S T A T E O F N E W Y O R K

3392--A

2015-2016 Regular Sessions

I N S E N A T E

February 6, 2015

Introduced by Sens. LANZA, AVELLA, CARLUCCI, DILAN, HASSELL-THOMPSON, LATIMER, MARTINS, PARKER, RITCHIE, RIVERA, SAVINO, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance -- recommitted to the Committee on Insurance in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the insurance law, in relation to enacting the "construction insurance transparency act of 2016" requiring all insurers which issue policies of liability insurance insuring against claims made in reliance upon the duty imposed by the "scaffold law" 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:

Section 1. This act shall be known and may be cited as the "construction insurance transparency act of 2016".

S 2. Declarations of legislative findings. The legislature hereby finds and declares that persons, corporations, associations or other business entities which issue policies of liability insurance insuring an owner of real property or a contractor who is performing work and services on real property against claims made in reliance upon the duties imposed upon such parties by section 240 of the labor law, commonly referred to as the "scaffold law", owe an obligation to the public, to those they insure and to those who may in the future be insured by them, to fully disclose in a public and transparent manner all elements relating to the premiums paid for such insurance, the method and manner in which such premiums are determined and imposed upon insureds, and claims made by injured persons who rely on owners and contractors to provide a safe and secure worksite as required in such section of such law. It is essential that the public be made aware of

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

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such an insurer's responsibility to inform them of their financial condition and solvency, and the details and specifics of the factors and circumstances behind its financial solvency as well as the basis for the rates they charge to owners and contractors to obtain such coverage. The determination of premiums for such liability insurance policy in this state has, unfortunately, gone on too long in obscurity, with even those who bear the cost of premiums unable to learn why prices are set as they are. As a matter of public trust, liability insurers should be required to make the public aware of the pertinent facts related to their premium determinations and financial solvency by disclosing all the pertinent facts as provided for in this section. It is the further sense of the legislature that this data should be disclosed in an open and public manner, and should be made available without undue cost and delay.

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

S 343. FINANCIAL STATEMENT AND DETAILED CLAIM DATA TO BE FILED WITH THE SUPERINTENDENT. (A) FOR PURPOSES OF THIS SECTION, THE TERM "INSURER" SHALL MEAN ANY PERSON, CORPORATION, ASSOCIATION OR OTHER BUSINESS ENTITY WHICH ISSUES A POLICY OF LIABILITY INSURANCE INSURING A CONTRACTOR OR OWNER OF REAL PROPERTY LOCATED IN THIS STATE AGAINST CLAIMS MADE BY AN INJURED WORKER, THE CLAIM FOR WHICH IS MADE IN RELIANCE UPON THE DUTY OWED TO SUCH WORKER PURSUANT TO THE PROVISIONS OF SECTION TWO HUNDRED FORTY OF THE LABOR LAW.

