

4526--A

2013-2014 Regular Sessions

I N S E N A T E

April 8, 2013

Introduced by Sens. HANNON, SAVINO, BRESLIN, AVELLA, HOYLMAN -- 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, in relation to creating the freelancers health plan demonstration program; 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 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 PLAN MAINTAINED BY A
11 FREELANCERS ASSOCIATION FOR THE PURPOSE OF PROVIDING MEDICAL, SURGICAL,
12 OR HOSPITAL SERVICES TO INDEPENDENT WORKERS WHO ARE MEMBERS OF THE FREE-
13 LANCERS ASSOCIATION AND A MEMBER'S SPOUSE, CHILDREN AND OTHER PERSONS
14 CHIEFLY DEPENDENT UPON THE MEMBER FOR SUPPORT AND MAINTENANCE.
15 (3) "INDEPENDENT WORKER" MEANS AN INDIVIDUAL WHO: (A) IS AN INDEPEND-
16 ENT 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

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

LBD10111-06-3

1 FULL-TIME BY A SINGLE EMPLOYER, WITH THE EXCEPTION OF AN INDIVIDUAL WHO
2 MEETS THE REQUIREMENTS OF SUBPARAGRAPH (D), (F) OR (G) OF THIS PARA-
3 GRAPH.

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

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

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

16 (C) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A FREELANCERS ASSO-
17 CIATION OPERATING A FREELANCERS HEALTH PLAN SHALL:

18 (1) WITH THE EXCEPTION OF THE ENROLLMENT PROVISIONS AS PROVIDED FOR IN
19 SECTION FOUR THOUSAND THREE HUNDRED SEVENTEEN OF THIS CHAPTER AND
20 STABILIZATION OF HEALTH INSURANCE MARKETS AND PREMIUM RATES AS PROVIDED
21 FOR IN SECTION FOUR THOUSAND TWO HUNDRED THIRTY-THREE OF THIS CHAPTER,
22 BE SUBJECT TO THE SAME PROVISIONS AND REQUIREMENTS OF A CORPORATION
23 ORGANIZED UNDER ARTICLE FORTY-THREE OF THIS CHAPTER; AND

24 (2) PROVIDE THAT ITS PLAN WILL HAVE AN EXPECTED LOSS RATIO OF NOT LESS
25 THAN EIGHTY-TWO PERCENT. IN REVIEWING A RATE FILING OR APPLICATION BY A
26 PLAN, THE SUPERINTENDENT MAY MODIFY THE EIGHTY-TWO PERCENT EXPECTED
27 MINIMUM LOSS RATIO REQUIREMENT IF THE SUPERINTENDENT DETERMINES THE
28 MODIFICATION TO BE IN THE INTERESTS OF THE PEOPLE OF THIS STATE OR IF
29 THE SUPERINTENDENT DETERMINES THAT A MODIFICATION IS NECESSARY TO MAIN-
30 TAIN PLAN SOLVENCY. NO LATER THAN ONE HUNDRED TWENTY DAYS AFTER THE
31 CLOSE OF A PLAN'S FISCAL YEAR, A PLAN SHALL ANNUALLY REPORT THE ACTUAL
32 LOSS RATIO FOR THE PREVIOUS PLAN FISCAL YEAR IN A FORMAT ACCEPTABLE TO
33 THE SUPERINTENDENT. IF THE EXPECTED LOSS RATIO IS NOT MET, THEN THE
34 SUPERINTENDENT MAY DIRECT THE PLAN TO TAKE CORRECTIVE ACTION IN ADDITION
35 TO THE REQUIREMENTS OF SECTION FORTY-THREE HUNDRED EIGHT OF THIS CHAP-
36 TER; AND

37 (3) INCLUDE IN ITS MEMBER CONTRACTS THAT THE MEMBER CONTRACT WILL NOT
38 BE EFFECTIVE AFTER DECEMBER THIRTY-FIRST, TWO THOUSAND FOURTEEN; AND

39 (4) PAY ALL CLAIMS UNDER ITS MEMBER CONTRACTS BY DECEMBER
40 THIRTY-FIRST, TWO THOUSAND FIFTEEN.

