

VIA EMAIL

Mr. Jeremy Attie
President & CEO
New York Compensating Insurance Rating Board
875 Third Avenue, Floor 8
New York, New York 10022

December 5, 2025,

Re: Evaluation of Workers' Compensation Third Party Liability Bill


Dear Mr. Attie,

At your request, the following is an evaluation of A.3351 (Dinowitz) / S.5170 (Skoufis). We appreciate the opportunity to provide this brief analysis, and feel free to contact us with any questions regarding the findings. We can be reached as follows:

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Sincerely,



Daniel Shaw, FCAS, MAAA



Susan Dunham, ACAS, MAAA

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I. Bill Summary

The "Third Party Liability Bill" (The Bill) analyzed in this report passed both the New York Assembly and Senate (A.3351 (Dinowitz) / S.5170 (Skoufis)) and has not been signed into law by the Governor as of the date of this report. The Bill is expected to impact claims covered under New York State (NYS) Workers' Compensation and Employers' Liability (EL) policies, specifically claims covered under Part II/Employers' Liability (EL) coverage in NYS. The purpose of this analysis is to estimate the impact of the Bill on NYS workers' compensation loss costs for the insured market only. This analysis does not estimate the impact on public or private sector costs that are self-insured.

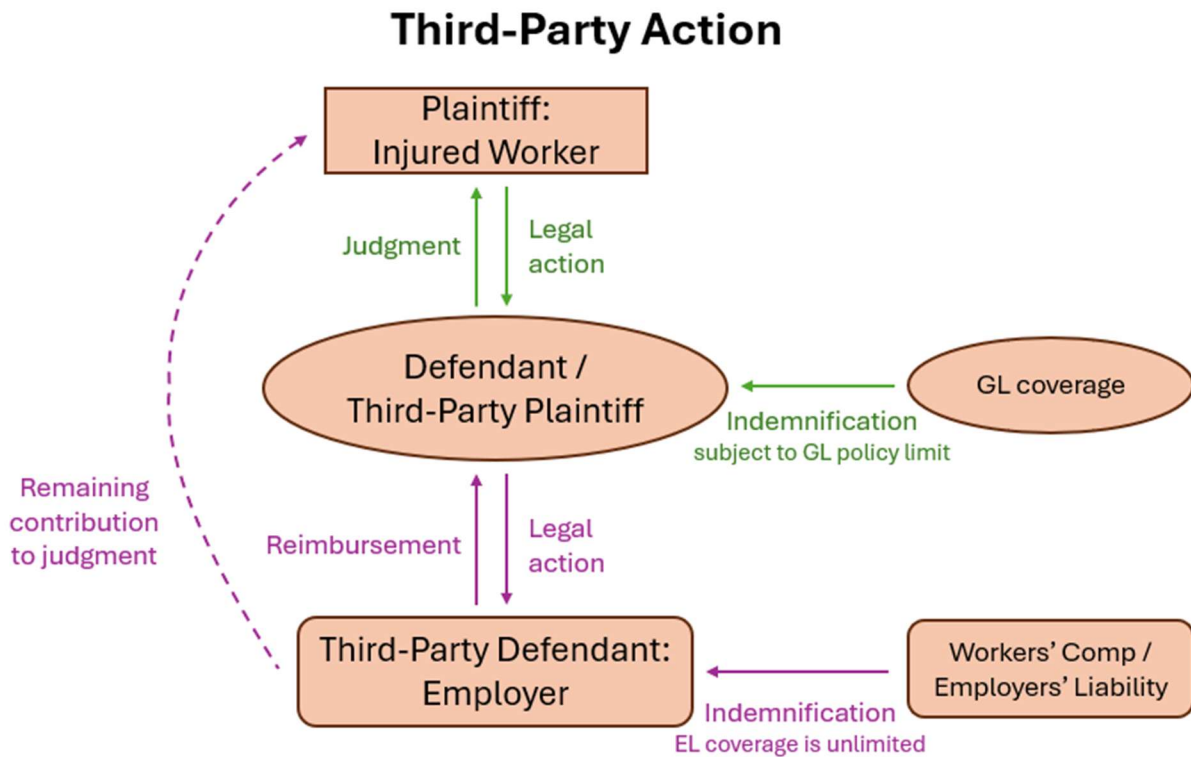
The Bill would amend the Civil Practice Law and Rules to allow a plaintiff (injured worker) to recover on a judgment for contribution or indemnification directly against the third-party defendant when the defendant/third-party plaintiff fails to satisfy the underlying judgment for which contribution or indemnification is sought 30 days after it has been served. As a result, when a defendant/third-party plaintiff is insolvent, the plaintiff could seek to recover directly from the third-party defendant.

