

NY To Require Greater Insurance Details From Defendants

By **Ben Zigterman**

Law360 (January 4, 2022, 8:17 PM EST) -- Defendants in New York state court are now required to share more detailed insurance coverage information under a law signed by Gov. Kathy Hochul.



A disclosure law signed last week by New York Gov. Kathy Hochul has drawn opposition from the insurance industry and support from trial lawyers. (AP Photo/Seth Wenig)

The Comprehensive Insurance Disclosure Act, which Hochul signed on Dec. 31, has drawn the opposition of the insurance industry, accusing it of being burdensome, while worker safety organizations and the New York State Trial Lawyers Association support it.

The law went into effect immediately, and defendants will have 60 days after answering a lawsuit to provide the information, according to the bill's text.

The legislation "clarifies pre-existing law that requires insurers to provide timely and complete disclosure of insurance coverage to injured New Yorkers seeking to hold wrongdoers accountable," NYSTLA President Halina Radchenko said in a statement. "For too long, powerful insurers have blatantly ignored this legal obligation, instead employing delay tactics in order to deny coverage."

Ellen Melchionni, the president of the New York Insurance Association, questioned how necessary the new law is.

"NYIA believes this is a solution seeking a problem as we are not aware of any evidence indicating that there is significant noncompliance with previous disclosure requirements," Melchionni said in a statement.

Dan Kohane, an attorney with Hurwitz & Fine PC who represents insurance companies, said policies were already required to be handed over when requested.

"I don't have any problem at turning over policies. We've been doing that for years," he told Law360. "Of course every plaintiff lawyer asked for it, so you turned it over."

What he and the NYIA take issue with are some of the additional requirements in the new law, such as contact information for insurance adjusters, insurance applications, available amounts under the policies and lawsuits that have reduced available amounts, according to the bill's text.

Providing all this information "places an impossible burden on defendants," Melchionni said. "We fear that the legislation will create a moving target that imposes unreasonable and inequitable compliance obligations upon defendants and their attorneys and potentially expose such parties to legal sanctions."

The new law also includes a provision requiring the defendant and their attorney both certify that the insurance disclosures are accurate, a standard some insurance attorneys said could be impossible to meet.

Roy A. Mura, an attorney with the Mura Law Group in Buffalo who represents insurance companies and their insureds, said insureds and their counsel don't necessarily possess all the information that's required to be disclosed.

"The insurers do," he told Law360. "That fact alone makes the double certification requirement ... problematic and unfair. How can someone who neither possesses nor controls the requirement information swear or affirm to its accuracy and completeness?"

Kohane also said it's unnecessary to provide policy applications, which often include personal financial information.

"It's private. There's no need for it. It doesn't accomplish anything other than disclose the wealth of the person who's applying for insurance," Kohane said. "The wealth of the defendant has nothing to do with whether he or she or it is responsible for an accident or not."

According to a draft shared on NYIA's website, an amended version of the law is in the works that would relax some requirements, such as by stretching the notification period to 90 days and eliminating the requirement to share insurance applications and related lawsuits.

But the draft amended version doesn't eliminate the certification requirement, leading Kohane to remain opposed.

"I think that is really a very bad part of this bill, so I can't support that because I think it's very unfair to the policyholders, to the businesses, to the lawyers to make them certify things that aren't possibly in their knowledge to certify," Kohane said.

A representative for Hochul did not immediately respond Tuesday to requests for comment.

The legislation was S7052 in the New York State Senate.

--Editing by Roy LeBlanc.