



2019 Lobby Day Agenda

1. Grieving Families Act: Access to Justice (S.4006 Hoylman/A.5612 Weinstein)

- This bill would update the state's wrongful death statute to allow a family who has lost a loved one to recover for pain and suffering.

2. Fair Claims Resolution Act (A.5623A Weinstein)

- This bill would allow a third party to directly bring an action against an insurance company when such insurance company has acted in bad faith in denying or delaying payment of a claim, leaving a policyholder exposed a judgment in excess of the policy limits, and possibly leaving a victim without means to collect damages owed to them.

3. Auto Insurance Modernization (A.3896 Hyndman)

- This bill would increase the minimum requirements for auto insurance to \$250,000/\$500,000/\$25,000. The current minimums of \$25,000/\$50,000/\$10,000 have not been updated since 1995.

4. Fighting Forced Arbitration (A.7597 Dinowitz)

- This bill would amend the CPLR to more rigorously regulate the arbitration process in New York, without preempting federal law. The bill requires arbitration decisions to include written findings of fact, conclusions of law, and explanations of damages; requires standards for qualifications, compensation, impartiality, and competence of arbitrators; protects patients by deeming unconscionable any contract for healthcare that requires the patient to sign a contract affecting legal rights as a condition of receiving healthcare; and allows a victim to bring a civil action rather than arbitration if liability insurance applies to the claim and the claim is for personal injury.

5. The Construction Insurance Transparency Act – “Scaffold Safety Sunshine Law” (S.465 Lanza/A.5980 Bronson)

- This bill requires construction insurance companies to publicly disclose information used to set premiums to provide an independent mechanism to gather reliable data to assess the state of the industry and examine the financial basis for the carrier's rate-setting policies. Information is included to rebut arguments presented by anti-worker safety scaffold reform proponents.

6. Patient Safety and the Patient Privacy Protection Act (A.2370 Dinowitz)

- This bill would remedy serious inequities in law that have ensued as a result of the State Court of Appeals' decision in *Arons v. Jutkowitz*, 9 N.Y.3d 393 (2007). This bill provides that in any action involving personal injury, medical, dental, or podiatric malpractice or wrongful death, a party or their representative would be prohibited from conducting ex parte interviews with a treating physician or other health care provider of any other party. The bill also includes important protections to ensure that a patient's attorney will still have the right to speak privately with the patient's treating physician or other health care provider.

STATE OF NEW YORK

4006

2019-2020 Regular Sessions

IN SENATE

February 25, 2019

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

AN ACT to amend the estates, powers and trusts law, in relation to payment and distribution of damages in wrongful death actions

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

1 Section 1. Paragraph (a) of section 5-4.3 of the estates, powers and
2 trusts law, as amended by chapter 100 of the laws of 1982, is amended to
3 read as follows:

4 (a) The damages awarded to the plaintiff may be such sum as the jury
5 or, where issues of fact are tried without a jury, the court or referee
6 deems to be fair and just compensation for the [pecuniary] injuries
7 resulting from the decedent's death to the persons for whose benefit the
8 action is brought. In every such action, in addition to any other lawful
9 element of recoverable damages, [the reasonable expenses of medical aid,
10 nursing and attention incident to the injury causing death and the
11 reasonable funeral expenses of the decedent paid by the distributees, or
12 for the payment of which any distributee is responsible, shall also be
13 proper elements of damage] fair compensation for the following damages
14 may be recovered: (i) reasonable funeral expenses of the decedent paid
15 by the distributees, or for the payment of which any distributee is
16 responsible; (ii) reasonable expenses for medical care incident to the
17 injury causing death, including but not limited to doctors, nursing,
18 attendant care, treatment, hospitalization of the decedent, and medi-
19 cines; (iii) grief or anguish caused by the decedent's death, and for
20 any disorder caused by such grief or anguish; (iv) loss of love, socie-
21 ty, protection, comfort, companionship, and consortium resulting from
22 the decedent's death; (v) pecuniary injuries, including loss of
23 services, support, assistance, and loss or diminishment of inheritance,
24 resulting from the decedent's death; and (vi) loss of nurture, guidance,
25 counsel, advice, training, and education resulting from the decedent's

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1 death. Interest upon the principal sum recovered by the plaintiff from
2 the date of the decedent's death shall be added to and be a part of the
3 total sum awarded.
4 § 2. This act shall take effect immediately and shall apply to all
5 trials commenced on or after such date.