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

45 (1) A COPY OF THE MEMBER CONTRACT, INCLUDING A TABLE OF THE PREMIUM
46 RATES CHARGED OR PROPOSED TO BE CHARGED, THAT EFFECTIVE JANUARY FIRST,
47 TWO THOUSAND FOURTEEN, CONTAINS THE BENEFITS DESCRIBED IN PARAGRAPH ONE
48 OF SUBSECTION (B) OF SECTION FOUR THOUSAND THREE HUNDRED TWENTY-EIGHT OF
49 THIS CHAPTER AND SHALL OFFER TO ITS MEMBERS, AT A MINIMUM, A CONTRACT AT
50 ONE OF THE LEVELS OF COVERAGE, AS DEFINED IN SECTION 1302(D) OF THE
51 AFFORDABLE CARE ACT, 42 USC 18022(D);

52 (2) A REPORT INDICATING THE BENEFIT PROVISIONS, PREMIUM RATES, AND
53 INCURRED MEDICAL LOSSES ASSOCIATED WITH THE FREELANCERS ASSOCIATION'S
54 MEMBERS UNDER THE INSURANCE POLICIES INSURING THE FREELANCERS ASSOCI-
55 ATION'S MEMBERS PURSUANT TO SECTION ONE THOUSAND ONE HUNDRED

TWENTY-THREE OF THIS ARTICLE FOR THE THREE YEARS PRIOR TO THE DATE OF THE APPLICATION;

(3) THE MOST RECENT CERTIFIED INDEPENDENTLY-AUDITED FINANCIAL STATEMENT FOR THE FREELANCERS ASSOCIATION;

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

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

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

(7) A NARRATIVE DESCRIPTION OF:

(A) THE ACCOUNTING METHODOLOGY THAT THE FREELANCERS ASSOCIATION WILL UTILIZE, WHICH SHALL BE IN ACCORDANCE WITH STATUTORY ACCOUNTING PRACTICES AND PROCEDURES AS PRESCRIBED BY APPLICABLE PROVISIONS OF THIS CHAPTER AND REGULATIONS PROMULGATED THEREUNDER AS WOULD BE APPLICABLE TO A CORPORATION ORGANIZED UNDER ARTICLE FORTY-THREE OF THIS CHAPTER;

(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, TO THE EXTENT PERMISSIBLE UNDER FEDERAL LAW, IF A FREELANCERS ASSOCIATION SUBMITS A MATERIALLY SATISFACTORY AND COMPLETE APPLICATION WITHIN SIXTY DAYS OF THE EFFECTIVE DATE OF THIS SECTION, THEN THE SUPERINTENDENT MAY 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 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. THE SUPERINTENDENT MAY REFUSE TO ISSUE ANY DEMONSTRATION PROGRAM WAIVER IF, IN THE SUPERINTENDENT'S JUDGMENT, THE REFUSAL WILL BEST PROMOTE THE INTERESTS OF THE PEOPLE OF THIS STATE. 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, HAVE 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;

(6) MAINTAIN ITS FUNCTIONS, ACTIVITIES AND SERVICES UNDERTAKEN AND PERFORMED PURSUANT TO A DEMONSTRATION PROGRAM WAIVER SEPARATE FROM ANY OTHER FUNCTION, ACTIVITY OR SERVICE THROUGH THE MAINTENANCE OF SEPARATE RECORDS, REPORTS AND ACCOUNTS FOR EACH SUCH FREELANCERS ASSOCIATION FUNCTION, ACTIVITY, OR SERVICE. THE RECORDS, REPORTS AND ACCOUNTS OF THE FREELANCERS ASSOCIATION SHALL BE MAINTAINED SEPARATELY FROM THOSE OF ANY OTHER PERSON OR FREELANCERS ASSOCIATION THAT IS A PARENT, SUBSIDIARY OR AFFILIATE OF THE FREELANCERS ASSOCIATION;

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

(8) PROVIDE PROMINENT, SEPARATELY STATED NOTICE TO ALL PLAN PARTICIPANTS THAT THEIR CONTRACTS WILL NOT BE EFFECTIVE AFTER DECEMBER THIRTY-FIRST, TWO THOUSAND FOURTEEN, AND THAT THEIR POLICIES ARE NON-RENEWABLE FOR ANY PERIOD BEYOND DECEMBER THIRTY-FIRST, TWO THOUSAND FOURTEEN.

