

328--B

2015-2016 Regular Sessions

I N   A S S E M B L Y

(PREFILED)

January 7, 2015

---

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.

LBD00089-05-6

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.