

5009

2011-2012 Regular Sessions

I N S E N A T E

May 2, 2011

Introduced by Sen. MAZIARZ -- 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 requiring all motor vehicle insurers to file annual financial statements and detailed claim data with the superintendent of insurance

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

1 Section 1. This act shall be known and may be cited as the "automobile
2 insurance sunshine act of 2011".
3 S 2. Legislative intent. The legislature hereby finds and declares
4 that insurance companies issuing motor vehicle policies in this state
5 owe a duty to the consumers they insure and to those who may in the
6 future be insured by them, to fully disclose in a public and transparent
7 manner all elements relating to their financial condition and solvency.
8 Automobile use and operation is a cornerstone of modern life; in fact,
9 auto insurance is the only coverage most New Yorkers are required by law
10 to purchase. New York's consumers have a right to know the details and
11 specifics of the factors and circumstances behind the financial solvency
12 of their insurer as well as the bases for the rates they are required to
13 pay to retain their legally mandated coverage. The determination of auto
14 insurance premiums in New York has, unfortunately, gone on too long in
15 obscurity, with those who bear the premium rates unable to learn reasons
16 why they are set where they are. As a matter of public trust, automobile
17 liability insurers should make public the pertinent facts related to
18 their premium determinations and financial solvency. It is the sense of
19 the legislature that this data should be disclosed in an open and public
20 manner.
21 S 3. The insurance law is amended by adding a new section 342 to read
22 as follows:
23 S 342. FINANCIAL STATEMENT AND DETAILED CLAIM DATA TO BE FILED WITH
24 THE DEPARTMENT. (A) FOR PURPOSES OF THIS SECTION, THE TERM "INSURER"

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

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1 SHALL MEAN ANY PERSON, CORPORATION, ASSOCIATION OR OTHER BUSINESS ENTITY
2 AUTHORIZED TO ISSUE A MOTOR VEHICLE INSURANCE POLICY IN THIS STATE.