STATE OF NEW YORK

5623--A

2019-2020 Regular Sessions

IN ASSEMBLY

February 14, 2019

Introduced by M. of A. WEINSTEIN, CUSICK, TITUS, CYMBROWITZ, JAFFEE, HYNDMAN, PAULIN, COLTON, ABINANTI, SEAWRIGHT, SANTABARBARA, ZEBROWSKI, TAYLOR -- read once and referred to the Committee on Insurance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the insurance law, in relation to unfair claim settlement practices

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

1 Section 1. The insurance law is amended by adding a new section 2601-a
2 to read as follows:
3 § 2601-a. Unfair claim settlement practices; civil remedy. (a) The
4 holder of a policy issued or renewed pursuant to article thirty-four of
5 this chapter shall have a private right of action against any insurer
6 doing business in this state for damages as provided in this section
7 upon such policyholder proving by a preponderance of the evidence that
8 such insurer's refusal to pay or unreasonable delay in payment to the
9 policyholder of amounts claimed to be due under a policy was not reason-
10 ably justified. An insurer is not reasonably justified in refusing to
11 pay or in unreasonably delaying payment when the insurer:
12 (1) failed to provide the policyholder with accurate information
13 concerning policy provisions relating to the coverage at issue;
14 (2) failed to effectuate a prompt and fair settlement of a claim or
15 any portion thereof, and the insurer failed to reasonably accord at
16 least equal or more favorable consideration to its insured interest as
17 it did to its own interests, and thereby exposed the insured to a judg-
18 ment in excess of the policy limits;
19 (3) failed to provide a timely written denial of a policyholder's
20 claim with a full and complete explanation of such denial, including
21 references to specific policy provisions wherever possible;

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1 (4) failed to make a final determination and notify the policyholder
2 in writing of its position on both liability for and the insurer's valu-
3 ation of a claim within six months of the date on which it received
4 actual or constructive notice of the loss upon which the claim is based;

5 (5) failed to act in good faith by compelling a policyholder to insti-
6 tute suit to recover amounts due under its policy by offering substan-
7 tially less than the amounts ultimately recovered in suit brought by
8 such policyholder;

9 (6) failed to advise a policyholder that a claim may exceed policy
10 limits, that counsel assigned by the insurer may be subject to a
11 conflict of interest, or that the policyholder may retain independent
12 counsel;

13 (7) failed to provide, on request of the policyholder or their repre-
14 sentative, all reports, letters or other documentation arising from the
15 investigation of a claim and evaluating liability for or valuation of
16 such claim;

17 (8) refused to pay a claim without conducting a reasonable investi-
18 gation;

19 (9) negotiated or settled a claim directly with a policyholder known
20 to be represented by an attorney without the attorney's knowledge or
21 consent. The provisions of this paragraph shall not be deemed to prohib-
22 it routine inquiries to a policyholder to obtain details concerning the
23 claim;

24 (10) failed to pay on one or more elements of a claim where a prepon-
25 derance of the evidence establishes the claim as to liability notwith-
26 standing the existence of disputes as to other elements of the claim
27 where such payment can be made without prejudice to either party; or

28 (11) acted in violation of section two thousand six hundred one of
29 this article or any regulation promulgated pursuant thereto.

30 (b) Any policyholder who establishes liability pursuant to subsection
31 (a) of this section shall be entitled to recover, in addition to amounts
32 due under the policy, interest, costs and disbursements, compensatory
33 damages, consequential damages, and reasonable attorneys' fees incurred
34 by the policyholder from the date of the loss, in recovering monies due
35 pursuant to the terms of the policy, as well as such additional punitive
36 damages as the court may allow. For purposes of this section, it shall
37 be presumed that consequential damages were within the contemplation of
38 the parties at the time of contracting.

39 (c) Any policyholder may recover damages from an insurer doing busi-
40 ness in this state pursuant to this section either as part of an action
41 to recover under the terms of an insurance policy or in a separate
42 action.

43 (d) In any trial of a cause of action asserted against an insurer
44 pursuant to this section, evidence of settlement discussions written and
45 verbal offers to compromise and other evidence relating to the claims
46 process shall be admissible. If causes of action relating to liability
47 of the insurer under the policy and under this section are alleged in
48 the same action, the court may bifurcate the trial of issues so as to
49 avoid prejudice to the insurer on the issue of liability under the poli-
50 cy and facilitate admissibility of evidence on the causes of action
51 asserted pursuant to this section.

52 (e) All amounts recovered from an insurer as damages and reasonable
53 attorneys' fees in any action authorized in this section shall be
54 excluded by the insurer in its determinations of the premiums it will
55 charge all policyholders on all policies issued by it.

1 (f) Nothing in this section shall be construed to limit a
2 policyholder's right to a trial by jury for any claims arising under
3 this section.