(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 AND MAINTAIN A RESERVE TO BE DESIGNATED AS THE STATUTORY RESERVE FUND, IN AN AMOUNT EQUAL TO TWELVE AND ONE-HALF PER CENTUM OF THE NET PREMIUM INCOME OF THE PLAN, IN ADDITION TO RESERVES CONSISTING OF 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; AND (B) A RESERVE FOR UNEARNED PREMIUM EQUIVALENTS, COMPUTED PRO-RATA ON THE BASIS OF THE UNEXPIRED PORTION OF THE POLICY PERIOD.

(2) 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 STATUTORY 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 STATUTORY RESERVE FUNDS.

(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

1 THE PLAN'S STATUTORY RESERVE FUND SHALL SHOW: (A) THE PURPOSE, SOURCE,
2 DATE AND AMOUNT OF EACH SUM PAID INTO THE FUND; (B) THE INTEREST EARNED
3 BY SUCH FUND; (C) CAPITAL GAINS OR LOSSES RESULTING FROM THE SALE OF
4 INVESTMENTS OF THE PLAN'S STATUTORY RESERVE FUND; (D) THE ORDER,
5 PURPOSE, DATE AND AMOUNT OF EACH PAYMENT FROM THE STATUTORY RESERVE
6 FUND; AND (E) THE ASSETS OF THE STATUTORY RESERVE FUND, INDICATING CASH
7 BALANCE AND SCHEDULE OF INVESTMENTS.

8 (5) THE REQUIREMENTS FOR FUNDING OF THE PLAN'S RESERVES SHALL BE
9 CALCULATED USING GENERALLY ACCEPTED ACCOUNTING PRINCIPLES. ONLY THOSE
10 EXPENSES THAT RELATE TO THE PLAN SHALL BE INCLUDED IN CALCULATING THE
11 REQUIREMENTS FOR FUNDING OF THE PLAN'S RESERVE FUNDS. EXPENSES ALLOCATED
12 TO THE PLAN SHALL BE ALLOCATED ON AN EQUITABLE BASIS IN CONFORMITY WITH
13 CUSTOMARY INSURANCE ACCOUNTING PRINCIPLES CONSISTENTLY APPLIED. THE
14 BOOKS, ACCOUNTS, AND RECORDS OF THE PLAN SHALL BE MAINTAINED AS TO
15 CLEARLY AND ACCURATELY DISCLOSE THE NATURE AND DETAILS OF ALL EXPENSES
16 SO AS TO SUPPORT THE REASONABLENESS OF SUCH EXPENSES.

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

20 (A) AN ANNUAL FINANCIAL STATEMENT, VERIFIED BY THE OATH OF AT LEAST
21 TWO OF THE FREELANCERS ASSOCIATION'S PRINCIPAL OFFICERS, WITH DIRECT
22 KNOWLEDGE OF THE OPERATIONS OF THE FREELANCERS HEALTH PLAN, SHOWING THE
23 FINANCIAL CONDITION AND AFFAIRS OF THE PLAN DURING THE MOST RECENT
24 FISCAL YEAR, IN ACCORDANCE WITH LAW AND STATUTORY PRACTICES AND PROCE-
25 DURES AS ADOPTED BY THE SUPERINTENDENT, IN A FORM PRESCRIBED BY THE
26 SUPERINTENDENT;

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

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

32 (D) THE NAME AND CONTACT INFORMATION OF THE PERSON OR ENTITY APPOINTED
33 BY THE FREELANCERS ASSOCIATION TO ADMINISTER THE FREELANCERS HEALTH
34 PLAN;

