

STATE OF NEW YORK

5109--A

2017-2018 Regular Sessions

IN SENATE

March 8, 2017

Introduced by Sens. LANZA, CARLUCCI, RITCHIE, 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 2018" 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:

1 Section 1. This act shall be known and may be cited as the
2 "construction insurance transparency act of 2018".
3 § 2. Declarations of legislative findings. The legislature hereby
4 finds and declares that persons, corporations, associations or other
5 business entities which issue policies of liability insurance insuring
6 an owner of real property or a contractor who is performing work and
7 services on real property against claims made in reliance upon the
8 duties imposed upon such parties by section 240 of the labor law,
9 commonly referred to as the "scaffold law", owe an obligation to the
10 public, to those they insure and to those who may in the future be
11 insured by them, to fully disclose in a public and transparent manner
12 all elements relating to the premiums paid for such insurance, the meth-
13 od and manner in which such premiums are determined and imposed upon
14 insureds, and claims made by injured persons who rely on owners and
15 contractors to provide a safe and secure worksite as required in such
16 section of such law. It is essential that the public be made aware of
17 such an insurer's responsibility to inform them of their financial
18 condition and solvency, and the details and specifics of the factors and

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

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

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

14 § 343. Financial statement and detailed claim data to be filed with
15 the superintendent. (a) For purposes of this section, the term "insurer"
16 shall mean any person, corporation, association or other business entity
17 which issues a policy of liability insurance insuring a contractor or
18 owner of real property located in this state against claims made by an
19 injured worker, the claim for which is made in reliance upon the duty
20 owed to such worker pursuant to the provisions of section two hundred
21 forty of the labor law.

22 (b) On or before April first of each year, every insurer shall for the
23 prior calendar year provide the superintendent and the public with a
24 detailed financial statement to supplement and expand upon any other
25 information otherwise provided to the department as it relates an insur-
26 er's provision of liability insurance coverage to owners of real proper-
27 ty or contractors performing services to owners of real property for
28 claims made by an injured person in reliance upon the duty owed by
29 section two hundred forty of the labor law; provided, however, that the
30 initial financial statement so filed by an insurer after the effective
31 date of this section shall include the information required in this
32 subdivision not only for such prior calendar year but also for the
33 previous nine calendar years prior to such report. The financial state-
34 ment shall, in depth, separate the cost of providing section two hundred
35 forty of the labor law based coverage from the cost of providing general
36 liability insurance insuring the same owner or contractor with respect
37 to the same property and shall contain at least the following informa-
38 tion relating to coverage pursuant to such section: (1) that portion of
39 premiums assessed and attributable to providing such coverage; (2) paid
40 judgments, settlements or losses resulting from such coverage; (3) case
41 reserves for losses which may be attributable to coverage; (4) incurred
42 but not reported loss estimates which may be attributable to coverage;
43 (5) paid defense and cost containment expenses attributable to any
44 claims made based upon such coverage; (6) case reserves for defense and
45 cost containment experience attributable to any claims made based upon
46 such coverage; (7) incurred but not reported defense and cost contain-
47 ment estimates based upon such coverage; (8) premium and loss experience
48 identified by policy limits and deductibles; (9) number of claims initi-
49 ated and closed; (10) number of claims closed with loss payments; (11)
50 number of open claims at the time such statement is prepared; (12) other
51 expenses by category as determined by the superintendent to reflect the
52 cost to the insurer to provide such coverage as part of a liability
53 insurance policy; (13) investment income realized from that portion of
54 the premium paid for a policy providing such coverage; (14) the amount
55 of exposure to the insurer resulting from the provision of such coverage
56 and whether the insurer has limited the amount of coverage provided

1 together with an estimate of the amount which might be required of the
2 insured to purchase further coverage from an out of state excess lines
3 provider, based upon current data available to such in-state provider,
4 especially where such in-state provider operates as an excess line
5 insurer for risks in another state; (15) amounts spent by insurer for
6 risk management programs, or required to be spent by insureds at the
7 behest of the insurer, which programs are designed and intended to
8 promote worksite safety, more particularly as it relates to height
9 related accidents covered by section two hundred forty of the labor law;
10 and (16) the foregoing experience and information further subdivided by
11 quality of risk as measured by prior loss experience, contractor payroll
12 ranges, contractor number of employee ranges, risk management partic-
13 ipation, and other relevant identifiable differences in exposure to
14 insurance loss. The data provided by insurers shall be separated out so
15 that a determination can be made that a claim made or paid is based
16 partially or totally upon section two hundred forty of the labor law;
17 coverage, and not any other provision of statutory or common law impos-
18 ing another or different or separate standard of care or duty to an
19 injured party. Such financial statement shall include the entirety of
20 such insurer's business activities insuring against risks occurring in
21 this state and shall be in a form determined by the superintendent. The
22 form shall be sufficiently itemized in a manner that allows for an actu-
23 arially sound analysis of the income realized by the insurer from all
24 sources during such year, including but not limited to premiums, invest-
25 ment income, and any other category or categories of income as deter-
26 mined by the superintendent to reflect the full disclosure requirements
27 of this section and that portion which may be specifically related to
28 such coverage. At a minimum, such information shall consist of the items
29 set forth in the statement of income, excluding the capital and surplus
30 account section of the property/casualty statutory annual statement, as
31 applicable to the insurer's New York state business, as well as the
32 other information delineated in this subsection. Such financial state-
33 ment shall also contain a comprehensive and detailed disclosure of the
34 insurer's expenses actually incurred and paid during such calendar year,
35 to include normal business expenses, salaries, commissions, consulting
36 fees, legal expenses, advertising costs and any other category deemed
37 pertinent to the intent of this section. At a minimum, the expense
38 information required shall consist of the items set forth in the under-
39 writing and investment exhibit - part 3 - expenses of the
40 property/casualty statutory annual statement, as applicable to the
41 insurer's New York state business. With respect to salaries (including
42 all other forms of compensation), each insurer shall itemize the salary
43 of the twenty most highly compensated employees of such insurer during
44 such year, provided that the names of such employees need not be
45 disclosed. Such financial statement shall also provide the public with
46 a synopsis of claims or settlements paid for section two hundred forty
47 of the labor law coverage pursuant to such policies or contracts, list-
48 ing the total of such claims and settlements attributable to such cover-
49 age. At a minimum, the claim information required shall consist of the
50 items set forth in the exhibit of premiums and losses of the
51 property/casualty statutory annual statement, as applicable to the
52 insurer's New York state business and identified and categorized sepa-
53 rately for each zip code in this state. Such financial statement shall
54 be signed and attested as full, complete and accurate by the chief exec-
55 utive officer of the insurer, and he or she shall be held personally
56 responsible with respect to the accuracy of the content of such state-