Under current law, a worker who sustains a "grave injury" (as defined in Article 2, Section 11 of the New York State Workers' Compensation Law) in the course of employment may, in addition to filing a workers' compensation claim against his or her employer, pursue a personal injury action against a negligent third-party ("Third-Party Action"). Further, in a Third-Party Action, the defendant/third-party plaintiff may implead the plaintiff's employer on the basis that the employer is responsible for damages awarded against the defendant. If the defendant/third-party plaintiff is successful in the claim for contribution or indemnification, the third-party defendant (employer) will be responsible for reimbursing amounts paid by the defendant/third-party plaintiff and its General Liability insurer, and that reimbursement will be made under Part II of the third-party defendant's Workers' Compensation and Employers' Liability policy, less any workers' compensation liens credited to Part I of the workers' compensation policy.

Under the proposed law, when the judgment in a Third-Party Action exceeds the defendant/third-party plaintiff's assets (including the policy limit of defendant/third-party plaintiff's General Liability policy) or otherwise remains unsatisfied 30 days after it has been served, the plaintiff would be permitted to seek recovery of the unpaid portion of the judgment directly from the third-party defendant or its Workers' Compensation and Employers' Liability policy for the same amount of contribution as would be awarded to the defendant/third-party plaintiff had they satisfied the plaintiff's original judgment.

For example, under current law, when a construction worker sustains a grave injury in the course of employment, the injured worker may pursue a Third-Party Action against the owner of the premises. If the owner of the premises impleads the construction worker's employer and the owner of the premises is successful in their claim for contribution against the employer, then the employer will be responsible for reimbursing (made under Part II of the employer's Workers' Compensation and Employers' Liability policy) the building owner for the employer's contribution of amounts the building owner and their general liability policy have paid to the construction worker. That is, the total amount paid to the construction worker is limited by the solvency and general liability policy limits of the owner of the premises. Under the proposed law, the solvency and general liability policy limits are no longer a limiting factor for the employer's contribution since the injured worker would be permitted to seek recovery of the unpaid portion of the employer's contribution directly from their employer or their employer's Workers' Compensation and Employers' Liability policy.

Below is a diagram of an example Third-Party Action with the dotted line representing the change resulting from the Bill.



II. Results

Our best estimate is an annual increase of 3.0% on insured loss costs in NYS as a result of the Bill. However, the contracting classification codes will bear most, if not all, of this cost increase given that almost all of the large EL claims are in the construction industry. Therefore, this 3.0% increase on total insured loss costs in NYS would translate to an 11.0% increase in loss costs for contracting class codes. Our summary calculations are shown in the table below.

Table 1: Estimated Cost Impact of the Bill

	(\$Millions)	Low	Best	High
A	Estimated System-Wide Impact	\$65	\$145	\$320
B	Estimated Policy Year Loss Costs	4,900	4,900	4,900
C	Loss Cost Impact	1.3%	3.0%	6.5%
D	Construction Proportion of Loss Costs	27%	27%	27%
E	Impact to Construction	4.9%	11.0%	24.2%

- A. Estimated. See "Approach".
- B. From Exhibit B, Sheet 1 of the October 1, 2025 NYCIRB Loss Cost Filing, adjusted for the approved October 1, 2025 manual loss cost level change.
- C. A / B.
- D. Provided by the NYCIRB.
- E. C / D.

Additionally, the Bill carries an immediate effective date and would apply to all judgments entered by plaintiffs on or after such date. This would create an unfunded liability on construction-related Workers' Compensation and Employers' Liability policies written prior to the approval, and implementation of a loss cost level change that accounts for the additional costs that could result from this legislation. There is significant uncertainty around our estimate of the annual cost impact of the Bill, and this uncertainty becomes magnified when estimating the unfunded liability of policies currently in force. The most recent 5-10 years of policies will be most impacted given these policies have the most unresolved claims, but this impact may extend to older policies as well. We estimate a total unfunded liability of \$500 million to \$1.5 billion based on current unpaid EL claim estimates.

The preceding table represents our best estimate of a reasonable range related to potential changes from the Bill but is not meant to represent the entire range of possible outcomes. It is possible that the actual impact may be outside our range of reasonable estimates as there is significant uncertainty related to these estimates for many reasons, some of which are discussed below:

1. **Court System:** As with many workers' compensation reform bills, the court system and legal interpretation of the language of the bill could play a significant role in the bill's ultimate impact. This process will take time, and the outcome cannot be predicted.