3 (B) ON OR BEFORE APRIL FIRST OF EACH YEAR, EVERY INSURER SHALL PROVIDE
4 THE SUPERINTENDENT WITH A DETAILED FINANCIAL STATEMENT TO SUPPLEMENT AND
5 EXPAND UPON THE INFORMATION CONTAINED IN THE STATUTORY ANNUAL STATEMENT
6 FOR THE MOST RECENTLY CONCLUDED CALENDAR YEAR. THE FINANCIAL STATEMENT
7 SHALL CONTAIN INFORMATION ON A COMBINED BASIS FOR ALL LINES OF INSURANCE
8 AS WELL AS INFORMATION SEPARATELY FOR EACH OF THE FOLLOWING LINES OF
9 INSURANCE: (1) PRIVATE PASSENGER AUTOMOBILE OTHER LIABILITY, (2) PRIVATE
10 PASSENGER AUTOMOBILE PERSONAL INJURY PROTECTION, (3) PRIVATE PASSENGER
11 AUTOMOBILE PHYSICAL DAMAGE, (4) COMMERCIAL AUTOMOBILE OTHER LIABILITY,
12 (5) COMMERCIAL AUTOMOBILE PERSONAL INJURY PROTECTION, AND (6) COMMERCIAL
13 AUTOMOBILE PHYSICAL DAMAGE. SUCH FINANCIAL STATEMENT SHALL INCLUDE THE
14 ENTIRETY OF ITS BUSINESS ACTIVITIES CONDUCTED IN THIS STATE, OR
15 CONDUCTED OUTSIDE THIS STATE, BUT HAVING A NEXUS TO INSURANCE POLICIES
16 OR CONTRACTS OF INSURANCE INSURING PERSONS OR RISKS IN THIS STATE,
17 CONSISTENT WITH THE PROCEDURES FOR DETERMINING NEW YORK STATE INSURANCE
18 BUSINESS FOR STATUTORY ANNUAL STATEMENT REPORTING PURPOSES. SUCH STATE-
19 MENT SHALL BE IN A FORM DETERMINED BY THE SUPERINTENDENT. THE FORM SHALL
20 BE SUFFICIENTLY ITEMIZED IN A MANNER THAT ALLOWS FOR AN ACTUARIALLY
21 SOUND ANALYSIS OF THE INCOME REALIZED BY THE INSURER FROM ALL SOURCES
22 DURING SUCH YEAR, INCLUDING BUT NOT LIMITED TO PREMIUMS, INVESTMENT
23 INCOME, PROFIT FROM SALE OF ASSETS AND ANY OTHER CATEGORY OR CATEGORIES
24 OF INCOME AS DETERMINED BY THE SUPERINTENDENT TO REFLECT THE FULL
25 DISCLOSURE REQUIREMENTS OF THIS SECTION. AT A MINIMUM, SUCH INFORMATION
26 SHALL CONSIST OF THE ITEMS SET FORTH IN THE STATEMENT OF INCOME, EXCLUD-
27 ING THE CAPITAL AND SURPLUS ACCOUNT SECTION OF THE PROPERTY/CASUALTY
28 STATUTORY ANNUAL STATEMENT, AS APPLICABLE TO THE INSURER'S NEW YORK
29 STATE BUSINESS, AS WELL AS THE OTHER INFORMATION DELINEATED IN THIS
30 SUBSECTION. SUCH FINANCIAL STATEMENT SHALL ALSO CONTAIN A COMPREHENSIVE
31 AND DETAILED DISCLOSURE OF THE INSURER'S EXPENSES ACTUALLY INCURRED AND
32 PAID DURING SUCH CALENDAR YEAR, TO INCLUDE NORMAL BUSINESS EXPENSES,
33 SALARIES, COMMISSIONS, CONSULTING FEES, LEGAL EXPENSES, ADVERTISING
34 COSTS AND ANY OTHER CATEGORY DEEMED PERTINENT TO THE INTENT OF THIS
35 SECTION. AT A MINIMUM, THE EXPENSE INFORMATION REQUIRED SHALL CONSIST OF
36 THE ITEMS SET FORTH IN THE UNDERWRITING AND INVESTMENT EXHIBIT - PART 3
37 - EXPENSES OF THE PROPERTY / CASUALTY STATUTORY ANNUAL STATEMENT, AS
38 APPLICABLE TO THE INSURER'S NEW YORK STATE BUSINESS. WITH RESPECT TO
39 SALARIES (INCLUDING ALL OTHER FORMS OF COMPENSATION), EACH INSURER SHALL
40 ITEMIZE THE SALARY OF THE TWENTY MOST HIGHLY COMPENSATED EMPLOYEES OF
41 SUCH INSURER DURING SUCH YEAR, PROVIDED THAT THE NAME OF SUCH EMPLOYEES
42 NEED NOT BE DISCLOSED. SUCH FINANCIAL STATEMENT SHALL ALSO PROVIDE THE
43 PUBLIC WITH A SYNOPSIS OF CLAIMS OR SETTLEMENTS PAID PURSUANT TO SUCH
44 POLICIES OR CONTRACTS, LISTING THE TOTAL OF SUCH CLAIMS AND SETTLEMENTS
45 BY TYPE OF INSURANCE OR THE RISK INSURED. AT A MINIMUM, THE CLAIM INFOR-
46 MATION REQUIRED SHALL CONSIST OF THE ITEMS SET FORTH IN THE EXHIBIT OF
47 PREMIUMS AND LOSSES OF THE PROPERTY / CASUALTY STATUTORY ANNUAL STATE-
48 MENT, AS APPLICABLE TO THE INSURER'S NEW YORK STATE BUSINESS AND IDENTI-
49 FIED AND CATEGORIZED SEPARATELY FOR EACH ZIP CODE IN THIS STATE. SUCH
50 FINANCIAL STATEMENT SHALL BE SIGNED AND ATTESTED AS FULL, COMPLETE AND
51 ACCURATE BY THE CHIEF EXECUTIVE OFFICER OF THE INSURER, AND HE OR SHE
52 SHALL BE HELD PERSONALLY RESPONSIBLE WITH RESPECT TO THE ACCURACY OF THE
53 CONTENT OF SUCH STATEMENT. THE SUPERINTENDENT SHALL PROVIDE INSURERS
54 WITH A METHOD TO SUBMIT THEIR FINANCIAL STATEMENTS ELECTRONICALLY VIA
55 THE INTERNET, WHICH METHOD SHALL INCLUDE INSTRUCTIONS RELATING TO THE
56 USE OF AN ELECTRONIC SIGNATURE WHICH SHALL BE SUBJECT TO, AND SUBMITTED

1 IN ACCORDANCE WITH SECTION THREE HUNDRED SIXTEEN OF THIS ARTICLE;
2 PROVIDED, HOWEVER, THAT NO EXCEPTION AUTHORIZED IN SUCH SECTION MAY BE
3 REQUESTED OR GRANTED.

