

631

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. WEINSTEIN, ORTIZ, CUSICK, DINOWITZ,
PEOPLES-STOKES -- read once and referred 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 ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Legislative intent. The legislature hereby finds and
2 declares that insurance companies issuing motor vehicle policies in this
3 state owe a duty to those they insure and to those who may in the future
4 be insured by them, to fully disclose in a public and transparent manner
5 all elements relating to their financial condition and solvency. Such
6 obligation is essential in maintaining the public's inherent right to
7 know the details and specifics of such insurer's expenses and claims
8 history on a global basis so, as consumers, they can make a reasoned and
9 rational selection of the insurer with which they intend to do business.
10 As premiums escalate, it is more incumbent on such insurers to honor
11 this obligation by making the public aware of the rationale they use in
12 determining the premiums they charge, and it is the sense of the legis-
13 lature that where the data used is available, it should be disclosed in
14 an open and public manner.

15 S 2. The insurance law is amended by adding a new section 342 to read
16 as follows:

17 S 342. FINANCIAL STATEMENT AND DETAILED CLAIM DATA TO BE FILED WITH
18 THE DEPARTMENT. (A) FOR PURPOSES OF THIS SECTION, THE TERM "INSURER"
19 SHALL MEAN ANY PERSON, CORPORATION, ASSOCIATION OR OTHER BUSINESS ENTITY
20 AUTHORIZED TO ISSUE A MOTOR VEHICLE INSURANCE POLICY IN THIS STATE.

21 (B) ON OR BEFORE APRIL FIRST OF EACH YEAR, EVERY INSURER SHALL PROVIDE
22 THE SUPERINTENDENT WITH A DETAILED FINANCIAL STATEMENT TO SUPPLEMENT AND
23 EXPAND UPON THE INFORMATION CONTAINED IN THE STATUTORY ANNUAL STATEMENT