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

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

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

41 (2) A FREELANCERS ASSOCIATION SHALL FILE WITH THE SUPERINTENDENT WITH-
42 IN ONE HUNDRED TWENTY DAYS OF THE CLOSE OF ITS FREELANCERS HEALTH PLAN'S
43 FISCAL YEAR THE MOST RECENT CERTIFIED, INDEPENDENTLY AUDITED FINANCIAL
44 STATEMENT FOR THE FREELANCERS ASSOCIATION. THE STATEMENT SHALL INCLUDE
45 AN OPINION OF AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT. THE NOTES TO
46 THE FINANCIAL STATEMENT SHALL SHOW THE FINANCIAL RESULTS OF THE FREE-
47 LANCERS HEALTH PLAN OPERATIONS AND A DESCRIPTION AS TO HOW THE FREELANC-
48 ERS ASSOCIATION MEETS THE RESERVE REQUIREMENTS IN PARAGRAPH ONE OF
49 SUBSECTION (H) OF THIS SECTION, INCLUDING THE AMOUNTS REPORTED FOR EACH
50 OF THE RESERVES, THE METHOD USED TO CALCULATE THE RESERVES, AND THE
51 CHANGE IN THE RESERVES FROM THE BEGINNING OF THE PLAN'S FISCAL YEAR TO
52 THE END OF THE PLAN'S FISCAL YEAR. IN ADDITION, THE NOTES TO FINANCIAL
53 STATEMENT SHALL DETAIL THE ASSETS COMPRISING THE STATUTORY RESERVE FUND
54 TO DEMONSTRATE COMPLIANCE WITH PARAGRAPH ONE OF SUBSECTION (H) OF THIS
55 SECTION.

(3) A FREELANCERS ASSOCIATION SHALL FILE A REPORT WITH THE SUPERINTENDENT EACH QUARTER, WITHIN FORTY-FIVE DAYS AFTER QUARTER CLOSE, DESCRIBING THE PLAN'S CURRENT FINANCIAL STATUS AND PROVIDING SUCH INFORMATION AS THE SUPERINTENDENT MAY PRESCRIBE.

(4) A FREELANCERS ASSOCIATION THAT FAILS TO FILE ANY REPORT OR STATEMENT REQUIRED BY THIS CHAPTER, OR FAILS TO REPLY WITHIN THIRTY DAYS TO A WRITTEN INQUIRY BY THE SUPERINTENDENT IN CONNECTION THEREWITH SHALL, IN ADDITION TO OTHER PENALTIES PROVIDED BY THIS CHAPTER, BE SUBJECT, UPON NOTICE AN OPPORTUNITY TO BE HEARD, TO A PENALTY OF UP TO ONE THOUSAND DOLLARS PER DAY OF DELAY, NOT TO EXCEED TWENTY-FIVE THOUSAND DOLLARS IN THE AGGREGATE, FOR EACH SUCH FAILURE.

(J) THE SUPERINTENDENT MAY, PURSUANT TO SECTIONS THREE HUNDRED NINE, THREE HUNDRED TEN, THREE HUNDRED ELEVEN, AND THREE HUNDRED TWELVE OF THIS CHAPTER, AND PURSUANT TO THE FINANCIAL SERVICES LAW, MAKE AN EXAMINATION INTO THE AFFAIRS OF ANY FREELANCERS ASSOCIATION WITH REGARD TO A FREELANCERS HEALTH PLAN ISSUED BY THE FREELANCERS ASSOCIATION, AS OFTEN AS THE SUPERINTENDENT DEEMS IT EXPEDIENT FOR THE PROTECTION OF THE INTERESTS OF THE PEOPLE OF THIS STATE. THE EXPENSES OF EVERY EXAMINATION OF THE AFFAIRS OF THE FREELANCERS ASSOCIATION, WITH REGARD TO A FREELANCERS HEALTH PLAN ESTABLISHED OR MAINTAINED BY THE FREELANCERS ASSOCIATION, SHALL BE BORNE AND PAID FOR BY THE FREELANCERS ASSOCIATION SO EXAMINED. THE EXPENSES OF EXAMINATION SHALL INCLUDE REIMBURSEMENT FOR THE COMPENSATION PAID FOR SERVICES OF PERSONS EMPLOYED BY THE SUPERINTENDENT OR BY THE SUPERINTENDENT'S AUTHORITY TO MAKE SUCH EXAMINATION, AND FOR THE NECESSARY TRAVELING AND LIVING EXPENSES OF THE PERSON OR PERSONS MAKING THE EXAMINATION.

