

STATE OF NEW YORK

7975

IN SENATE

January 4, 2024

Introduced by Sen. RAMOS -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

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:

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

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

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

ARTICLE 70-A

NEW YORK SMALL CONTRACTOR RELIEF ACT

Section 7013. Definitions.

16 7014. New York small contractor captive insurance company.

17 7015. Reinsurance and retrocession reinsurance.

18 7016. No refusal.

19 7017. Risk management program.

20 7018. Prevailing wage requirement.

21 § 7013. Definitions. For the purpose of this article, the following
22 terms shall have the following meanings:

23 (a) "Liability insurance" shall mean personal injury liability insur-
24 ance and property damage liability insurance, as such terms are defined
25 in paragraphs thirteen and fourteen of subsection (a) of section one
26 thousand one hundred thirteen of this chapter, and shall include any
27

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

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1 type of insurance deemed by the superintendent of financial services to
2 be substantially similar thereto pursuant to paragraph thirty-four of
3 subsection (a) of such section.

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

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

16 § 7014. New York small contractor captive insurance company. (a) A
17 captive insurance company organized pursuant to this article shall be
18 formed and regulated pursuant to the provisions of article seventy of
19 this chapter. Such entity may be a corporation, association, a joint
20 stock company or association, or an aggregation or partnership pursuant
21 to the laws of the state of New York.

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

27 § 7015. Reinsurance and retrocession reinsurance. A captive insurance
28 company organized pursuant to this article shall be authorized to
29 purchase, and the New York state insurance fund (hereinafter the "fund")
30 shall be authorized and directed, to provide reinsurance and retroces-
31 sion reinsurance for such captive insurance company, on either a quota
32 share arrangement or facultative arrangement (hereafter "reinsurance")
33 at a rate to be determined by the board of the fund. The fund shall
34 provide such reinsurance on an application for such coverage unless, in
35 the opinion of the executive director, providing such coverage on an
36 application will imperil the financial safety and soundness of the fund.
37 The executive director of the fund shall provide, in writing, to the
38 board of the fund and the superintendent not less than quarterly a
39 report on all such applications for coverage that are denied, together
40 with the grounds for and an analysis of the basis for such denial.

41 § 7016. No refusal. A small contractor captive insurance company
42 organized pursuant to this article shall not refuse to issue, renew or
43 cancel a policy of any qualified small construction contractor based
44 upon geographic location or line of business engaged in by such contrac-
45 tor.

46 § 7017. Risk management program. A captive insurance company organized
47 pursuant to this article shall establish and promote a risk management
48 program among its members to identify and reduce risks by implementation
49 of loss control, safety programs and other methods of risk management,
50 and any small construction contractor accepted for coverage from such
51 insurer shall be responsible for adopting and following such risk
52 management program.

53 § 7018. Prevailing wage requirement. A small construction contractor
54 seeking to obtain liability insurance from a small contractor captive
55 insurance company authorized under this article shall establish that the
56 small construction contractor's entire workforce is being paid the

1 prevailing wage. The small construction contractor's application for
2 insurance shall document and certify that the applicant meets this
3 requirement and will meet this requirement for all construction work on
4 all projects covered by the liability insurance obtained pursuant to
5 this article as a precondition to qualifying for liability insurance
6 issued hereunder. Such application shall also be submitted to the
7 commissioner of labor who shall notify the small contractor captive
8 insurance company of receipt prior to approval of such application. As
9 a condition of approval, at least ten days prior to commencement of
10 work, the small construction contractor shall notify and update the
11 captive insurance company of any location where it is performing
12 construction covered by a policy associated with this article. Such
13 locations shall be publicly posted online within two days of receipt
14 from the small construction contractor and maintained by the captive
15 insurance company. All such work performed by the small construction
16 contractor shall be subject to the provisions of article eight of the
17 labor law including, but not limited to, section two hundred twenty and
18 two hundred twenty-i of such article. In the event the small
19 construction contractor is determined by the fiscal officer, as defined
20 in section two hundred twenty of the labor law, to be in violation of
21 article eight of the labor law, in addition to any penalties to be
22 enforced pursuant to such article, the captive insurance company shall
23 revoke such contractor's policy pursuant to this article and assess a
24 penalty equal to the costs incurred in providing liability insurance
25 coverage since its initial application was approved.

26 § 4. Not less than six months before the expiration date of article
27 70-A of the insurance law, as added by this chapter, the superintendent
28 of financial services shall issue to the governor, the speaker of the
29 assembly and the temporary president of the senate, and the chairs of
30 the insurance and labor committees of each house, a report on the
31 performance of the New York small contractor relief act and its impact
32 upon the small construction contractor sector. If such act is to expire,
33 it shall not impede such captive insurance companies created under arti-
34 cle 70-A of the insurance law to continue to operate as if the
35 provisions of such article were still in full force and effect, assuming
36 that such companies are otherwise viable pursuant to the provisions of
37 article 70 of the insurance law.

38 § 5. The sum of fifty million dollars (\$50,000,000) is hereby appro-
39 priated for the support of up to two captives under this act. Such
40 funds may be used for the purpose of providing paid-in capital and
41 initial surplus contributions for captives organized pursuant to article
42 70-A of the insurance law, such amounts not to exceed twenty-five
43 million dollars (\$25,000,000) for any one captive insurer so organized.
44 The New York state insurance fund is authorized, upon action of its
45 board of directors, to invest other funds as may be appropriate in a
46 captive organized pursuant to article 70-A of the insurance law.

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