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

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1 FOR THE MOST RECENTLY CONCLUDED CALENDAR YEAR. THE FINANCIAL STATEMENT
2 SHALL CONTAIN INFORMATION ON A COMBINED BASIS FOR ALL LINES OF INSURANCE
3 AS WELL AS INFORMATION SEPARATELY FOR EACH OF THE FOLLOWING LINES OF
4 INSURANCE: (1) PRIVATE PASSENGER AUTOMOBILE OTHER LIABILITY, (2) PRIVATE
5 PASSENGER AUTOMOBILE PERSONAL INJURY PROTECTION, (3) PRIVATE PASSENGER
6 AUTOMOBILE PHYSICAL DAMAGE, (4) COMMERCIAL AUTOMOBILE OTHER LIABILITY,
7 (5) COMMERCIAL AUTOMOBILE PERSONAL INJURY PROTECTION, AND (6) COMMERCIAL
8 AUTOMOBILE PHYSICAL DAMAGE. THAT FINANCIAL STATEMENT SHALL INCLUDE THE
9 ENTIRETY OF ITS BUSINESS ACTIVITIES CONDUCTED IN THIS STATE, OR
10 CONDUCTED OUTSIDE THIS STATE, BUT HAVING A NEXUS TO INSURANCE POLICIES
11 OR CONTRACTS OF INSURANCE INSURING PERSONS OR RISKS IN THIS STATE,
12 CONSISTENT WITH THE PROCEDURES FOR DETERMINING NEW YORK STATE INSURANCE
13 BUSINESS FOR STATUTORY ANNUAL STATEMENT REPORTING PURPOSES. SUCH STATE-
14 MENT SHALL BE IN A FORM DETERMINED BY THE SUPERINTENDENT. THE FORM SHALL
15 BE SUFFICIENTLY ITEMIZED IN A MANNER THAT ALLOWS FOR AN ACTUARIALLY
16 SOUND ANALYSIS OF THE INCOME REALIZED BY THE INSURER FROM ALL SOURCES
17 DURING SUCH YEAR, INCLUDING BUT NOT LIMITED TO PREMIUMS, INVESTMENT
18 INCOME, PROFIT FROM SALE OF ASSETS AND ANY OTHER CATEGORY OR CATEGORIES
19 OF INCOME AS DETERMINED BY THE SUPERINTENDENT TO REFLECT THE FULL
20 DISCLOSURE REQUIREMENTS OF THIS SECTION. AT A MINIMUM, SUCH INFORMATION
21 SHALL CONSIST OF THE ITEMS SET FORTH IN THE STATEMENT OF INCOME, EXCLUD-
22 ING THE CAPITAL AND SURPLUS ACCOUNT SECTION OF THE PROPERTY/CASUALTY
23 STATUTORY ANNUAL STATEMENT, AS APPLICABLE TO THE INSURER'S NEW YORK
24 STATE BUSINESS, AS WELL AS THE OTHER INFORMATION DELINEATED IN THIS
25 SUBSECTION. SUCH FINANCIAL STATEMENT SHALL ALSO CONTAIN A COMPREHENSIVE
26 AND DETAILED DISCLOSURE OF THE INSURER'S EXPENSES ACTUALLY INCURRED AND
27 PAID DURING SUCH CALENDAR YEAR, TO INCLUDE NORMAL BUSINESS EXPENSES,
28 SALARIES, COMMISSIONS, CONSULTING FEES, LEGAL EXPENSES, ADVERTISING
29 COSTS AND ANY OTHER CATEGORY DEEMED PERTINENT TO THE INTENT OF THIS
30 SECTION. AT A MINIMUM, THE EXPENSE INFORMATION REQUIRED SHALL CONSIST OF
31 THE ITEMS SET FORTH IN THE UNDERWRITING AND INVESTMENT EXHIBIT - PART 3
32 - EXPENSES OF THE PROPERTY / CASUALTY STATUTORY ANNUAL STATEMENT, AS
33 APPLICABLE TO THE INSURER'S NEW YORK STATE BUSINESS. WITH RESPECT TO
34 SALARIES (INCLUDING ALL OTHER FORMS OF COMPENSATION), EACH INSURER SHALL
35 ITEMIZE THE SALARY OF THE TWENTY MOST HIGHLY COMPENSATED EMPLOYEES OF
36 SUCH INSURER DURING SUCH YEAR, PROVIDED THAT THE NAME OF SUCH EMPLOYEES
37 NEED NOT BE DISCLOSED. SUCH FINANCIAL STATEMENT SHALL ALSO PROVIDE THE
38 PUBLIC WITH A SYNOPSIS OF CLAIMS OR SETTLEMENTS PAID PURSUANT TO SUCH
39 POLICIES OR CONTRACTS, LISTING THE TOTAL OF SUCH CLAIMS AND SETTLEMENTS
40 BY TYPE OF INSURANCE OR THE RISK INSURED. AT A MINIMUM, THE CLAIM INFOR-
41 MATION REQUIRED SHALL CONSIST OF THE ITEMS SET FORTH IN THE EXHIBIT OF
42 PREMIUMS AND LOSSES OF THE PROPERTY / CASUALTY STATUTORY ANNUAL STATE-
43 MENT, AS APPLICABLE TO THE INSURER'S NEW YORK STATE BUSINESS AND IDENTI-
44 FIED AND CATEGORIZED SEPARATELY FOR EACH ZIP CODE IN THIS STATE. SUCH
45 FINANCIAL STATEMENT SHALL BE SIGNED AND ATTESTED AS FULL, COMPLETE AND
46 ACCURATE BY THE CHIEF EXECUTIVE OFFICER OF THE INSURER, AND HE OR SHE
47 SHALL BE HELD PERSONALLY RESPONSIBLE WITH RESPECT TO THE ACCURACY OF THE
48 CONTENT OF SUCH STATEMENT. THE SUPERINTENDENT SHALL PROVIDE INSURERS
49 WITH A METHOD TO SUBMIT THEIR FINANCIAL STATEMENTS ELECTRONICALLY VIA
50 THE INTERNET, WHICH METHOD SHALL INCLUDE INSTRUCTIONS RELATING TO THE
51 USE OF AN ELECTRONIC SIGNATURE WHICH SHALL BE SUBJECT TO, AND SUBMITTED
52 IN ACCORDANCE WITH SECTION THREE HUNDRED SIXTEEN OF THIS ARTICLE;
53 PROVIDED, HOWEVER, THAT NO EXCEPTION AUTHORIZED IN SUCH SECTION MAY BE
54 REQUESTED OR GRANTED.

