

328--B

2015-2016 Regular Sessions

I N A S S E M B L Y

(PREFILED)

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Introduced by M. of A. WEINSTEIN, ZEBROWSKI, DINOWITZ, PEOPLES-STOKES, COLTON, JAFFEE, CYMBROWITZ, ABINANTI, MARKEY, TITONE, PERRY, BENEDETTO, SCHIMEL, BRINDISI, STECK, THIELE, RODRIGUEZ, MILLER, ORTIZ, SKOUFIS, STIRPE, MONTESANO -- Multi-Sponsored by -- M. of A. BRAUNSTEIN, GALEF, MAGNARELLI -- read once and referred to the Committee on Insurance -- reported and referred to the Committee on Codes -- reported from committee, advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading -- recommitted to the Committee on Codes in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 financial services

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 2016".
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

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

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1 obscurity, with those who bear the premium rates unable to learn reasons
2 why they are set where they are. As a matter of public trust, automobile
3 liability insurers should make public the pertinent facts related to
4 their premium determinations and financial solvency. It is the sense of
5 the legislature that this data should be disclosed in an open and public
6 manner.

7 S 3. The insurance law is amended by adding a new section 343 to read
8 as follows:

9 S 343. FINANCIAL STATEMENT AND DETAILED CLAIM DATA TO BE FILED WITH
10 THE DEPARTMENT. (A) FOR PURPOSES OF THIS SECTION, THE TERM "INSURER"
11 SHALL MEAN ANY PERSON, CORPORATION, ASSOCIATION OR OTHER BUSINESS ENTITY
12 AUTHORIZED TO ISSUE A MOTOR VEHICLE INSURANCE POLICY IN THIS STATE.

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

1 PREMIUMS AND LOSSES OF THE PROPERTY / CASUALTY STATUTORY ANNUAL STATE-
2 MENT, AS APPLICABLE TO THE INSURER'S NEW YORK STATE BUSINESS AND IDENTIFI-
3 FIED AND CATEGORIZED SEPARATELY FOR EACH ZIP CODE IN THIS STATE. SUCH
4 FINANCIAL STATEMENT SHALL BE SIGNED AND ATTESTED AS FULL, COMPLETE AND
5 ACCURATE BY THE CHIEF EXECUTIVE OFFICER OF THE INSURER, AND HE OR SHE
6 SHALL BE HELD PERSONALLY RESPONSIBLE WITH RESPECT TO THE ACCURACY OF THE
7 CONTENT OF SUCH STATEMENT. THE SUPERINTENDENT SHALL PROVIDE INSURERS
8 WITH A METHOD TO SUBMIT THEIR FINANCIAL STATEMENTS ELECTRONICALLY VIA
9 THE INTERNET, WHICH METHOD SHALL INCLUDE INSTRUCTIONS RELATING TO THE
10 USE OF AN ELECTRONIC SIGNATURE WHICH SHALL BE SUBJECT TO, AND SUBMITTED
11 IN ACCORDANCE WITH SECTION THREE HUNDRED SIXTEEN OF THIS ARTICLE;
12 PROVIDED, HOWEVER, THAT NO EXCEPTION AUTHORIZED IN SUCH SECTION MAY BE
13 REQUESTED OR GRANTED.

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

39 (D) THE SUPERINTENDENT SHALL, IN BOTH WRITTEN FORM AND AS PART OF THE
40 DEPARTMENT WEB SITE, MAKE SUCH FINANCIAL STATEMENTS AND DETAILED CLAIM
41 INFORMATION AVAILABLE TO THE PUBLIC. THE DETAILED CLAIM INFORMATION
42 SHALL BE PROVIDED IN AGGREGATE FORM FOR ALL INSURERS COMBINED WITHOUT
43 ANY IDENTIFICATION OF A SPECIFIC CLAIM TO A SPECIFIC INSURER. NONE OF
44 THE PUBLICLY AVAILABLE DETAILED CLAIM INFORMATION SHALL IDENTIFY THE
45 INDIVIDUAL INSURER, DEFENDANT OR PLAINTIFF ASSOCIATED WITH THE CLAIM.
46 SUCH FINANCIAL STATEMENTS AND DETAILED CLAIM INFORMATION SHALL BE DEEMED
47 A PUBLIC DOCUMENT AND NO PERSON SHALL BE REQUIRED TO FILE A REQUEST FOR
48 SUCH FINANCIAL STATEMENTS PURSUANT TO ARTICLE SIX OF THE PUBLIC OFFICERS
49 LAW IN ORDER TO RECEIVE A COPY THEREOF, BUT UPON REQUEST AND PAYMENT OF
50 THE FEE FOR COPYING SUCH DOCUMENT, IT SHALL BE PROVIDED. WITH RESPECT TO
51 THE ELECTRONIC COPY OF SUCH FINANCIAL STATEMENTS AND DETAILED CLAIM
52 INFORMATION, WHICH SHALL BE ACCESSIBLE ON THE DEPARTMENT'S WEB SITE, THE
53 DEPARTMENT SHALL HIGHLIGHT THE AVAILABILITY OF SUCH INFORMATION TO THE
54 PUBLIC ON SUCH WEB SITE, AND THE LINK TO EACH INSURER'S FINANCIAL STATE-
55 MENT AND THE AGGREGATED DETAILED CLAIM INFORMATION SHALL BE ACCESSIBLE
56 IN A SIMPLE AND EASY MANNER. BOTH THE FINANCIAL STATEMENT AND AGGREGATED

1 DETAILED CLAIM INFORMATION ON THE DEPARTMENT WEB SITE SHALL BE AVAILABLE
2 IN SPREADSHEET FORMAT, IN ADDITION TO ANY OTHER FORMAT THE SUPERINTEN-
3 DENT DETERMINES IS APPROPRIATE.

4 (E) ON OR BEFORE JULY FIRST OF EACH YEAR, THE SUPERINTENDENT SHALL
5 ISSUE REPORTS SUMMARIZING AND EXPLAINING THE INFORMATION COLLECTED FROM
6 THE FINANCIAL STATEMENTS AND THE DETAILED CLAIM INFORMATION. COPIES OF
7 SUCH REPORTS SHALL BE FORWARDED TO THE TEMPORARY PRESIDENT OF THE
8 SENATE, THE SPEAKER OF THE ASSEMBLY AND THE CHAIRS OF BOTH THE SENATE
9 AND ASSEMBLY INSURANCE COMMITTEES. SUCH REPORTS SHALL BE PUBLIC DOCU-
10 MENTS AND SHALL BE ACCESSIBLE BOTH IN PAPER COPY AND ON THE DEPARTMENT'S
11 WEB SITE.

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

25 (G) THE SUPERINTENDENT MAY PROMULGATE SUCH RULES AND REGULATIONS HE OR
26 SHE DEEMS NECESSARY FOR THE PROPER ADMINISTRATION OF THE PROVISIONS OF
27 THIS SECTION, AND SUCH RULES AND REGULATIONS MAY BE PROMULGATED ON AN
28 EMERGENCY BASIS IF THE SUPERINTENDENT WARRANTS SUCH ACTION TO BE NECES-
29 SARY.

30 S 4. Severability. If any item, clause, sentence, subparagraph, subdi-
31 vision or other part of this act, or the application thereof to any
32 person or circumstances shall be held to be invalid, such holding shall
33 not affect, impair or invalidate the remainder of this act but it shall
34 be confined in its operation to the item, clause, sentence, subpara-
35 graph, subdivision or other part of this act directly involved in such
36 holding, or to the person and circumstances therein involved.

37 S 5. This act shall take effect immediately.