(B) ON OR BEFORE APRIL FIRST OF EACH YEAR, EVERY INSURER SHALL FOR THE PRIOR CALENDAR YEAR PROVIDE THE SUPERINTENDENT AND THE PUBLIC WITH A DETAILED FINANCIAL STATEMENT TO SUPPLEMENT AND EXPAND UPON ANY OTHER INFORMATION OTHERWISE PROVIDED TO THE DEPARTMENT AS IT RELATES AN INSURER'S PROVISION OF LIABILITY INSURANCE COVERAGE TO OWNERS OF REAL PROPERTY OR CONTRACTORS PERFORMING SERVICES TO OWNERS OF REAL PROPERTY FOR CLAIMS MADE BY AN INJURED PERSON IN RELIANCE UPON THE DUTY OWED BY SECTION TWO HUNDRED FORTY OF THE LABOR LAW; PROVIDED, HOWEVER, THAT THE INITIAL FINANCIAL STATEMENT SO FILED BY AN INSURER AFTER THE EFFECTIVE DATE OF THIS SECTION SHALL INCLUDE THE INFORMATION REQUIRED IN THIS SUBDIVISION NOT ONLY FOR SUCH PRIOR CALENDAR YEAR BUT ALSO FOR THE PREVIOUS NINE CALENDAR YEARS PRIOR TO SUCH REPORT. THE FINANCIAL STATEMENT SHALL, IN DEPTH, SEPARATE THE COST OF PROVIDING SECTION TWO HUNDRED FORTY OF THE LABOR LAW BASED COVERAGE FROM THE COST OF PROVIDING GENERAL LIABILITY INSURANCE INSURING THE SAME OWNER OR CONTRACTOR WITH RESPECT TO THE SAME PROPERTY AND SHALL CONTAIN AT LEAST THE FOLLOWING INFORMATION RELATING TO COVERAGE PURSUANT TO SUCH SECTION: (1) THAT PORTION OF PREMIUMS ASSESSED AND ATTRIBUTABLE TO PROVIDING SUCH COVERAGE; (2) PAID JUDGMENTS, SETTLEMENTS OR LOSSES RESULTING FROM SUCH COVERAGE; (3) CASE RESERVES FOR LOSSES WHICH MAY BE ATTRIBUTABLE TO COVERAGE; (4) INCURRED BUT NOT REPORTED LOSS ESTIMATES WHICH MAY BE ATTRIBUTABLE TO COVERAGE; (5) PAID DEFENSE AND COST CONTAINMENT EXPENSES ATTRIBUTABLE TO ANY CLAIMS MADE BASED UPON SUCH COVERAGE; (6) CASE RESERVES FOR DEFENSE AND COST CONTAINMENT EXPERIENCE ATTRIBUTABLE TO ANY CLAIMS MADE BASED UPON SUCH COVERAGE; (7) INCURRED BUT NOT REPORTED DEFENSE AND COST CONTAINMENT ESTIMATES BASED UPON SUCH COVERAGE; (8) PREMIUM AND LOSS EXPERIENCE IDENTIFIED BY POLICY LIMITS AND DEDUCTIBLES; (9) NUMBER OF CLAIMS INITIATED AND CLOSED; (10) NUMBER OF CLAIMS CLOSED WITH LOSS PAYMENTS; (11) NUMBER OF OPEN CLAIMS AT THE TIME SUCH STATEMENT IS PREPARED; (12) OTHER EXPENSES BY CATEGORY AS DETERMINED BY THE SUPERINTENDENT TO REFLECT THE COST TO THE INSURER TO PROVIDE SUCH COVERAGE AS PART OF A LIABILITY INSURANCE POLICY; (13) INVESTMENT INCOME REALIZED FROM THAT PORTION OF THE PREMIUM PAID FOR A POLICY PROVIDING SUCH COVERAGE; (14) THE AMOUNT