55 (C) ON OR BEFORE APRIL FIRST OF EACH YEAR, EVERY INSURER SHALL PROVIDE
56 THE SUPERINTENDENT WITH DETAILED CLOSED CLAIM INFORMATION FOR THE SAME

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

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

45 (E) ON OR BEFORE JULY FIRST OF EACH YEAR, THE SUPERINTENDENT SHALL
46 ISSUE REPORTS SUMMARIZING AND EXPLAINING THE INFORMATION COLLECTED FROM
47 THE FINANCIAL STATEMENTS AND THE DETAILED CLAIM INFORMATION. COPIES OF
48 SUCH REPORTS SHALL BE FORWARDED TO THE TEMPORARY PRESIDENT OF THE
49 SENATE, THE SPEAKER OF THE ASSEMBLY AND THE CHAIRS OF BOTH THE SENATE
50 AND ASSEMBLY INSURANCE COMMITTEES. SUCH REPORTS SHALL BE PUBLIC DOCU-
51 MENTS AND SHALL BE ACCESSIBLE BOTH IN PAPER COPY AND ON THE DEPARTMENT'S
52 WEB SITE.

53 (F) WHERE AN INSURER FAILS OR REFUSES TO PROVIDE THE SUPERINTENDENT
54 WITH A FULL AND COMPLETE DISCLOSURE AS REQUIRED BY THIS SECTION, THE
55 SUPERINTENDENT SHALL TAKE SUCH ACTION HE OR SHE DEEMS NECESSARY TO BRING
56 THE INSURER INTO FULL COMPLIANCE. SUCH ACTION MAY INCLUDE IMPOSITION OF

1 A CIVIL PENALTY OF UP TO FIFTY THOUSAND DOLLARS ASSESSED AGAINST THE
2 INSURER FOR EACH VIOLATION, TEMPORARY SUSPENSION OF ANY RIGHT TO ISSUE
3 ADDITIONAL POLICIES OR CONTRACTS UNTIL THE INSURER BRINGS ITSELF INTO
4 FULL COMPLIANCE, AN AUDIT OF THE INSURER'S RECORDS BY THE DEPARTMENT OR
5 ITS DESIGNATED REPRESENTATIVE TO OBTAIN THE INFORMATION AND WHICH AUDIT
6 SHALL BE PAID FOR BY THE INSURER, OR ANY OTHER CIVIL REMEDY THE SUPER-
7 INTENDENT DEEMS WARRANTED OR NECESSARY UNTIL SUCH INSURER FULLY
8 COMPLIES. IN ADDITION THE OFFICER WHOSE SIGNATURE IS AFFIXED TO SUCH
9 STATEMENT MAY BE PERSONALLY PENALIZED TO THE SAME EXTENT.

10 (G) THE SUPERINTENDENT MAY PROMULGATE SUCH RULES AND REGULATIONS HE OR
11 SHE DEEMS NECESSARY FOR THE PROPER ADMINISTRATION OF THE PROVISIONS OF
12 THIS SECTION, AND SUCH RULES AND REGULATIONS MAY BE PROMULGATED ON AN
13 EMERGENCY BASIS IF THE SUPERINTENDENT WARRANTS SUCH ACTION TO BE NECES-
14 SARY.

15 S 3. Severability. If any item, clause, sentence, subparagraph, subdi-
16 vision or other part of this act, or the application thereof to any
17 person or circumstances shall be held to be invalid, such holding shall
18 not affect, impair or invalidate the remainder of this act but it shall
19 be confined in its operation to the item, clause, sentence, subpara-
20 graph, subdivision or other part of this act directly involved in such
21 holding, or to the person and circumstances therein involved.

22 S 4. This act shall take effect immediately.