4 (g) An action may also be maintained by the persons identified in
5 paragraphs one, two and three of subsection (b) of section three thou-
6 sand four hundred twenty of this chapter against an insurer to recover
7 damages including punitive damages as the court may allow, and interest
8 measured from the time of failure to offer a reasonable settlement in
9 accordance with this section, from such insurer to the full extent of
10 the judgment against the insured, not limited to the policy limits and
11 not subject to the limitations and conditions of paragraph two of
12 subsection (a) of section three thousand four hundred twenty of this
13 chapter, where a preponderance of the evidence establishes that the
14 insurer failed to effectuate a prompt and fair settlement of a claim or
15 any portion thereof, and where under the totality of the facts and
16 circumstances related to the claim, the insurer failed to reasonably
17 accord at least equal or more favorable consideration to its insured's
18 interests as it did to its own interests, and thereby exposed the
19 insured to a judgment in excess of the policy limits.

20 (h) The rights enumerated in this section are not the exclusive reme-
21 dies available to the policyholder and do not preclude any common law
22 claims or other statutory claims that may exist or rise.

23 § 2. Section 3425 of the insurance law is amended by adding a new
24 subsection (t) to read as follows:

25 (t) No insurer shall refuse to issue or renew a covered policy solely
26 on the ground that the policyholder has brought an action pursuant to
27 section two thousand six hundred one-a of this chapter.

28 § 3. Paragraph 4 of subsection (a) of section 2601 of the insurance
29 law, as amended by chapter 547 of the laws of 1997, is amended to read
30 as follows:

31 (4) [not attempting in good faith] where the insurer failed to effec-
32 tuate a prompt[,] and fair [and equitable settlements] settlement of
33 [claims submitted in which liability has become reasonably clear] a
34 claim or any portion thereof, and the insurer failed to reasonably
35 accord at least equal or more favorable consideration to its insured's
36 interests as it did to it own interests, and thereby exposed the insured
37 to a judgment in excess of the policy limits, except where there is a
38 reasonable basis supported by specific information available for review
39 by the department that the claimant has caused the loss to occur by
40 arson. After receiving a properly executed proof of loss, the insurer
41 shall advise the claimant of acceptance or denial of the claim within
42 thirty working days;

43 § 4. This act shall take effect on the first of January next succeed-
44 ing the date on which it shall have become a law, and shall apply to all
45 acts and omissions by insurers occurring on or after such effective
46 date.

STATE OF NEW YORK

3896

2019-2020 Regular Sessions

IN ASSEMBLY

January 31, 2019

Introduced by M. of A. HYNDMAN, D'URSO, HEVESI, ABINANTI, DAVILA, SEAWRIGHT, RAIA, BRABENEC, McDONOUGH, PERRY, WEPRIN, B. MILLER -- read once and referred to the Committee on Insurance

AN ACT to amend the vehicle and traffic law and the insurance law, in relation to increasing the minimum insurance coverage requirements for automobiles registered and/or operated within the state of New York

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

1 Section 1. Paragraph (a) of subdivision 4 and subdivision 7 of section
2 311 of the vehicle and traffic law, paragraph (a) of subdivision 4 as
3 amended by chapter 305 of the laws of 1995 and subdivision 7 as amended
4 by chapter 805 of the laws of 1984, are amended to read as follows:
5 (a) Affording coverage as defined in the minimum provisions prescribed
6 in a regulation which shall be promulgated by the superintendent at
7 least ninety days prior to effective date of this act. The superinten-
8 dent before promulgating such regulations or any amendment thereof,
9 shall consult with all insurers licensed to write automobile liability
10 insurance in this state and shall not prescribe minimum provisions which
11 fail to reflect the provisions of automobile liability insurance poli-
12 cies, other than motor vehicle liability policies as defined in section
13 three hundred forty-five of this chapter, issued within this state at
14 the date of such regulation or amendment thereof. Nothing contained in
15 such regulation or in this article shall prohibit any insurer from
16 affording coverage under an owner's policy of liability insurance more
17 liberal than that required by said minimum provisions. Every such
18 owner's policy of liability insurance shall provide insurance subject to
19 said regulation against loss from the liability imposed by law for
20 damages, including damages for care and loss of services, because of
21 bodily injury to or death of any person and injury to or destruction of
22 property arising out of the ownership, maintenance, use, or operation of
23 a specific motor vehicle or motor vehicles within the state of New York,