OF EXPOSURE TO THE INSURER RESULTING FROM THE PROVISION OF SUCH COVERAGE AND WHETHER THE INSURER HAS LIMITED THE AMOUNT OF COVERAGE PROVIDED TOGETHER WITH AN ESTIMATE OF THE AMOUNT WHICH MIGHT BE REQUIRED OF THE INSURED TO PURCHASE FURTHER COVERAGE FROM AN OUT OF STATE EXCESS LINES PROVIDER, BASED UPON CURRENT DATA AVAILABLE TO SUCH IN-STATE PROVIDER, ESPECIALLY WHERE SUCH IN-STATE PROVIDER OPERATES AS AN EXCESS LINE INSURER FOR RISKS IN ANOTHER STATE; (15) AMOUNTS SPENT BY INSURER FOR RISK MANAGEMENT PROGRAMS, OR REQUIRED TO BE SPENT BY INSUREDS AT THE BEHEST OF THE INSURER, WHICH PROGRAMS ARE DESIGNED AND INTENDED TO PROMOTE WORKSITE SAFETY, MORE PARTICULARLY AS IT RELATES TO HEIGHT RELATED ACCIDENTS COVERED BY SECTION TWO HUNDRED FORTY OF THE LABOR LAW; AND (16) THE AFOREGOING EXPERIENCE AND INFORMATION FURTHER SUBDIVIDED BY QUALITY OF RISK AS MEASURED BY PRIOR LOSS EXPERIENCE, CONTRACTOR PAYROLL RANGES, CONTRACTOR NUMBER OF EMPLOYEE RANGES, RISK MANAGEMENT PARTICIPATION, AND OTHER RELEVANT IDENTIFIABLE DIFFERENCES IN EXPOSURE TO INSURANCE LOSS. THE DATA PROVIDED BY INSURERS SHALL BE SEPARATED OUT SO THAT A DETERMINATION CAN BE MADE THAT A CLAIM MADE OR PAID IS BASED PARTIALLY OR TOTALLY UPON SECTION TWO HUNDRED FORTY OF THE LABOR LAW; COVERAGE, AND NOT ANY OTHER PROVISION OF STATUTORY OR COMMON LAW IMPOSING ANOTHER OR DIFFERENT OR SEPARATE STANDARD OF CARE OR DUTY TO AN INJURED PARTY. SUCH FINANCIAL STATEMENT SHALL INCLUDE THE ENTIRETY OF SUCH INSURER'S BUSINESS ACTIVITIES INSURING AGAINST RISKS OCCURRING IN THIS STATE AND SHALL BE IN A FORM DETERMINED BY THE SUPERINTENDENT. THE FORM SHALL BE SUFFICIENTLY ITEMIZED IN A MANNER THAT ALLOWS FOR AN ACTUARIALLY SOUND ANALYSIS OF THE INCOME REALIZED BY THE INSURER FROM ALL SOURCES DURING SUCH YEAR, INCLUDING BUT NOT LIMITED TO PREMIUMS, INVESTMENT INCOME, AND ANY OTHER CATEGORY OR CATEGORIES OF INCOME AS DETERMINED BY THE SUPERINTENDENT TO REFLECT THE FULL DISCLOSURE REQUIREMENTS OF THIS SECTION AND THAT PORTION WHICH MAY BE SPECIFICALLY RELATED TO SUCH COVERAGE. AT A MINIMUM, SUCH INFORMATION SHALL CONSIST OF THE ITEMS SET FORTH IN THE STATEMENT OF INCOME, EXCLUDING THE CAPITAL AND SURPLUS ACCOUNT SECTION OF THE PROPERTY/CASUALTY STATUTORY ANNUAL STATEMENT, AS APPLICABLE TO THE INSURER'S NEW YORK STATE BUSINESS, AS WELL AS THE OTHER INFORMATION DELINEATED IN THIS SUBSECTION. SUCH FINANCIAL STATEMENT SHALL ALSO CONTAIN A COMPREHENSIVE AND DETAILED DISCLOSURE OF THE INSURER'S EXPENSES ACTUALLY INCURRED AND PAID DURING SUCH CALENDAR YEAR, TO INCLUDE NORMAL BUSINESS EXPENSES, SALARIES, COMMISSIONS, CONSULTING FEES, LEGAL EXPENSES, ADVERTISING COSTS AND ANY OTHER CATEGORY DEEMED PERTINENT TO THE INTENT OF THIS SECTION. AT A MINIMUM, THE EXPENSE INFORMATION REQUIRED SHALL CONSIST OF THE ITEMS SET FORTH IN THE UNDERWRITING AND INVESTMENT EXHIBIT - PART 3 - EXPENSES OF THE PROPERTY/CASUALTY STATUTORY ANNUAL STATEMENT, AS APPLICABLE TO THE INSURER'S NEW YORK STATE BUSINESS. WITH RESPECT TO SALARIES (INCLUDING ALL OTHER FORMS OF COMPENSATION), EACH INSURER SHALL ITEMIZE THE SALARY OF THE TWENTY MOST HIGHLY COMPENSATED EMPLOYEES OF SUCH INSURER DURING SUCH YEAR, PROVIDED THAT THE NAMES OF SUCH EMPLOYEES NEED NOT BE DISCLOSED. SUCH FINANCIAL STATEMENT SHALL ALSO PROVIDE THE PUBLIC WITH A SYNOPSIS OF CLAIMS OR SETTLEMENTS PAID FOR SECTION TWO HUNDRED FORTY OF THE LABOR LAW COVERAGE PURSUANT TO SUCH POLICIES OR CONTRACTS, LISTING THE TOTAL OF SUCH CLAIMS AND SETTLEMENTS ATTRIBUTABLE TO SUCH COVERAGE. AT A MINIMUM, THE CLAIM INFORMATION REQUIRED SHALL CONSIST OF THE ITEMS SET FORTH IN THE EXHIBIT OF PREMIUMS AND LOSSES OF THE PROPERTY/CASUALTY STATUTORY ANNUAL STATEMENT, AS APPLICABLE TO THE INSURER'S NEW YORK STATE BUSINESS AND IDENTIFIED AND CATEGORIZED SEPARATELY FOR EACH ZIP CODE IN THIS STATE. SUCH FINANCIAL STATEMENT SHALL BE SIGNED AND ATTESTED AS FULL, COMPLETE AND ACCURATE BY THE CHIEF EXEC-

