

Regulatory Impact Statement for the 46th Amendment to 11 NYCRR 52 (Insurance Regulation 62).

1. Statutory authority: Financial Services Law (“FSL”) sections 202 and 302 and Insurance Law (“IL”) sections 301, 3201, 3217, 3221 and 4237.

Pursuant to FSL section 202, the Superintendent of Financial Services (“Superintendent”) has the rights, powers, and duties in connection with financial services and protection in this state, expressed or reasonably implied by the FSL or any other applicable law of this State.

FSL section 302 and IL section 301, in pertinent part, authorize the Superintendent to prescribe regulations, not inconsistent with the IL and FSL, interpreting the provisions of the IL and to effectuate any power granted to the Superintendent in the Insurance Law.

Pursuant to IL section 3201, policy forms, including blanket accident insurance policy forms, are subject to the Superintendent’s approval.

IL section 3217 authorizes the Superintendent to issue regulations to establish minimum standards, including standards for full and fair disclosure, for the form, content and sale of accident and health insurance policies and subscriber contracts of corporations organized under Article 32 and Article 43 of the Insurance Law, and Article 44 of the Public Health Law.

IL section 3221 of the Insurance Law prohibits a policy of group or blanket accident and health insurance, except as provided in Insurance Law section 3221(d), to be delivered or issued for delivery in New York unless it contains in substance the provisions set forth therein or provisions that are in the opinion of the Superintendent more favorable to the holders of such certificates or not less favorable to the holders of such certificates and more favorable to policyholders.

IL section 4237 defines a blanket accident insurance policy, a blanket health insurance policy, and a blanket accident and health insurance policy.

2. Legislative objectives: Chapter 32 of the Laws of 2016 added a new Article 41 to the General Business Law (“GBL”) to authorize and regulate professional combative sports and professional wrestling in New York State. In providing a framework for the licensure and regulation of authorized combative sports and professional wrestling, the Legislature repealed the existing statutory structure related to “boxing, sparring and wrestling” and replaced it with a more comprehensive scheme for the regulation of those endeavors as well as, among others, professional and amateur mixed martial arts, kickboxing, and other combative sports.

The legislation also sought to protect combatants in all combative endeavors by requiring every licensed promoter of authorized combative sports and professional wrestling to provide accident insurance for the protection of licensed professionals and wrestlers appearing in authorized combative sports matches or professional wrestling exhibitions on and after September 1, 2016; establishing insurance minimums; and authorizing the State Athletic Commission (“SAC”) to establish regulations to implement the legislation (codified as GBL section 1015.11). Accordingly, SAC is repealing current 19 NYCRR 208 and promulgating a new Part 208, which, among other things, provides that the accident insurance policy may be either primary or secondary to any other applicable insurance coverage held by the licensed professional or wrestler participant.

Currently, 11 NYCRR 52 (Insurance Regulation 62) would prohibit an insurer from issuing such a blanket policy on an excess basis. This amendment would allow an insurer to issue a blanket accident insurance policy that is issued in accordance with GBL section 1015.11 to contain a provision that its benefits are excess or always secondary to any plan.

3. Needs and benefits: Permitting a limited exception to Regulation 62 in allowing the GBL section 1015.11 blanket accident insurance policies to be written on an excess basis should make the coverage more affordable and more readily available. In order for a blanket accident insurance policy that is issued in accordance with GBL section 1015.11 to be secondary to other coverage, it is necessary to amend Insurance Regulation 62. Without this amendment, the SAC’s proposal permitting the accident insurance policy to be

either primary or secondary to any other applicable insurance coverage held by a licensed professional or wrestler participant could not be fully realized. While this means that other accident and health policies insuring the participant could be primary, this amendment should not significantly impact the rates for those policies because they already have to provide the coverage and there are only a limited number of participants involved. Moreover, coordination of coverage with other policies may vary depending upon the jurisdiction in which the other policies were issued.

4. Costs: This amendment imposes no compliance costs upon state or local governments. The Department of Financial Services (“Department”) will not incur any additional costs due to this amendment because insurers that choose to offer the accident insurance coverage under the rule will not be required to file its forms any differently than they are presently required to do. The Department also does not expect any substantial increase in the number of forms filed with the Department due to this amendment.