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1 or elsewhere in the United States in North America or the Dominion of
2 Canada, subject to a limit, exclusive of interest and costs, with
3 respect to each such motor vehicle except a tow truck, of [twenty-five]
4 two hundred fifty thousand dollars because of bodily injuries to and
5 [fifty] five hundred thousand dollars because of death of one person in
6 any one accident and, subject to said limit for one person, to a limit
7 of [fifty] five hundred thousand dollars because of bodily injury to and
8 one [hundred thousand] million dollars because of death of two or more
9 persons in any one accident, and to a limit of [ten] twenty-five thou-
10 sand dollars because of injury to or destruction of property of others
11 in any one accident provided, however, that such policy need not be for
12 a period coterminous with the registration period of the vehicle
13 insured. The limit, exclusive of interest and costs, with respect to a
14 tow truck shall be a combined single limit of at least three hundred
15 thousand dollars because of bodily injury or death to one or more
16 persons or because of injury or destruction of property of others in any
17 one accident, and to a limit of twenty-five thousand dollars because of
18 damage to a vehicle in the care, custody and control of the insured. Any
19 insurer authorized to issue an owner's policy of liability insurance as
20 provided for in this article may, pending the issue of such a policy,
21 make an agreement, to be known as a binder, or may, in lieu of such a
22 policy, issue a renewal endorsement or evidence of renewal of an exist-
23 ing policy; each of which shall be construed to provide indemnity or
24 protection in like manner and to the same extent as such a policy. The
25 provisions of this article shall apply to such binders, renewal endorse-
26 ments or evidences of renewal. Every such policy issued insuring private
27 passenger vehicles and every renewal policy, renewal endorsement, or
28 other evidence of renewal issued shall have attached thereto a rating
29 information form which clearly specifies and defines the rating classi-
30 fication assigned thereto, including any applicable merit rating plan;
31 and

32 7. The term "financial security deposit" shall mean for each motor
33 vehicle the deposit with the commissioner of [twenty-five] two hundred
34 fifty thousand dollars in cash, or securities, such as may legally be
35 purchased by savings banks or trust funds, of a market value of [twen-
36 ty-five] two hundred fifty thousand dollars and an additional deposit in
37 an amount determined by the commissioner to be sufficient to satisfy the
38 requirements of article fifty-one of the insurance law.

39 § 2. Paragraph 3 of subdivision (b) of section 345 of the vehicle and
40 traffic law, as amended by chapter 305 of the laws of 1995, is amended
41 to read as follows:

42 (3) Shall insure the insured or such other person against loss from
43 the liability imposed by law for damages, including damages for care and
44 loss of services because of bodily injury to or death of any person and
45 injury to or destruction of property arising out of the ownership, main-
46 tenance, use, or operation of such motor vehicle or motor vehicles with-
47 in the state of New York, or elsewhere in the United States in North
48 America or the Dominion of Canada, subject to a limit, exclusive of
49 interest and cost, with respect to each such motor vehicle, except a tow
50 truck, of [twenty-five] two hundred fifty thousand dollars because of
51 bodily injury to or [fifty] five hundred thousand dollars because of
52 death of one person in any one accident and, subject to said limit for
53 one person, to a limit of [fifty] five hundred thousand dollars because
54 of bodily injury to or one [hundred thousand] million dollars because of
55 death of two or more persons in any one accident, and to a limit of
56 [ten] twenty-five thousand dollars because of injury to or destruction

1 of property of others in any one accident. The limit, exclusive of
2 interest and costs, with respect to a tow truck shall be a combined
3 single limit of three hundred thousand dollars because of bodily injury
4 of death to one or more persons or because of injury or destruction of
5 property of others in any one accident, and to a limit of twenty-five
6 thousand dollars because of damage to a vehicle in the care, custody and
7 control of the insured.

8 § 3. Paragraph 1 of subsection (f) of section 3420 of the insurance
9 law, as amended by chapter 305 of the laws of 1995, is amended to read
10 as follows:

11 (1) No policy insuring against loss resulting from liability imposed
12 by law for bodily injury or death suffered by any natural person arising
13 out of the ownership, maintenance and use of a motor vehicle by the
14 insured shall be issued or delivered by any authorized insurer upon any
15 motor vehicle then principally garaged or principally used in this state
16 unless it contains a provision whereby the insurer agrees that it will
17 pay to the insured, as defined in such provision, subject to the terms
18 and conditions set forth therein to be prescribed by the board of direc-
19 tors of the Motor Vehicle Accident Indemnification Corporation and
20 approved by the superintendent, all sums, not exceeding a maximum amount
21 or limit of [twenty-five] two hundred fifty thousand dollars exclusive
22 of interest and costs, on account of injury to and all sums, not exceed-
23 ing a maximum amount or limit of [fifty] five hundred thousand dollars
24 exclusive of interest and costs, on account of death of one person, in
25 any one accident, and the maximum amount or limit, subject to such limit
26 for any one person so injured of [fifty] five hundred thousand dollars
27 or so killed of one [hundred thousand] million dollars, exclusive of
28 interest and costs, on account of injury to, or death of, more than one
29 person in any one accident, which the insured or his legal represen-
30 tative shall be entitled to recover as damages from an owner or operator
31 of an uninsured motor vehicle, unidentified motor vehicle which leaves
32 the scene of an accident, a motor vehicle registered in this state as to
33 which at the time of the accident there was not in effect a policy of
34 liability insurance, a stolen vehicle, a motor vehicle operated without
35 permission of the owner, an insured motor vehicle where the insurer
36 disclaims liability or denies coverage or an unregistered vehicle
37 because of bodily injury, sickness or disease, including death resulting
38 therefrom, sustained by the insured, caused by accident occurring in
39 this state and arising out of the ownership, maintenance or use of such
40 motor vehicle. No payment for non-economic loss shall be made under such
41 policy provision to a covered person unless such person has incurred a
42 serious injury, as such terms are defined in section five thousand one
43 hundred two of this chapter. Such policy shall not duplicate any element
44 of basic economic loss provided for under article fifty-one of this
45 chapter. No payments of first party benefits for basic economic loss
46 made pursuant to such article shall diminish the obligations of the
47 insurer under this policy provision for the payment of non-economic loss
48 and economic loss in excess of basic economic loss. Notwithstanding any
49 inconsistent provisions of section three thousand four hundred twenty-
50 five of this article, any such policy which does not contain the afore-
51 said provisions shall be construed as if such provisions were embodied
52 therein.

