OR CAPITAL GAIN REALIZED ON THE MONEY SO DEPOSITED OR INVESTED SHALL ACCRUE TO AND BECOME PART OF THE PLAN'S RESERVE FUNDS OR CONTINGENT RESERVE, AS APPLICABLE.

(4) THE PLAN'S ASSETS, LIABILITIES, INCOME AND EXPENSES SHALL BE ACCOUNTED FOR SEPARATE AND APART FROM ALL OTHER ASSETS, LIABILITIES, INCOME AND EXPENSES OF THE FREELANCERS ASSOCIATION. THE ACCOUNTING FOR THE PLAN'S CONTINGENT RESERVE FUND SHALL SHOW: (A) THE PURPOSE, SOURCE, DATE AND AMOUNT OF EACH SUM PAID INTO THE FUND; (B) THE INTEREST EARNED BY SUCH FUND; (C) CAPITAL GAINS OR LOSSES RESULTING FROM THE SALE OF INVESTMENTS OF THE PLAN'S CONTINGENT RESERVE FUND; (D) THE ORDER, PURPOSE, DATE AND AMOUNT OF EACH PAYMENT FROM THE CONTINGENT RESERVE FUND; AND (E) THE ASSETS OF THE CONTINGENT RESERVE FUND, INDICATING CASH BALANCE AND SCHEDULE OF INVESTMENTS.

(5) THE REQUIREMENTS FOR FUNDING OF THE PLAN'S RESERVES SHALL BE CALCULATED USING GENERALLY ACCEPTED ACCOUNTING PRINCIPLES. ONLY THOSE EXPENSES THAT RELATE TO THE PLAN SHALL BE INCLUDED IN CALCULATING THE REQUIREMENTS FOR FUNDING OF THE PLAN'S RESERVE FUNDS. EXPENSES ALLOCATED TO THE PLAN SHALL BE ALLOCATED ON AN EQUITABLE BASIS IN CONFORMITY WITH

1 GENERALLY ACCEPTED ACCOUNTING PRINCIPLES CONSISTENTLY APPLIED. THE
2 BOOKS, ACCOUNTS, AND RECORDS OF THE PLAN SHALL BE MAINTAINED AS TO
3 CLEARLY AND ACCURATELY DISCLOSE THE NATURE AND DETAILS OF ALL EXPENSES
4 SO AS TO SUPPORT THE REASONABLENESS OF SUCH EXPENSES.

5 (I) (1) A FREELANCERS ASSOCIATION SHALL FILE WITH THE SUPERINTENDENT
6 WITHIN ONE HUNDRED TWENTY DAYS OF THE CLOSE OF THE PLAN'S FISCAL YEAR A
7 REPORT THAT CONTAINS:

8 (A) AN ANNUAL FINANCIAL STATEMENT, VERIFIED BY THE OATH OF AT LEAST
9 TWO OF THE FREELANCERS ASSOCIATION'S PRINCIPAL OFFICERS, WITH DIRECT
10 KNOWLEDGE OF THE OPERATIONS OF THE FREELANCERS HEALTH PLAN, SHOWING THE
11 FINANCIAL CONDITION OF THE PLAN DURING THE MOST RECENT FISCAL YEAR, IN
12 ACCORDANCE WITH LAW AND GENERALLY ACCEPTED ACCOUNTING PRINCIPLES, IN A
13 FORM PRESCRIBED BY THE SUPERINTENDENT;

14 (B) THE IDENTITY OF THE QUALIFIED ACTUARY UTILIZED BY THE FREELANCERS
15 ASSOCIATION OR PLAN AND THE AMOUNT PAID TO THE QUALIFIED ACTUARY BY THE
16 FREELANCERS ASSOCIATION OR PLAN DURING ITS MOST RECENT FISCAL YEAR;

17 (C) THE IDENTITIES OF THE PLAN'S TEN LARGEST VENDORS BY PAYMENT AMOUNT
18 DURING ITS MOST RECENT FISCAL YEAR;

19 (D) THE NAME AND CONTACT INFORMATION OF THE PERSON OR ENTITY APPOINTED
20 BY THE FREELANCERS ASSOCIATION TO ADMINISTER THE FREELANCERS HEALTH
21 PLAN;

22 (E) A PRO-FORMA STATEMENT OF PROJECTED REVENUE AND EXPENSES FOR HEALTH
23 BENEFITS ANTICIPATED BY THE PLAN FOR THE NEXT TWELVE-MONTH PERIOD OF THE
24 PLAN'S OPERATION, PROVIDED ON A FISCAL YEAR;

25 (F) A DETAILED REPORT OF THE OPERATIONS AND CONDITION OF THE PLAN'S
26 RESERVE FUNDS; AND

27 (G) SUCH OTHER INFORMATION AS THE SUPERINTENDENT MAY REQUIRE.