4 (C) ON OR BEFORE APRIL FIRST OF EACH YEAR, EVERY INSURER SHALL PROVIDE
5 THE SUPERINTENDENT WITH DETAILED CLOSED CLAIM INFORMATION FOR THE SAME
6 LINES OF INSURANCE PROVIDED FOR IN SUBSECTION (B) OF THIS SECTION FOR
7 THE MOST RECENTLY CONCLUDED CALENDAR YEAR. UNTIL THE SUPERINTENDENT
8 PROMULGATES DATA COLLECTION FORMS AND PROCEDURES FOR PRIVATE PASSENGER
9 AUTOMOBILE INSURANCE, DATA SHALL BE COLLECTED USING, AT A MINIMUM, THE
10 MOST RECENT PUBLICLY AVAILABLE FORMS USED BY THE INSURANCE RESEARCH
11 COUNCIL FOR ITS AUTO INJURY SURVEY. THE SUPERINTENDENT MAY REQUIRE ADDI-
12 TIONAL INFORMATION BEYOND THAT WHICH IS CONTAINED IN SUCH SURVEY IF HE
13 OR SHE DEEMS IT NECESSARY AND WARRANTED. INSTEAD OF COLLECTING INFORMA-
14 TION FOR ALL PRIVATE PASSENGER AUTOMOBILE CLAIMS THE SUPERINTENDENT MAY
15 COLLECT DATA FOR A STATISTICALLY VALID SAMPLE OF CLAIMS. THE MINIMUM
16 SAMPLE SIZE SHALL REPRESENT FIVE PER CENTUM OF THE NUMBER OF CLAIMS FOR
17 EACH YEAR. UNTIL THE SUPERINTENDENT PROMULGATES DATA COLLECTION FORMS
18 AND PROCEDURES FOR COMMERCIAL AUTOMOBILE INSURANCE, DATA SHALL BE
19 COLLECTED USING INFORMATION WHICH MAY BE AVAILABLE FROM ANY OTHER
20 SOURCE. FOR COMMERCIAL AUTOMOBILE CLAIMS, INSTEAD OF COLLECTING INFORMA-
21 TION FOR ALL CLAIMS THE SUPERINTENDENT MAY COLLECT DATA FOR A STATIS-
22 TICALLY VALID SAMPLE OF CLAIMS. THE MINIMUM SAMPLE SIZE SHALL REPRESENT
23 TEN PER CENTUM OF THE NUMBER OF CLAIMS FOR EACH YEAR FOR SUCH LINE OF
24 INSURANCE. SUCH DETAILED CLAIM DATA SHALL BE SIGNED AND ATTESTED AS
25 FULL, COMPLETE AND ACCURATE BY THE CHIEF EXECUTIVE OFFICER OF THE INSUR-
26 ER, AND HE OR SHE SHALL BE HELD PERSONALLY RESPONSIBLE WITH RESPECT TO
27 THE ACCURACY OF THE DATA. THE DETAILED CLAIM DATA SHALL BE SUBMITTED IN
28 THE SAME MANNER AS PROVIDED FOR IN SUBSECTION (B) OF THIS SECTION.

29 (D) THE SUPERINTENDENT SHALL, IN BOTH WRITTEN FORM AND AS PART OF THE
30 DEPARTMENT WEB SITE, MAKE SUCH FINANCIAL STATEMENTS AND DETAILED CLAIM
31 INFORMATION AVAILABLE TO THE PUBLIC. THE DETAILED CLAIM INFORMATION
32 SHALL BE PROVIDED IN AGGREGATE FORM FOR ALL INSURERS COMBINED WITHOUT
33 ANY IDENTIFICATION OF A SPECIFIC CLAIM TO A SPECIFIC INSURER. NONE OF
34 THE PUBLICLY AVAILABLE DETAILED CLAIM INFORMATION SHALL IDENTIFY THE
35 INDIVIDUAL INSURER, DEFENDANT OR PLAINTIFF ASSOCIATED WITH THE CLAIM.
36 SUCH FINANCIAL STATEMENTS AND DETAILED CLAIM INFORMATION SHALL BE DEEMED
37 A PUBLIC DOCUMENT AND NO PERSON SHALL BE REQUIRED TO FILE A REQUEST FOR
38 SUCH FINANCIAL STATEMENTS PURSUANT TO ARTICLE SIX OF THE PUBLIC OFFICERS
39 LAW IN ORDER TO RECEIVE A COPY THEREOF, BUT UPON REQUEST AND PAYMENT OF
40 THE FEE FOR COPYING SUCH DOCUMENT, IT SHALL BE PROVIDED. WITH RESPECT TO
41 THE ELECTRONIC COPY OF SUCH FINANCIAL STATEMENTS AND DETAILED CLAIM
42 INFORMATION, WHICH SHALL BE ACCESSIBLE ON THE DEPARTMENT'S WEB SITE, THE
43 DEPARTMENT SHALL HIGHLIGHT THE AVAILABILITY OF SUCH INFORMATION TO THE
44 PUBLIC ON SUCH WEB SITE, AND THE LINK TO EACH INSURER'S FINANCIAL STATE-
45 MENT AND THE AGGREGATED DETAILED CLAIM INFORMATION SHALL BE ACCESSIBLE
46 IN A SIMPLE AND EASY MANNER. BOTH THE FINANCIAL STATEMENT AND AGGREGATED
47 DETAILED CLAIM INFORMATION ON THE DEPARTMENT WEB SITE SHALL BE AVAILABLE
48 IN SPREADSHEET FORMAT, IN ADDITION TO ANY OTHER FORMAT THE SUPERINTEN-
49 DENT DETERMINES IS APPROPRIATE.