53 § 4. Subsection (a) of section 5210 of the insurance law, as amended
54 by chapter 305 of the laws of 1995, is amended to read as follows:

55 (a) When any qualified person who has complied with all the applicable
56 requirements of this article recovers a final judgment in a court

1 against a financially irresponsible motorist, for injury to, or death
2 of, any person arising out of the ownership, maintenance or use of the
3 uninsured motor vehicle in this state, which remains unpaid, and all
4 appeals have been concluded or the time for commencing them has expired,
5 the judgment creditor may file a verified petition in the court in which
6 the judgment was entered and, upon ten days' written notice to the
7 corporation apply to the court for an order directing payment by the
8 corporation of the amount unpaid on the judgment. However, there shall
9 be no right of recovery by a covered person from the corporation for
10 non-economic loss unless such person has incurred a serious injury, as
11 such terms are defined in section five thousand one hundred two of this
12 chapter. Such judgment exclusive of interest and costs shall not
13 exceed:

14 (1) [twenty-five] two hundred fifty thousand dollars on account of
15 injury to one person in any one accident, and

16 (2) [fifty] five hundred thousand dollars on account of death to one
17 person in any one accident, and

18 (3) [fifty] five hundred thousand dollars on account of injury to more
19 than one person in any one accident subject to the limit of twenty-five
20 thousand dollars for any one person, and

21 (4) one [hundred thousand] million dollars on account of death to more
22 than one person in any one accident subject to the limit of fifty thou-
23 sand dollars for any one person.

24 § 5. This act shall take effect on the one hundred eightieth day after
25 is shall have become a law.

STATE OF NEW YORK

7597

2019-2020 Regular Sessions

IN ASSEMBLY

May 13, 2019

Introduced by M. of A. DINOWITZ, WEINSTEIN, GOTTFRIED, SEAWRIGHT,
WEPRIN, STIRPE -- (at request of the Office of Court Administration)
-- read once and referred to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, in relation to contracts in small print, procedural reciprocity for arbitration agreements in consumer transactions and consumer arbitration; to amend the general obligations law, in relation to the prohibition of certain contractual agreements to arbitrate personal injury and wrongful death claims; to amend the executive law, in relation to powers and duties of the consumer protection division and contracts of adhesion; and to amend the public health law, in relation to protecting against certain contracts of adhesion in the provision of health care

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 as the access to justice act of
2 2019: remedying injustices arising out of contracts of adhesion in the
3 context of consumer contracts.
4 § 2. Legislative intent. The legislature finds that it is the public
5 policy of this state to ensure access to justice for all New Yorkers.
6 The unified court system in this state supports and encourages arbi-
7 tration in the civil practice context and arbitration is one of a varie-
8 ty of alternative dispute resolution tools which help parties resolve
9 disputes without a trial. Arbitration has proven to be most successful
10 when agreed to between parties of equal bargaining power as part of an
11 arm's length agreement. A vital component of access to justice is to
12 preserve, when possible, the ability of New Yorkers to choose either
13 arbitration or litigation when seeking a remedy if an injury or dispute
14 has occurred. When an arbitration clause is foisted upon a party to a
15 contract, that choice is precluded; thus access to justice may be denied
16 at the very commencement of the parties' relationship. The legislature
17 further finds that the prevalence of arbitration agreements in contracts

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1 of adhesion in transactions for personal, family or household services
2 New Yorkers cannot do without - e.g., telephone, internet, nursing home,
3 credit cards - and the interpretation of such arbitration agreements by
4 the courts has resulted in conflicting decisions and substantial inequi-
5 ty between the parties. One area of concern is reflected in the effect
6 of recent arbitrations on contracts affecting the rights, remedies or
7 obligations between health care providers and patients relative to
8 personal injuries to, or wrongful death of, patients. This act amends
9 the law to preclude predatory behavior against some of the most vulner-
10 able New Yorkers against the public policy of this state, to protect
11 fairness in consumer transactions and other types of transactions that
12 affect the health and well-being of New Yorkers, to create remedies
13 targeting unconscionable contracts at the state level and to ensure
14 access to justice for consumers.