28 (2) A FREELANCERS ASSOCIATION SHALL FILE WITH THE SUPERINTENDENT WITH-
29 IN ONE HUNDRED TWENTY DAYS OF THE CLOSE OF ITS FREELANCERS HEALTH PLAN'S
30 FISCAL YEAR THE MOST RECENT CERTIFIED, INDEPENDENTLY AUDITED FINANCIAL
31 STATEMENT FOR THE FREELANCERS ASSOCIATION. THE STATEMENT SHALL INCLUDE
32 AN OPINION OF AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT. THE NOTES TO
33 THE FINANCIAL STATEMENT SHALL SHOW THE FINANCIAL RESULTS OF THE FREE-
34 LANCERS HEALTH PLAN OPERATIONS AND A DESCRIPTION AS TO HOW THE FREELANC-
35 ERS ASSOCIATION MEETS THE RESERVE REQUIREMENTS IN PARAGRAPH ONE OF
36 SUBSECTION (H) OF THIS SECTION, INCLUDING THE AMOUNTS REPORTED FOR EACH
37 OF THE RESERVES, THE METHOD USED TO CALCULATE THE RESERVES, AND THE
38 CHANGE IN THE RESERVES FROM THE BEGINNING OF THE PLAN'S FISCAL YEAR TO
39 THE END OF THE PLAN'S FISCAL YEAR. IN ADDITION, THE NOTES TO FINANCIAL
40 STATEMENT SHALL DETAIL THE ASSETS COMPRISING THE CONTINGENT RESERVE FUND
41 TO DEMONSTRATE COMPLIANCE WITH PARAGRAPH ONE OF SUBSECTION (H) OF THIS
42 SECTION.

43 (3) A FREELANCERS ASSOCIATION THAT FAILS TO FILE ANY REPORT OR STATE-
44 MENT REQUIRED BY THIS CHAPTER, OR FAILS TO REPLY WITHIN THIRTY DAYS TO A
45 WRITTEN INQUIRY BY THE SUPERINTENDENT IN CONNECTION THEREWITH SHALL, IN
46 ADDITION TO OTHER PENALTIES PROVIDED BY THIS CHAPTER, BE SUBJECT, UPON
47 DUE NOTICE AND OPPORTUNITY TO BE HEARD, TO A PENALTY OF UP TO ONE THOU-
48 SAND DOLLARS PER DAY OF DELAY, NOT TO EXCEED TWENTY-FIVE THOUSAND
49 DOLLARS IN THE AGGREGATE, FOR EACH SUCH FAILURE.

50 (J) THE SUPERINTENDENT MAY, PURSUANT TO SECTIONS THREE HUNDRED NINE,
51 THREE HUNDRED TEN, THREE HUNDRED ELEVEN, AND THREE HUNDRED TWELVE OF
52 THIS CHAPTER, AND PURSUANT TO THE FINANCIAL SERVICES LAW, MAKE AN EXAM-
53 INATION INTO THE AFFAIRS OF ANY FREELANCERS ASSOCIATION WITH REGARD TO A
54 FREELANCERS HEALTH PLAN ISSUED BY THE FREELANCERS ASSOCIATION, AS OFTEN
55 AS THE SUPERINTENDENT DEEMS IT EXPEDIENT FOR THE PROTECTION OF THE
56 INTERESTS OF THE PEOPLE OF THIS STATE.