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

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

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

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

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

(3) NOTWITHSTANDING SUBDIVISION TWO OF SECTION EIGHTY-SEVEN OF THE PUBLIC OFFICERS LAW, ALL FINAL DECISIONS TO SUSPEND OR REVOKE THE DEMON-

1 STRATION PROGRAM WAIVER WITH REGARD TO A FREELANCERS HEALTH PLAN SHALL
2 BE PUBLIC.

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

12 (M) NO PART OF ANY FUNDS OF THE FREELANCERS ASSOCIATION, AS THEY
13 PERTAIN TO THE FREELANCERS HEALTH PLAN, SHALL BE SUBJECT TO THE CLAIMS
14 OF GENERAL CREDITORS OF THE FREELANCERS ASSOCIATION UNTIL ALL PLAN BENE-
15 FITS AND OTHER PLAN OBLIGATIONS HAVE BEEN SATISFIED. UNTIL SUCH TIME,
16 THE FREELANCERS ASSOCIATION SHALL CONTINUE TO MAINTAIN AND FUND THE
17 RESERVE FUNDS REQUIRED TO BE ESTABLISHED UNDER SUBSECTION (H) OF THIS
18 SECTION. IF AT ANY TIME THE SUPERINTENDENT DETERMINES THAT ADDITIONAL
19 FUNDS SHALL BE DEPOSITED IN THE RESERVE FUNDS, THEN THE FREELANCERS
20 ASSOCIATION SHALL MAKE THE DEPOSIT WITHIN THIRTY DAYS OF THE SUPERINTEN-
21 DENT'S DETERMINATION.

22 (N) A FREELANCERS ASSOCIATION THAT RECEIVES A DEMONSTRATION PROGRAM
23 WAIVER UNDER THIS SECTION SHALL SUBMIT PERIODIC REPORTS TO THE SUPER-
24 INTENDENT SUFFICIENT TO ENABLE THE SUPERINTENDENT TO EVALUATE THE EFFEC-
25 TIVENESS OF THE DEMONSTRATION PROGRAM. SUCH REPORTS SHALL INCLUDE A
26 COMPARISON OF THE COST OF BENEFITS OBTAINED UNDER THE PROGRAM TO OTHER
27 AVAILABLE INSURANCE OPTIONS AND ANY OTHER INFORMATION REQUIRED BY THE
28 SUPERINTENDENT.

29 (O) A FREELANCERS ASSOCIATION SHALL NOT ISSUE A STOP-LOSS INSURANCE
30 POLICY.

31 (P) A FREELANCERS HEALTH PLAN SHALL PROVIDE BENEFITS ONLY TO INDEPEND-
32 ENT WORKERS WHO ARE MEMBERS OF THE FREELANCERS ASSOCIATION SPONSORING
33 THE PLAN AND SUCH MEMBERS' SPOUSES, CHILDREN AND ALL OTHER PERSONS
34 CHIEFLY DEPENDENT UPON THE MEMBERS FOR SUPPORT AND MAINTENANCE;
35 PROVIDED, HOWEVER, A FREELANCERS HEALTH PLAN SHALL NOT ESTABLISH RULES
36 OF ELIGIBILITY, INCLUDING CONTINUED ELIGIBILITY, OF ANY INDIVIDUAL OR
37 DEPENDENT OF THE INDIVIDUAL BASED ON ANY OF THE FOLLOWING FACTORS:

- 38 (1) HEALTH STATUS;
- 39 (2) MEDICAL CONDITION;
- 40 (3) CLAIMS EXPERIENCE;
- 41 (4) RECEIPT OF HEALTH CARE;
- 42 (5) MEDICAL HISTORY;
- 43 (6) GENETIC INFORMATION;
- 44 (7) EVIDENCE OF INSURABILITY, INCLUDING CONDITIONS ARISING OUT OF ACTS
45 OF DOMESTIC VIOLENCE; OR
- 46 (8) DISABILITY.