15 § 3. Section 7501 of the civil practice law and rules, as amended by
16 chapter 532 of the laws of 1963, is amended to read as follows:

17 § 7501. Effect of arbitration agreement. A written agreement to
18 submit any controversy thereafter arising or any existing controversy to
19 arbitration is enforceable without regard to the justiciable character
20 of the controversy and confers jurisdiction on the courts of the state
21 to enforce it and to enter judgment on an award. In determining any
22 matter arising under this article, the court shall not consider whether
23 the claim with respect to which arbitration is sought is tenable, or
24 otherwise pass upon the merits of the dispute. The commencement of an
25 action in a court of law by any person to enforce a contract entered
26 into by, or delivered to, a resident of this state that involves a
27 consumer transaction, as defined in section forty-five hundred forty-
28 four of this chapter, shall constitute a waiver of the enforceability of
29 the arbitration clause in that contract or agreement. Such waiver shall
30 not apply to any action brought to enforce the arbitration clause, to
31 stay arbitration or in aid of arbitration.

32 § 4. The civil practice law and rules is amended by adding a new
33 section 7516 to read as follows:

34 § 7516. Arbitration of disputes regarding contracts or agreements in a
35 consumer transaction. (a) 1. This section shall govern arbitrations of
36 disputes regarding contracts or agreements entered into by, or delivered
37 to, a resident of this state or entered into in this state that involves
38 a consumer transaction.

39 2. Proceedings pursuant to this section shall be commenced and
40 conducted in accordance with this article, except as otherwise provided
41 by this section and in accordance with rules promulgated and approved by
42 the superintendent of the department of financial services.

43 3. The term "consumer transaction" shall be defined as set forth in
44 section forty-five hundred forty-four of this chapter.

45 4. Except as provided by an express waiver contained in such contract
46 or agreement, either party to a consumer dispute may seek relief in
47 arbitration by way of class action in accordance with the regulations
48 promulgated by the superintendent of the department of financial
49 services pursuant to article nine of this chapter.

50 (b) 1. The rules promulgated by the superintendent of the department
51 of financial services shall set forth standards for panels of arbitra-
52 tors under this section and establish qualifications and compensation of
53 individuals seeking appointment to the arbitration panels. These stand-
54 ards shall require that an arbitrator be impartial and that the arbitra-
55 tor be competent to arbitrate the subject matter of each arbitration to
56 which he or she is appointed as a panel member.

1 2. All costs of arbitration shall be paid by the party providing the
2 money, property or service.

3 3. A consumer that prevails in whole or in part in arbitration under
4 this section shall be awarded reasonable attorney's fees by the arbitra-
5 tor.

6 4. A contract entered into, or delivered to, a resident of this state
7 that provides for arbitration of a dispute shall be void if it provides
8 for arbitration by any arbitrator contrary to the provisions of this
9 section.

10 (c) Decisions by members of the arbitration panel shall: 1. be
11 provided to all parties;

12 2. contain written findings of fact and conclusions of law and an
13 explanation of the calculation of any damages; and

14 3. be based on the applicable substantive law of this state or the law
15 of any other jurisdiction that the arbitrator determines, based upon the
16 choice of law principles of this state.

17 § 5. The general obligations law is amended by adding a new section
18 5-337 to read as follows:

19 § 5-337. Prohibition of contractual provisions requiring arbitration
20 of claims for personal injuries or wrongful death where the party
21 asserting the contractual right to arbitrate has liability insurance
22 applicable to the claim. Except where otherwise provided by state stat-
23 ute, any contractual provision requiring arbitration of claims for
24 personal injuries or wrongful death shall be deemed without effect where
25 the party asserting the contractual right to arbitrate has liability
26 insurance applicable to the claim.

27 § 6. Subdivision a of section 5-702 of the general obligations law is
28 amended by adding a new paragraph 3 to read as follows:

29 3. Written in clear and legible print no less than eight points in
30 depth or five and one-half points in depth for upper case type. The
31 portion of any printed contract or agreement involving a consumer trans-
32 action or a lease for space to be occupied for residential purposes
33 where the print does not comply with this paragraph may not be received
34 in evidence in any trial, hearing or proceeding on behalf of the party
35 who printed or prepared such contract or agreement, or who caused said
36 agreement or contract to be printed or prepared. No provision of any
37 contract or agreement waiving the provisions of this section shall be
38 effective. The provisions of this paragraph shall not apply to agree-
39 ments or contracts entered into or agreements effective prior to the
40 effective date of this paragraph.