50 (E) ON OR BEFORE JULY FIRST OF EACH YEAR, THE SUPERINTENDENT SHALL
51 ISSUE REPORTS SUMMARIZING AND EXPLAINING THE INFORMATION COLLECTED FROM
52 THE FINANCIAL STATEMENTS AND THE DETAILED CLAIM INFORMATION. COPIES OF
53 SUCH REPORTS SHALL BE FORWARDED TO THE TEMPORARY PRESIDENT OF THE
54 SENATE, THE SPEAKER OF THE ASSEMBLY AND THE CHAIRS OF BOTH THE SENATE
55 AND ASSEMBLY INSURANCE COMMITTEES. SUCH REPORTS SHALL BE PUBLIC DOCU-

1 MENTS AND SHALL BE ACCESSIBLE BOTH IN PAPER COPY AND ON THE DEPARTMENT'S
2 WEB SITE.

3 (F) WHERE AN INSURER FAILS OR REFUSES TO PROVIDE THE SUPERINTENDENT
4 WITH A FULL AND COMPLETE DISCLOSURE AS REQUIRED BY THIS SECTION, THE
5 SUPERINTENDENT SHALL TAKE SUCH ACTION HE OR SHE DEEMS NECESSARY TO BRING
6 THE INSURER INTO FULL COMPLIANCE. SUCH ACTION MAY INCLUDE IMPOSITION OF
7 A CIVIL PENALTY OF UP TO FIFTY THOUSAND DOLLARS ASSESSED AGAINST THE
8 INSURER FOR EACH VIOLATION, TEMPORARY SUSPENSION OF ANY RIGHT TO ISSUE
9 ADDITIONAL POLICIES OR CONTRACTS UNTIL THE INSURER BRINGS ITSELF INTO
10 FULL COMPLIANCE, AN AUDIT OF THE INSURER'S RECORDS BY THE DEPARTMENT OR
11 ITS DESIGNATED REPRESENTATIVE TO OBTAIN THE INFORMATION AND WHICH AUDIT
12 SHALL BE PAID FOR BY THE INSURER, OR ANY OTHER CIVIL REMEDY THE SUPER-
13 INTENDENT DEEMS WARRANTED OR NECESSARY UNTIL SUCH INSURER FULLY
14 COMPLIES. IN ADDITION THE OFFICER WHOSE SIGNATURE IS AFFIXED TO SUCH
15 STATEMENT MAY BE PERSONALLY PENALIZED TO THE SAME EXTENT.

16 (G) THE SUPERINTENDENT MAY PROMULGATE SUCH RULES AND REGULATIONS HE OR
17 SHE DEEMS NECESSARY FOR THE PROPER ADMINISTRATION OF THE PROVISIONS OF
18 THIS SECTION, AND SUCH RULES AND REGULATIONS MAY BE PROMULGATED ON AN
19 EMERGENCY BASIS IF THE SUPERINTENDENT WARRANTS SUCH ACTION TO BE NECES-
20 SARY.

21 S 4. Severability. If any item, clause, sentence, subparagraph, subdi-
22 vision or other part of this act, or the application thereof to any
23 person or circumstances shall be held to be invalid, such holding shall
24 not affect, impair or invalidate the remainder of this act but it shall
25 be confined in its operation to the item, clause, sentence, subpara-
26 graph, subdivision or other part of this act directly involved in such
27 holding, or to the person and circumstances therein involved.

28 S 5. This act shall take effect immediately.