Insurers that issue the accident insurance policies under this rule would incur no additional costs beyond their usual costs of doing business. In fact, insurers that write the coverage should earn additional income from the new business.

5. Local government mandates: This amendment imposes no new mandates on any county, city, town, village, school district, fire district or other special district.

6. Paperwork: This amendment does not impose any additional paperwork for insurers, the Department, or any local or state governments.

7. Duplication: There are no federal or other New York State requirements that duplicate, or conflict with this regulation.

8. Alternatives: Without this amendment, the SAC’s proposal permitting the accident insurance policy to be either primary or secondary to any other applicable insurance coverage held by a licensed professional or

wrestler participant could not be fully realized, which might make the coverage less available. Therefore, there are no viable alternatives to this amendment.

9. Federal standards: There are no minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule: The emergency adoption of the amended rule will become effective upon filing with the Department of State.

Statement setting forth the basis for the finding that the 46th Amendment to 11 NYCRR 52 (Insurance Regulation 62) will not impose any adverse economic impact or compliance requirements on small businesses or local governments.

1. Small businesses: The Department of Financial Services (“Department”) finds that this amendment will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping or other compliance requirements on small businesses. The basis for this finding is that this amendment is directed at insurers that are authorized to write accident insurance coverage in New York State, none of which fall within the definition of “small business” as defined in State Administrative Procedure Act section 102(8), because there are no such insurers that are both independently owned and have less than one hundred employees.

2. Local governments: This amendment, which simply allows a blanket accident insurance policy that is issued in accordance with General Business Law section 1015.11 to contain a provision that its benefits are excess or always secondary to any plan, does not impose any impacts, including any adverse impacts, or any reporting, recordkeeping, or other compliance requirements on any local governments.

Statement setting forth the basis for the finding that the Proposed 46th Amendment to 11 NYCRR 52 (Insurance Regulation 62) will not impose any adverse impact on rural areas or compliance requirements on public or private entities in rural areas.

The Department of Financial Services finds that this amendment, which simply allows a blanket accident insurance policy that is issued in accordance with General Business Law section 1015.11 to contain a provision that its benefits are excess or always secondary to any plan, does not impose any additional burden on persons located in rural areas, and will not have an adverse impact on rural areas. This amendment applies uniformly to regulated parties that do business in both rural and non-rural areas of New York State. Additionally, this amendment will not require regulated entities to engage in any additional reporting, recordkeeping or other compliance requirements. Neither will it require additional professional services. As such, this amendment will not impose any additional costs on rural areas.

Statement setting forth the basis for finding that the 46th Amendment to 11 NYCRR 52 (Insurance Regulation 62) will not have an adverse impact on jobs and employment opportunities.

The amendment to Insurance Regulation 62 should have no negative impact on jobs or employment opportunities, including self-employment opportunities, in New York State.

New General Business Law (“GBL”) section 1015.11 requires every licensed promoter of authorized combative sports and professional wrestling to provide accident insurance for the protection of licensed professionals and wrestlers appearing in authorized combative sports matches or professional wrestling exhibitions on and after September 1, 2016, and authorizes the State Athletic Commission to promulgate regulations necessary to implement this legislation.

In accordance with GBL section 1015.11, the State Athletic Commission is repealing current 19 NYCRR 208 and promulgating a new Part 208, which, among other things, provides that the accident insurance policy may be either primary or secondary to any other applicable insurance coverage held by the licensed professional or wrestler participant.

Pursuant to Insurance Law section 3201, accident insurance policies are subject to the approval of the Superintendent of Financial Services. These policies are subject to the requirements of 11 NYCRR 52 (Insurance Regulation 62). In order for the accident insurance policy to be secondary to other coverage, an amendment to Insurance Regulation 62 is necessary.

This amendment allows a blanket accident insurance policy that is issued in accordance with GBL section 1015.11 to contain a provision that its benefits are excess or always secondary to any plan.

This amendment should not result in any impact on jobs or employment opportunities, including self-employment opportunities, in New York State because it neither creates new employment or job opportunities nor reduces them.