41 § 7. Paragraphs 14 and 15 of subdivision 3 of section 94-a of the
42 executive law, as added by section 21 of part A of chapter 62 of the
43 laws of 2011, are amended to read as follows:

44 (14) cooperate with and assist consumers in class actions in proper
45 cases; [and]

46 (15) (i) determine, upon an application by a consumer, whether a
47 contract or agreement or any provision therein between the consumer and
48 any person, firm, corporation or association or agent or employee there-
49 of violates the public policy of the state of New York under the laws of
50 this state, including but not limited to the provisions of this section,
51 article twenty-two-A of the general business law or section twenty-eight
52 hundred one-h of the public health law, prohibiting unscrupulous or
53 questionable business practices or unconscionable contracts, or requir-
54 ing the consumer to enter into an unconscionable contract to obtain the
55 benefits of such contract or agreement, and (ii) refer such determi-

1 nation to the appropriate unit of the department, or federal, state or
2 local agency authorized by law for appropriate action; and

3 (16) create an internet website or webpage pursuant to section three
4 hundred ninety-c of the general business law.

5 § 8. Section 94-a of the executive law is amended by adding a new
6 subdivision 6 to read as follows:

7 6. Right of action. If within sixty days after an application is made
8 by a consumer under paragraph fifteen of subdivision three of this
9 section an action is not commenced by any federal, state or local agen-
10 cy, the consumer may bring an action in his or her own name on behalf of
11 the state to obtain such a determination and seek to enjoin enforcement
12 of the contract or agreement or any of its provisions determined to be
13 void under such subdivision, recover his or her actual damages or both.
14 In such action, preliminary relief may be granted under article sixty-
15 three of the civil practice law and rules. The court may, in its
16 discretion, increase the award of damages to an amount not to exceed
17 three times the actual damages up to one thousand dollars in each
18 instance, if the court finds the defendant willfully or knowingly
19 engaged in an unscrupulous or questionable business practice or required
20 the consumer to enter such contract or agreement to obtain its benefits.
21 Any amount of damages awarded to plaintiff in excess of actual damages
22 shall be payable to the state. The court may award reasonable attorney's
23 fees to a prevailing plaintiff.

24 § 9. The public health law is amended by adding a new section 2801-h
25 to read as follows:

26 § 2801-h. Prohibition of contractual provisions in health care provid-
27 er contracts affecting the rights, remedies or obligations between
28 health care providers and patients relative to personal injuries to, or
29 wrongful death of, patients. 1. Any written contract that a health care
30 provider requires a person to sign as a condition to providing health
31 care services which attempts to affect any legal rights, remedies or
32 obligations relative to personal injuries to, or wrongful death of,
33 patients which may be occasioned in connection with the health care
34 services rendered shall be deemed unconscionable and entered into by the
35 person under duress, and is prohibited as against the public policy of
36 the state.

37 2. For the purpose of this section, the term "health care provider"
38 shall include, but is not limited to: (a) hospitals, nursing homes, and
39 residential health care facilities as defined in section twenty-eight
40 hundred one of this article; (b) home care service agencies as defined
41 in section thirty-six hundred two of this chapter; and (c) physicians,
42 nurses, dentists, podiatrists, chiropractors, orthodontists, nurse
43 midwives, nurse practitioners, physician assistants, acupuncturists,
44 physical therapists, occupational therapists, speech therapists, home
45 health aides, nutritionists, medical technicians and dental hygienists,
46 as well as any groups, corporations, partnerships or joint ventures that
47 provides such services.

48 3. Nothing herein shall be deemed to prohibit or otherwise invalidate
49 an otherwise legally valid consent form being executed by or on behalf
50 of a person undergoing a medical, dental, podiatric or chiropractic
51 treatment or procedure where such consent is required, provided that the
52 document does not attempt to define any rights, remedies or obligations
53 relative to personal injuries to, or wrongful death of, patients arising
54 or resulting from, or contributed to by, the health care services
55 rendered.

1 § 10. If any provision of this chapter or its application to any
2 person or circumstance is held invalid, the invalidity does not affect
3 any other provisions or application of the provisions of the remainder
4 to any other person or circumstance, and to this end the provisions of
5 this chapter are severable.

6 § 11. This act shall take effect immediately and apply to contracts
7 entered into or agreements effective on or after the date on which it
8 shall have become a law; provided, however, that section four of this
9 act shall apply to all pending and future actions in which judgment has
10 not yet been entered.

