

# STATE OF NEW YORK

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5109--A

2017-2018 Regular Sessions

## IN SENATE

March 8, 2017

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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.