UTIVE OFFICER OF THE INSURER, AND HE OR SHE SHALL BE HELD PERSONALLY RESPONSIBLE WITH RESPECT TO THE ACCURACY OF THE CONTENT OF SUCH STATEMENT. THE SUPERINTENDENT SHALL PROVIDE INSURERS WITH A METHOD TO SUBMIT THEIR FINANCIAL STATEMENTS ELECTRONICALLY VIA THE INTERNET, WHICH METHOD SHALL INCLUDE INSTRUCTIONS RELATING TO THE USE OF AN ELECTRONIC SIGNATURE WHICH SHALL BE SUBJECT TO, AND SUBMITTED IN ACCORDANCE WITH SECTION THREE HUNDRED SIXTEEN OF THIS ARTICLE; PROVIDED, HOWEVER, THAT NO EXCEPTION AUTHORIZED IN SUCH SECTION MAY BE REQUESTED OR GRANTED.

(C) ON OR BEFORE APRIL FIRST OF EACH YEAR, EVERY INSURER SHALL PROVIDE THE SUPERINTENDENT WITH DETAILED CLOSED CLAIM INFORMATION FOR THE SAME INSURANCE COVERAGE AS PROVIDED FOR IN SUBSECTION (B) OF THIS SECTION FOR THE MOST RECENTLY CONCLUDED CALENDAR YEAR. UNTIL THE SUPERINTENDENT PROMULGATES DATA COLLECTION FORMS AND PROCEDURES FOR THE ITEMIZATION REQUIREMENTS, DATA SHALL BE COLLECTED USING, AT A MINIMUM, THE MOST RECENT PUBLICLY AVAILABLE FORMS REQUIRED BY LAW, OR COMMONLY USED IN THE INSURANCE INDUSTRY. THE SUPERINTENDENT MAY REQUIRE ADDITIONAL INFORMATION BEYOND THAT WHICH MAY OTHERWISE BE CURRENTLY REQUIRED IF HE OR SHE DEEMS IT NECESSARY AND WARRANTED WITHOUT THE NEED TO FORMALLY ADOPT A RULE OR REGULATION PROVIDED SUCH REQUIREMENT IS CONSISTENT WITH THE INTENT OF THIS SECTION. SUCH DETAILED CLAIM DATA SHALL BE SIGNED AND ATTESTED AS FULL, COMPLETE AND ACCURATE BY THE CHIEF EXECUTIVE OFFICER OF THE INSURER, AND HE OR SHE SHALL BE HELD PERSONALLY RESPONSIBLE WITH RESPECT TO THE ACCURACY OF THE DATA. THE DETAILED CLAIM DATA SHALL BE SUBMITTED IN THE SAME MANNER AS PROVIDED FOR IN SUBSECTION (B) OF THIS SECTION.

