

Disappearing Act

What do you do when you do not like the statutory format of a required report? The options would seem to be to comply with the reporting requirement, ignore the law and be punished for failing to comply, or change the requirement. If you are a licensed insurance company, broker, agent

bureau, 7 paragraphs on the health bureau and 6 paragraphs on the life bureau (compare this to the 8 pages devoted to the technically non-existent liquidation bureau!). The remainder of the narrative was primarily about the structure of the DFS and not about the businesses it regulates (interestingly, the banking division

The bulk of the new section goes into great detail regarding the required reporting of banking activities for the preceding year. The new law, however, continues to de-emphasize the scope of reporting required by the DFS on the business of insurance.

The real kicker in new section 207, however, is that it extends the time for filing the report from May 15 to June 15. As a result there is no report to review at this time, and by the time it is available to review, it will be substantially irrelevant and stale. Why does the DFS need an extra month to do a report that is less than half the size and content of prior reports? By comparison, licensed insurance companies will not only have been required to file their detailed 2012 statutory statement, but also their first quarter 2013 statements, before the DFS has to file its summary report with the legislature.

An equally important question: what was the legislature thinking in approving this change? The required report is a report to the legislature as well as to the governor. The legislative session usually ends by the end of June. Of what value is a report to the legislature on a regulated business that is not required to be filed until the end of session? One of the required elements of the report is that it should contain "legislative recommendations that the superintendent deems necessary or desirable." Is this a hollow, meaningless requirement? If the report is supposed to have value to the legislature, shouldn't it at least be timely?

Following my review of the first annual report by the superintendent of financial services last year, I made a couple of Freedom of Information Law requests to see if it was possible to fill in some of the gaps in the report. The results were a mixed bag. I managed to get some information that had been included in the old insurance department reports but omitted from the DFS report.

For example, one of the schedules that had routinely been included in prior insurance department reports but was deleted from the DFS report was a schedule of



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or other regulated entity, the answer is usually to grumble and comply. If, however, you are the superintendent of financial services you simply get the requirements changed.

Last year I wrote about the diminished annual report of the superintendent to the New York legislature and the governor on the insurance business in the state, and suggested that it failed to meet the intent if not the letter of the law (IA, June 18, 2012). The report on the insurance business was a mere shadow of prior reports in terms of scope and content.

For instance, the last annual report of a superintendent of insurance, for the calendar year 2010, was 235 pages long filled with complete narratives and supporting tables and schedules for the business overseen by each bureau of the department, including over 55 pages on property business alone. The first annual report of the superintendent of financial services for calendar year 2011 – comprising the reports for both insurance and banking — was a total of 118 pages: 41 pages of narrative and the rest various charts and schedules. Of the 41 pages of narrative, a grand total of 3 pages were devoted to the insurance division, including just 4 paragraphs (paragraphs – not pages!) on the property

portion of the report was almost exactly the same in terms of content and length as prior banking department reports).

Naturally I was curious about how the report would look this year — to see if there would be any significant changes, additional deletions or improvements. However, when I went to check the operative statute – Section 206 of the Insurance Law — it was gone! After a bit of research I discovered that Insurance Law Section 206 had been repealed last July and replaced by a new Section 207 of the Financial Services Law combining the reports on the banking and insurance businesses into one report. With the creation of the DFS merging banking and insurance, requiring a single report makes sense, and at first blush it appears to be a simple case of moving the separate banking and insurance requirements into one provision under the relatively new Financial Services Law. Of course, that would be too easy!

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[INSIGHT]

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employees of the DFS. Through a Freedom of Information Law request, I obtained a copy of the schedule for 2011, which showed that the DFS had a total of 1346 employees, 1039 in the New York office, 275 in Albany and 32 in other offices throughout the state. Of the 1346 total, 742 were examiners, 83 attorneys, 65 actuaries, 231 other professionals, 54 investigators and 171 support staff. These numbers are for the entire DFS, including banking, insurance and consumer affairs (a comparison to the 913 total employees of the insurance department at the end of 2010 is not entirely possible because of cross-over and pooling of assignments under the DFS).

It is not clear why information like the schedule of employees was not included in the DFS report, or why the bulk of the other information removed from the old insurance department reports was removed. It could not be because of the

difficulty in compiling the information or its complexity. The templates already existed, and the updated information readily available. And the DFS had no problem replicating and updating the banking department piece of the report.

This is just one small example of information not included in the DFS report. The DFS denied my Freedom of Information request for other, even more significant information about the insurance business. More on these denied requests in a future column.

The disappeared information would have been of value to the recipients of the report – particularly the legislature — and the general public, providing significant insight into trends, strengths, weaknesses, developments and effectiveness of the business of insurance in New York and of its regulation. We can only hope that the DFS will eventually understand the importance of all the businesses it regulates. One way it can do this is by restoring the report to its former content and value. [A]

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