1 (K)(1) THE SUPERINTENDENT MAY SUSPEND OR REVOKE A DEMONSTRATION
2 PROGRAM WAIVER ISSUED TO A FREELANCERS ASSOCIATION IF THE SUPERINTENDENT
3 FINDS, AFTER NOTICE AND HEARING, THAT THE FREELANCERS ASSOCIATION HAS
4 FAILED TO COMPLY WITH ANY REQUIREMENT IMPOSED ON IT BY THE PROVISIONS OF
5 THIS CHAPTER AND IF IN THE SUPERINTENDENT'S JUDGMENT SUCH SUSPENSION OR
6 REVOCATION IS REASONABLY NECESSARY TO PROTECT THE INTERESTS OF THE
7 PEOPLE OF THIS STATE, INCLUDING:

8 (A) FOR ANY CAUSE THAT WOULD BE A BASIS FOR DENIAL OF AN INITIAL
9 APPLICATION FOR A DEMONSTRATION PROGRAM WAIVER;

10 (B) FAILURE TO MAINTAIN THE RESERVES REQUIRED BY SUBSECTION (H) OF
11 THIS SECTION; OR

12 (C) THE SUPERINTENDENT FINDS THAT THE FREELANCERS ASSOCIATION HAS
13 REFUSED TO PRODUCE ITS ACCOUNTS, RECORDS, AND FILES FOR EXAMINATION OR
14 HAS REFUSED TO COOPERATE OR GIVE INFORMATION WITH RESPECT TO THE AFFAIRS
15 OF THE FREELANCERS HEALTH PLAN OR TO PERFORM ANY OTHER LEGAL OBLIGATION
16 RELATING TO SUCH AN EXAMINATION WHEN REQUIRED BY THE SUPERINTENDENT.

17 (2) ANY DEMONSTRATION PROGRAM WAIVER SUSPENDED OR REVOKED UNDER THIS
18 SUBSECTION SHALL BE SURRENDERED TO THE SUPERINTENDENT, AND THE FREELANC-
19 ERS ASSOCIATION SHALL NOTIFY ALL MEMBERS OF THAT DECISION IN SUCH FORM
20 AND MANNER AS THE SUPERINTENDENT MAY PRESCRIBE, BUT NOT LATER THAN TEN
21 DAYS AFTER RECEIPT OF NOTICE OF THE SUPERINTENDENT'S DECISION REQUIRING
22 SUSPENSION OR REVOCATION. IN ADDITION, THE FREELANCERS ASSOCIATION SHALL
23 SUBMIT A PLAN FOR THE SUPERINTENDENT'S APPROVAL FOR WINDING UP THE
24 PLAN'S AFFAIRS IN AN ORDERLY MANNER DESIGNED TO RESULT IN TIMELY PAYMENT
25 OF ALL BENEFITS, IN SUCH FORM AND MANNER AS THE SUPERINTENDENT MAY
26 PRESCRIBE.

27 (3) NOTWITHSTANDING SUBDIVISION TWO OF SECTION EIGHTY-SEVEN OF THE
28 PUBLIC OFFICERS LAW, ALL FINAL DECISIONS TO SUSPEND OR REVOKE THE DEMON-
29 STRATION PROGRAM WAIVER WITH REGARD TO A FREELANCERS HEALTH PLAN SHALL
30 BE PUBLIC.

31 (L) IN ANY CASE IN WHICH A FREELANCERS ASSOCIATION DETERMINES THAT
32 THERE IS A REASON TO BELIEVE THAT THE FREELANCERS HEALTH PLAN WILL
33 TERMINATE, THE FREELANCERS ASSOCIATION SHALL SO INFORM THE SUPERINTEN-
34 DENT AT LEAST SIXTY DAYS PRIOR THERETO, AND SHALL FILE A SWORN STATEMENT
35 WITH THE SUPERINTENDENT CONCERNING ALL CURRENT AND FUTURE LIABILITIES
36 UNDER ITS DISCONTINUED PLAN. THE FREELANCERS ASSOCIATION SHALL SUBMIT A
37 PLAN FOR THE SUPERINTENDENT'S APPROVAL FOR WINDING UP THE PLAN'S AFFAIRS
38 IN AN ORDERLY MANNER DESIGNED TO RESULT IN TIMELY PAYMENT OF ALL BENE-
39 FITS, IN SUCH FORM AND MANNER AS THE SUPERINTENDENT MAY PRESCRIBE.