1 ment. The superintendent shall provide insurers with a method to submit
2 their financial statements electronically via the internet, which method
3 shall include instructions relating to the use of an electronic signa-
4 ture which shall be subject to, and submitted in accordance with section
5 three hundred sixteen of this article; provided, however, that no excep-
6 tion authorized in such section may be requested or granted.

7 (c) On or before April first of each year, every insurer shall provide
8 the superintendent with detailed closed claim information for the same
9 insurance coverage as provided for in subsection (b) of this section for
10 the most recently concluded calendar year. Until the superintendent
11 promulgates data collection forms and procedures for the itemization
12 requirements, data shall be collected using, at a minimum, the most
13 recent publicly available forms required by law, or commonly used in the
14 insurance industry. The superintendent may require additional informa-
15 tion beyond that which may otherwise be currently required if he or she
16 deems it necessary and warranted without the need to formally adopt a
17 rule or regulation provided such requirement is consistent with the
18 intent of this section. Such detailed claim data shall be signed and
19 attested as full, complete and accurate by the chief executive officer
20 of the insurer, and he or she shall be held personally responsible with
21 respect to the accuracy of the data. The detailed claim data shall be
22 submitted in the same manner as provided for in subsection (b) of this
23 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 and separated by
28 specific insurer, combined without any identification of a specific
29 claim to a specific insurer. None of the publicly available detailed
30 claim information shall identify the individual insurer, defendant or
31 plaintiff, or representative of the same, associated with the claim.
32 Such financial statements and detailed claim information shall be deemed
33 a public document and no person shall be required to file a request for
34 such financial statements pursuant to article six of the public officers
35 law in order to receive a copy thereof, but upon request and payment of
36 the fee for copying such document, it shall be provided forthwith. With
37 respect to the electronic copy of such financial statements and detailed
38 claim information, which shall be accessible on the department's web
39 site, the department shall highlight the availability of such informa-
40 tion to the public on such web site, and the link to each insurer's
41 financial statement and the aggregated detailed claim information shall
42 be accessible in a simple and easy manner. Both the financial statement
43 and aggregated detailed claim information on the department's web site
44 shall be available in spreadsheet format, in addition to any other
45 format the superintendent determines is appropriate. Where summaries are
46 included, they shall be written in plain and simple English so that the
47 public at large can easily comprehend the data provided.

48 (e) On or before July first of each year, the superintendent shall
49 issue reports summarizing and explaining the information collected from
50 the financial statements and the detailed claim information and summa-
51 rizing the cost and other essential elements relevant to providing
52 section two hundred forty of the labor law coverage. Such report shall
53 further contain such recommendations the superintendent deems advisable
54 to encourage the utilization of risk management programs to be regularly
55 conducted by contractors to reduce premiums and provide workers with a
56 safer work environment, and any other steps contractors or real property

1 owners should utilize in furtherance of the same. The superintendent may
2 seek, and shall be entitled to receive, the aid and assistance of the
3 commissioner of labor and any other state or local governmental official
4 charged with responsibility for work site safety in preparing such anal-
5 ysis and recommendations. Copies of such reports shall be forwarded to
6 the temporary president of the senate, the speaker of the assembly and
7 the chairs of the senate and assembly insurance committees. Such reports
8 shall be public documents and shall be accessible both in paper copy and
9 on the department's web site in a similar fashion as provided for in
10 subsection (d) of this section.

11 (f) Where an insurer fails or refuses to provide the superintendent
12 with a full and complete disclosure as required by this section, the
13 superintendent shall take such action he or she deems necessary to bring
14 the insurer into full compliance. Such action may include imposition of
15 a civil penalty of up to fifty thousand dollars assessed against the
16 insurer for each violation, temporary suspension of any right to issue
17 additional policies or contracts until the insurer brings itself into
18 full compliance, an audit of the insurer's records by the department or
19 its designated representative to obtain the information and which audit
20 shall be paid for by the insurer, or any other civil remedy the super-
21 intendent deems warranted or necessary until such insurer fully
22 complies. In addition the officer whose signature is affixed to such
23 statement may be personally penalized to the same extent.

24 (g) The superintendent may promulgate such rules and regulations he or
25 she deems necessary for the proper administration of the provisions of
26 this section, and such rules and regulations may be promulgated on an
27 emergency basis if the superintendent warrants such action to be neces-
28 sary.

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

36 § 5. This act shall take effect on the first of January next succeed-
37 ing the date upon which it shall have become a law.