(D) THE SUPERINTENDENT SHALL, IN BOTH WRITTEN FORM AND AS PART OF THE DEPARTMENT WEB SITE, MAKE SUCH FINANCIAL STATEMENTS AND DETAILED CLAIM INFORMATION AVAILABLE TO THE PUBLIC. THE DETAILED CLAIM INFORMATION SHALL BE PROVIDED IN AGGREGATE FORM FOR ALL INSURERS AND SEPARATED BY SPECIFIC INSURER, COMBINED WITHOUT ANY IDENTIFICATION OF A SPECIFIC CLAIM TO A SPECIFIC INSURER. NONE OF THE PUBLICLY AVAILABLE DETAILED CLAIM INFORMATION SHALL IDENTIFY THE INDIVIDUAL INSURER, DEFENDANT OR PLAINTIFF, OR REPRESENTATIVE OF THE SAME, ASSOCIATED WITH THE CLAIM. SUCH FINANCIAL STATEMENTS AND DETAILED CLAIM INFORMATION SHALL BE DEEMED A PUBLIC DOCUMENT AND NO PERSON SHALL BE REQUIRED TO FILE A REQUEST FOR SUCH FINANCIAL STATEMENTS PURSUANT TO ARTICLE SIX OF THE PUBLIC OFFICERS LAW IN ORDER TO RECEIVE A COPY THEREOF, BUT UPON REQUEST AND PAYMENT OF THE FEE FOR COPYING SUCH DOCUMENT, IT SHALL BE PROVIDED FORTHWITH. WITH RESPECT TO THE ELECTRONIC COPY OF SUCH FINANCIAL STATEMENTS AND DETAILED CLAIM INFORMATION, WHICH SHALL BE ACCESSIBLE ON THE DEPARTMENT'S WEB SITE, THE DEPARTMENT SHALL HIGHLIGHT THE AVAILABILITY OF SUCH INFORMATION TO THE PUBLIC ON SUCH WEB SITE, AND THE LINK TO EACH INSURER'S FINANCIAL STATEMENT AND THE AGGREGATED DETAILED CLAIM INFORMATION SHALL BE ACCESSIBLE IN A SIMPLE AND EASY MANNER. BOTH THE FINANCIAL STATEMENT AND AGGREGATED DETAILED CLAIM INFORMATION ON THE DEPARTMENT'S WEB SITE SHALL BE AVAILABLE IN SPREADSHEET FORMAT, IN ADDITION TO ANY OTHER FORMAT THE SUPERINTENDENT DETERMINES IS APPROPRIATE. WHERE SUMMARIES ARE INCLUDED, THEY SHALL BE WRITTEN IN PLAIN AND SIMPLE ENGLISH SO THAT THE PUBLIC AT LARGE CAN EASILY COMPREHEND THE DATA PROVIDED.

(E) ON OR BEFORE JULY FIRST OF EACH YEAR, THE SUPERINTENDENT SHALL ISSUE REPORTS SUMMARIZING AND EXPLAINING THE INFORMATION COLLECTED FROM THE FINANCIAL STATEMENTS AND THE DETAILED CLAIM INFORMATION AND SUMMARIZING THE COST AND OTHER ESSENTIAL ELEMENTS RELEVANT TO PROVIDING SECTION TWO HUNDRED FORTY OF THE LABOR LAW COVERAGE. SUCH REPORT SHALL FURTHER CONTAIN SUCH RECOMMENDATIONS THE SUPERINTENDENT DEEMS ADVISABLE TO ENCOURAGE THE UTILIZATION OF RISK MANAGEMENT PROGRAMS TO BE REGULARLY

CONDUCTED BY CONTRACTORS TO REDUCE PREMIUMS AND PROVIDE WORKERS WITH A SAFER WORK ENVIRONMENT, AND ANY OTHER STEPS CONTRACTORS OR REAL PROPERTY OWNERS SHOULD UTILIZE IN FURTHERANCE OF THE SAME. THE SUPERINTENDENT MAY SEEK, AND SHALL BE ENTITLED TO RECEIVE, THE AID AND ASSISTANCE OF THE COMMISSIONER OF LABOR AND ANY OTHER STATE OR LOCAL GOVERNMENTAL OFFICIAL CHARGED WITH RESPONSIBILITY FOR WORK SITE SAFETY IN PREPARING SUCH ANALYSIS AND RECOMMENDATIONS. COPIES OF SUCH REPORTS SHALL BE FORWARDED TO THE TEMPORARY PRESIDENT OF THE SENATE, THE SPEAKER OF THE ASSEMBLY AND THE CHAIRS OF THE SENATE AND ASSEMBLY INSURANCE COMMITTEES. SUCH REPORTS SHALL BE PUBLIC DOCUMENTS AND SHALL BE ACCESSIBLE BOTH IN PAPER COPY AND ON THE DEPARTMENT'S WEB SITE IN A SIMILAR FASHION AS PROVIDED FOR IN SUBSECTION (D) OF THIS SECTION.

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

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

S 4. Severability. If any item, clause, sentence, subparagraph, subdivision or other part of this act, or the application thereof to any person or circumstances shall be held to be invalid, such holding shall not affect, impair or invalidate the remainder of this act but it shall be confined in its operation to the item, clause, sentence, subparagraph, subdivision or other part of this act directly involved in such holding, or to the person and circumstances therein involved.

S 5. This act shall take effect on the first of January next succeeding the date upon which it shall have become a law.