STATE OF NEW YORK

7317--A

2023-2024 Regular Sessions

IN ASSEMBLY

May 17, 2023

Introduced by M. of A. BRAUNSTEIN -- read once and referred to the Committee on Insurance -- recommitted to the Committee on Insurance 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 establishing the New York small contractor relief act; provides for the repeal upon expiration thereof; and making an appropriation therefor

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Short title. This act shall be known and may be cited as the "New York small contractor relief act".

§ 2. The legislature hereby declares that the market for insurance for small construction contractors and certified minority and women-owned construction contractors has been challenged both by high insurance rates and a lack of market capacity. These challenges are acute for small construction contractors, and minority and women-owned construction contractors working for public owners. This act shall provide for a private market insurance solution for small construction contractors, and minority and women-owned construction contractors through the creation of a captive insurance company.

§ 3. The insurance law is amended by adding a new article 70-A to read as follows:

ARTICLE 70-A

NEW YORK SMALL CONTRACTOR RELIEF ACT

Section 7013. Definitions.
7014. New York small contractor captive insurance company.
7015. Reinsurance and retrocession reinsurance.
7016. No refusal.
7017. Risk management program.
7018. Prevailing wage requirement.

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

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§ 7013. Definitions. For the purpose of this article, the following terms shall have the following meanings:

(a) "Liability insurance" shall mean personal injury liability insurance and property damage liability insurance, as such terms are defined in paragraphs thirteen and fourteen of subsection (a) of section one thousand one hundred thirteen of this chapter, and shall include any type of insurance deemed by the superintendent of financial services to be substantially similar thereto pursuant to paragraph thirty-four of subsection (a) of such section.

(b) "Small construction contractor" shall mean any contractor which (i) is resident in this state; (ii) is independently owned and operated; (iii) is exclusively engaged in construction contracting or subcontracting; (iv) had less than three million dollars in gross revenues for the calendar year prior to an application for insurance being filed pursuant to the terms of this article, or is a certified minority or women-owned business; and (v) pays the prevailing wage.

(c) "Prevailing wage" shall mean the rate of wages and supplemental benefits paid in the locality to workers in the same trade or occupation and annually determined by the commissioner of labor or comptroller in accordance with the provisions of section two hundred twenty of the labor law.

§ 7014. New York small contractor captive insurance company. (a) A captive insurance company organized pursuant to this article shall be formed and regulated pursuant to the provisions of article seventy of this chapter. Such entity may be a corporation, association, a joint stock company or association, or an aggregation or partnership pursuant to the laws of the state of New York.

(b) A captive insurance company may be organized pursuant to this article for the sole purpose of providing liability insurance as defined in subsection (a) of section seven thousand thirteen of this article to small construction contractors, as that term is defined in subsection (a) of section seven thousand thirteen of this article.

§ 7015. Reinsurance and retrocession reinsurance. A captive insurance company organized pursuant to this article shall be authorized to purchase, and the New York state insurance fund (hereinafter the "fund") shall be authorized and directed, to provide reinsurance and retrocession reinsurance for such captive insurance company, on either a quota share arrangement or facultative arrangement (hereafter "reinsurance") at a rate to be determined by the board of the fund. The fund shall provide such reinsurance on an application for such coverage unless, in the opinion of the executive director, providing such coverage on an application will imperil the financial safety and soundness of the fund. The executive director of the fund shall provide, in writing, to the board of the fund and the superintendent not less than quarterly a report on all such applications for coverage that are denied, together with the grounds for and an analysis of the basis for such denial.

§ 7016. No refusal. A small contractor captive insurance company organized pursuant to this article shall not refuse to issue, renew or cancel a policy of any qualified small construction contractor based upon geographic location or line of business engaged in by such contractor.

§ 7017. Risk management program. A captive insurance company organized pursuant to this article shall establish and promote a risk management program among its members to identify and reduce risks by implementation of loss control, safety programs and other methods of risk management, and any small construction contractor accepted for coverage from such

insurer shall be responsible for adopting and following such risk management program.

§ 7018. Prevailing wage requirement. A small construction contractor seeking to obtain liability insurance from a small contractor captive insurance company authorized under this article shall establish that the small construction contractor's entire workforce is being paid the prevailing wage. The small construction contractor's application for insurance shall document and certify that the applicant meets this requirement and will meet this requirement for all construction work on all projects covered by the liability insurance obtained pursuant to this article as a precondition to qualifying for liability insurance issued hereunder. Such application shall also be submitted to the commissioner of labor who shall notify the small contractor captive insurance company of receipt prior to approval of such application. As a condition of approval, at least ten days prior to commencement of work, the small construction contractor shall notify and update the captive insurance company of any location where it is performing construction covered by a policy associated with this article. Such locations shall be publicly posted online within two days of receipt from the small construction contractor and maintained by the captive insurance company. All such work performed by the small construction contractor shall be subject to the provisions of article eight of the labor law including, but not limited to, section two hundred twenty and two hundred twenty-i of such article. In the event the small construction contractor is determined by the fiscal officer, as defined in section two hundred twenty of the labor law, to be in violation of article eight of the labor law, in addition to any penalties to be enforced pursuant to such article, the captive insurance company shall revoke such contractor's policy pursuant to this article and assess a penalty equal to the costs incurred in providing liability insurance coverage since its initial application was approved.

§ 4. Not less than six months before the expiration date of article 70-A of the insurance law, as added by this chapter, the superintendent of financial services shall issue to the governor, the speaker of the assembly and the temporary president of the senate, and the chairs of the insurance and labor committees of each house, a report on the performance of the New York small contractor relief act and its impact upon the small construction contractor sector. If such act is to expire, it shall not impede such captive insurance companies created under article 70-A of the insurance law to continue to operate as if the provisions of such article were still in full force and effect, assuming that such companies are otherwise viable pursuant to the provisions of article 70 of the insurance law.

§ 5. The sum of fifty million dollars ($50,000,000) is hereby appropriated for the support of up to two captives under this act. Such funds may be used for the purpose of providing paid-in capital and initial surplus contributions for captives organized pursuant to article 70-A of the insurance law, such amounts not to exceed twenty-five million dollars ($25,000,000) for any one captive insurer so organized. The New York state insurance fund is authorized, upon action of its board of directors, to invest other funds as may be appropriate in a captive organized pursuant to article 70-A of the insurance law.

§ 6. This act shall take effect on the one hundred eightieth day after it shall have become a law and shall expire and be deemed repealed five years after such effective date.