2. High Severity and Low Frequency: The number of EL claims in the insured market in NYS is fewer than 200 annually, and 10% of these claims are over \$1,000,000 on average. The low frequency and high severity of these claims results in a large variance around any related estimates.
3. Data Quality: The EL data available includes both indemnity and DCCE, but DCCE is aggregated with the indemnity award and can't be reliably separated. The EL indemnity on an EL claim reflects just the portion of judgement or settlement that the employer reimbursed the defendant/third-party plaintiff from their workers' compensation EL coverage. Therefore, the full value of the judgement or settlement is indeterminable from the available data, since the EL data implicitly reflects loss limitations based upon the solvency and general liability policy limits of the defendant/third-party plaintiff. This lack of complete information surrounding the full judgement/settlement value, share of liability assigned to the liable parties, defendant/third-party plaintiff general liability policy limits, and other considerations of the settlement amounts adds additional uncertainty to our analysis.
4. Behavioral Changes: It is possible that the change in access to EL benefits could change the behavior of injured workers, employers, insurers, the involved attorneys, and others. While the presented estimates include consideration of some behavioral changes, the true behavioral impact may vary widely and thus represents a significant area of uncertainty in our findings.

III. Approach

Our estimate discussed in the preceding section is based on the available data, stakeholder discussions, and actuarial judgment. We have considered all available information, perspectives, and data in our analysis. The approach used to analyze the Bill is outlined below.

1. Stakeholder Outreach: We reached out to a variety of workers' compensation stakeholders in NYS in order to gain different perspectives regarding the potential impact of the Bill. These stakeholders included the NYS AFL-CIO, the Business Council of New York State, defense and plaintiff attorneys, insurance companies, PERMA, NYS WCB, and the NYS State Insurance Fund (SIF). For those that were interested, discussions were conducted live through video conferencing, and all participants were provided the opportunity to express their point of view, suggest additional people or organizations to contact, and provide relevant data if possible.
2. Key Data Sources: The only source of claims information for this analysis came from the NYCIRB. We received EL claims data summaries compiled from Unit Statistical Reporting data reported through October 31, 2025 and Financial Data Reporting call NY 141 (employers' liability claims) through December 31, 2024. This data was a key consideration.
3. Selected Estimates: The significant uncertainty with regards to data quality necessitated that our selected estimate be based on judgment, with consideration of the available data and the information gathered through stakeholder outreach. In broad terms, our approach considered claims segmented by severity band and modeled changes in counts and severities.

Some considerations contemplated in our selected estimates are discussed below:

- a. Settlements: Stakeholders report that the vast majority of EL claims are settled rather than going to trial. The settlement process takes into account many considerations that aren't collected in the available data. These considerations include policy limits on the involved GL policies, defendant/third-party plaintiff's assets, workers' compensation lien rights, medical documentation on the injury in question, among others.
- b. Severity: Employers' liability coverage in NYS does not have a policy limit. This bill opens the door for the entirety of the employer's contribution to the judgment to be collected from the third-party defendant's EL coverage when previously this

would have been limited by the defendant's/third-party plaintiff's assets and their GL policy limit. This could increase the indemnity payments on claims for those that receive judgments and will likely result in more generous settlement offers in order to avoid a trial, thus increasing the indemnity payments on claims for those that settle. We considered average EL payments by claim segment in our selections.

- c. Frequency: Given the increase in the indemnity costs associated with these claims, it's possible that behavioral changes may result in a larger number of these claims. With the removal of the defendant's/third-party plaintiff's assets as a limiting factor, it's possible that claims with minimal EL indemnity payments may also increase substantially.

IV. Glossary of Terms

NYS AFL-CIO	New York State American Federation of Labor and Congress of Industrial Organizations
AOE	Adjusting and Other Expense
DCCE	Defense and Cost Containment Expense
EL	Employers' Liability
GL	General Liability
LAE	Loss Adjustment Expense
Loss Cost Filing	NYCIRB Loss Cost Filing for October 1, 2025
NCCI	National Council on Compensation Insurance
NYCIRB	New York Compensation Insurance Rating Board
NYS	New York State
PERMA	Public Employer Risk Management Association, Inc.
SIF	New York State Insurance Fund
WCB	New York State Workers' Compensation Board
WC	Workers' Compensation