40 (M)(1) NO PART OF ANY FUNDS OF THE FREELANCERS ASSOCIATION, AS THEY
41 PERTAIN TO THE FREELANCERS HEALTH PLAN, SHALL BE SUBJECT TO THE CLAIMS
42 OF GENERAL CREDITORS OF THE FREELANCERS ASSOCIATION UNTIL ALL PLAN BENE-
43 FITS AND OTHER PLAN OBLIGATIONS HAVE BEEN SATISFIED. UNTIL SUCH TIME,
44 THE FREELANCERS ASSOCIATION SHALL CONTINUE TO MAINTAIN AND FUND THE
45 RESERVE FUNDS REQUIRED TO BE ESTABLISHED UNDER SUBSECTION (H) OF THIS
46 SECTION. IF AT ANY TIME THE SUPERINTENDENT DETERMINES THAT ADDITIONAL
47 FUNDS SHALL BE DEPOSITED IN THE RESERVE FUNDS, THEN THE FREELANCERS
48 ASSOCIATION SHALL MAKE THE DEPOSIT WITHIN THIRTY DAYS OF THE SUPERINTEN-
49 DENT'S DETERMINATION.

50 (2) IF, AFTER TWENTY-FOUR MONTHS, OR SUCH LONGER PERIOD AS DEEMED
51 NECESSARY BY THE SUPERINTENDENT, ALL PLAN BENEFITS AND OTHER PLAN OBLI-
52 GATIONS HAVE BEEN SATISFIED, THE FREELANCERS ASSOCIATION, UPON APPROVAL
53 BY THE SUPERINTENDENT, SHALL NO LONGER BE REQUIRED TO MAINTAIN ASSETS
54 WITHIN THE PLAN'S RESERVE FUNDS WITHIN RESTRICTED ACCOUNTS WITHIN THE
55 FREELANCERS ASSOCIATION'S GENERAL ACCOUNTING LEDGER SYSTEM.

1 (N) A FREELANCERS ASSOCIATION THAT RECEIVES A DEMONSTRATION PROGRAM
2 WAIVER UNDER THIS SECTION SHALL SUBMIT PERIODIC REPORTS TO THE SUPER-
3 INTENDENT SUFFICIENT TO ENABLE THE SUPERINTENDENT TO EVALUATE THE EFFEC-
4 TIVENESS OF THE DEMONSTRATION PROGRAM. SUCH REPORTS SHALL INCLUDE A
5 COMPARISON OF THE COST OF BENEFITS OBTAINED UNDER THE PROGRAM TO OTHER
6 AVAILABLE INSURANCE OPTIONS AND ANY OTHER INFORMATION REQUIRED BY THE
7 SUPERINTENDENT.

8 (O) A FREELANCERS ASSOCIATION SHALL NOT ISSUE A STOP-LOSS INSURANCE
9 POLICY.

10 (P) A FREELANCERS HEALTH PLAN SHALL PROVIDE BENEFITS ONLY TO INDEPEND-
11 ENT WORKERS WHO ARE MEMBERS OF THE FREELANCERS ASSOCIATION SPONSORING
12 THE PLAN AND SUCH MEMBERS' SPOUSES, DOMESTIC PARTNERS AND DEPENDENTS.

13 (Q) THE PROVISIONS OF THIS CHAPTER REQUIRING LICENSURE OF INSURERS
14 SHALL BE WAIVED WITH RESPECT TO A FREELANCERS HEALTH PLAN OPERATING
15 UNDER A DEMONSTRATION PROGRAM WAIVER. A FREELANCERS ASSOCIATION OPERAT-
16 ING FREELANCERS HEALTH PLAN PURSUANT TO A DEMONSTRATION PROGRAM WAIVER
17 SHALL NOT BE DEEMED TO BE AN INSURER UNDER SECTION ONE THOUSAND ONE
18 HUNDRED ONE OF THIS ARTICLE AND SHALL NOT BE SUBJECT TO THE PROVISIONS
19 OF THIS CHAPTER REGULATING INSURERS EXCEPT AS EXPRESSLY SET FORTH IN
20 THIS SECTION.

21 (R) THE SUPERINTENDENT MAY PROMULGATE SUCH REGULATIONS AS THE SUPER-
22 INTENDENT DEEMS NECESSARY TO IMPLEMENT THE PROVISIONS OF THIS SECTION
23 AND TO ENSURE THAT THE PLANS ESTABLISHED UNDER THIS SECTION ARE IN THE
24 BEST INTERESTS OF THE FREELANCERS ASSOCIATION'S MEMBERS, AND THEIR
25 SPOUSES, DOMESTIC PARTNERS AND DEPENDENTS.

26 (S) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, ANY FREELANCERS
27 ASSOCIATION THAT VIOLATES THIS SECTION SHALL BE SUBJECT TO THE PENALTIES
28 SET FORTH IN SECTION ONE HUNDRED NINE OF THIS CHAPTER.

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