STATE OF NEW YORK

5980

2019-2020 Regular Sessions

IN ASSEMBLY

February 22, 2019

Introduced by M. of A. BRONSON -- read once and referred to the Committee on Insurance

AN ACT to amend the insurance law, in relation to enacting the "construction insurance transparency act of 2019" 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 2019".
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
19 circumstances behind its financial solvency as well as the basis for the
20 rates they charge to owners and contractors to obtain such coverage. The
21 determination of premiums for such liability insurance policy in this

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

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

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

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

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

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

1 ture which shall be subject to, and submitted in accordance with section
2 three hundred sixteen of this article; provided, however, that no excep-
3 tion authorized in such section may be requested or granted.

4 (c) On or before April first of each year, every insurer shall provide
5 the superintendent with detailed closed claim information for the same
6 insurance coverage as provided for in subsection (b) of this section for
7 the most recently concluded calendar year. Until the superintendent
8 promulgates data collection forms and procedures for the itemization
9 requirements, data shall be collected using, at a minimum, the most
10 recent publicly available forms required by law, or commonly used in the
11 insurance industry. The superintendent may require additional informa-
12 tion beyond that which may otherwise be currently required if he or she
13 deems it necessary and warranted without the need to formally adopt a
14 rule or regulation provided such requirement is consistent with the
15 intent of this section. Such detailed claim data shall be signed and
16 attested as full, complete and accurate by the chief executive officer
17 of the insurer, and he or she shall be held personally responsible with
18 respect to the accuracy of the data. The detailed claim data shall be
19 submitted in the same manner as provided for in subsection (b) of this
20 section.

21 (d) The superintendent shall, in both written form and as part of the
22 department web site, make such financial statements and detailed claim
23 information available to the public. The detailed claim information
24 shall be provided in aggregate form for all insurers and separated by
25 specific insurer, combined without any identification of a specific
26 claim to a specific insurer. None of the publicly available detailed
27 claim information shall identify the individual insurer, defendant or
28 plaintiff, or representative of the same, associated with the claim.
29 Such financial statements and detailed claim information shall be deemed
30 a public document and no person shall be required to file a request for
31 such financial statements pursuant to article six of the public officers
32 law in order to receive a copy thereof, but upon request and payment of
33 the fee for copying such document, it shall be provided forthwith. With
34 respect to the electronic copy of such financial statements and detailed
35 claim information, which shall be accessible on the department's web
36 site, the department shall highlight the availability of such informa-
37 tion to the public on such web site, and the link to each insurer's
38 financial statement and the aggregated detailed claim information shall
39 be accessible in a simple and easy manner. Both the financial statement
40 and aggregated detailed claim information on the department's web site
41 shall be available in spreadsheet format, in addition to any other
42 format the superintendent determines is appropriate. Where summaries are
43 included, they shall be written in plain and simple English so that the
44 public at large can easily comprehend the data provided.

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

1 charged with responsibility for work site safety in preparing such anal-
2 ysis and recommendations. Copies of such reports shall be forwarded to
3 the temporary president of the senate, the speaker of the assembly and
4 the chairs of the senate and assembly insurance committees. Such reports
5 shall be public documents and shall be accessible both in paper copy and
6 on the department's web site in a similar fashion as provided for in
7 subsection (d) of this section.

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

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

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

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

STATE OF NEW YORK

2370

2019-2020 Regular Sessions

IN ASSEMBLY

January 22, 2019

Introduced by M. of A. DINOWITZ, WEPRIN, MOSLEY -- read once and referred to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, in relation to enacting the "patient privacy protection act"

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 "patient privacy protection act".

3 § 2. Section 3102 of the civil practice law and rules is amended by
4 adding a new subdivision (c-1) to read as follows:

5 (c-1) Ex-parte interviews. In any action involving personal injury,
6 medical, dental or podiatric malpractice, or wrongful death, no party or
7 anyone acting on behalf of a party may either directly or indirectly
8 conduct ex-parte interviews with the treating physicians or other health
9 care providers of any other party. Nothing in this subdivision shall
10 prohibit an attorney or the agent or employee of an attorney who repres-
11 ents the patient, the estate of the patient, or the natural or duly
12 appointed guardian of the patient whose condition is at issue in the
13 action from conducting ex-parte conversations with a treating physician
14 or other health care provider of the patient.

15 § 3. This act shall take effect on the thirtieth day after it shall
16 have become a law and shall apply to all actions involving personal
17 injury, medical, dental or podiatric malpractice, or wrongful death
18 filed on and after such date and to all such actions pending on such
19 effective date except as to conduct prohibited by section two of this
20 act which occurred prior to such effective date.

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

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