47 (Q) THE SUPERINTENDENT MAY PROMULGATE SUCH REGULATIONS AS THE SUPER-
48 INTENDENT DEEMS NECESSARY TO IMPLEMENT THE PROVISIONS OF THIS SECTION
49 AND TO ENSURE THAT THE PLANS ESTABLISHED UNDER THIS SECTION ARE IN THE
50 BEST INTERESTS OF MEMBERS OF THE FREELANCERS ASSOCIATION AND THE
51 MEMBER'S SPOUSE, CHILDREN AND OTHER PERSONS CHIEFLY DEPENDENT UPON THE
52 MEMBERS FOR SUPPORT AND MAINTENANCE.

53 (R) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, ANY FREELANCERS
54 ASSOCIATION THAT VIOLATES THIS SECTION SHALL BE SUBJECT TO THE PENALTIES
55 SET FORTH IN SECTION ONE HUNDRED NINE OF THIS CHAPTER.

(S) NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS SECTION, ANY ACTIVITIES THAT MAY OR MUST BE CARRIED OUT BY A FREELANCERS ASSOCIATION UNDER THIS SECTION MAY BE CARRIED OUT ON BEHALF OF THE FREELANCERS ASSOCIATION BY ANOTHER ENTITY WHOLLY OWNED OR CONTROLLED BY THE FREELANCERS ASSOCIATION, PROVIDED THAT ANY ACTIVITIES CARRIED OUT ON BEHALF OF THE FREELANCERS ASSOCIATION BY ANOTHER ENTITY WHOLLY OWNED OR CONTROLLED BY THE FREELANCERS ASSOCIATION SHALL BE SUBJECT TO ALL PROVISIONS OF THIS SECTION.

S 2. Subsections (b) and (c) of section 4237-a of the insurance law, as amended by chapter 246 of the laws of 2012, are amended to read as follows:

(b) "Stop-loss insurance" means an insurance policy whereby the insurer agrees to pay claims or indemnify an employer for losses incurred under a self-insured employee benefit plan or a student health plan as authorized by section one thousand one hundred twenty-four of this chapter, OR THE FREELANCERS HEALTH PLAN DEMONSTRATION PROGRAM AS AUTHORIZED BY SECTION ONE THOUSAND ONE HUNDRED TWENTY-FIVE OF THIS CHAPTER, in excess of specified loss limits for individual claims and/or for all claims combined, or any similar arrangement.

(c) A stop-loss insurance policy delivered, issued for delivery, or entered into in this state shall clearly describe:

(1) the entire money or other consideration for the policy;

(2) the time at which the insurance takes effect and terminates;

(3) the specified per-claim, per-employee or, in the case of a student health plan under section one thousand one hundred twenty-four of this chapter, per student, OR IN THE CASE OF THE FREELANCERS HEALTH PLAN DEMONSTRATION PROGRAM UNDER SECTION ONE THOUSAND ONE HUNDRED TWENTY-FIVE OF THIS CHAPTER, PER MEMBER, or aggregate amount of claims above which payment or reimbursement is to be made by the insurer; and

(4) the payments to be made by the insurer once the specified stop-loss thresholds have been exceeded.

S 3. Subsection (k) of section 1108 of the insurance law, as added by chapter 246 of the laws of 2012, is relettered subsection (l) and a new subsection (m) is added to read as follows:

(M) A FREELANCERS ASSOCIATION, AS DEFINED IN SECTION ONE THOUSAND ONE HUNDRED TWENTY-FIVE OF THIS ARTICLE, THAT OBTAINS AND MAINTAINS A DEMONSTRATION PROGRAM WAIVER FROM THE SUPERINTENDENT AND COMPLIES WITH THE REQUIREMENTS OF SECTION ONE THOUSAND ONE HUNDRED TWENTY-FIVE OF THIS ARTICLE, TO THE EXTENT THEREIN STATED.

S 4. This act shall take effect immediately and shall expire and be deemed repealed December 31, 2014.