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Anthony J. Piazza  
585.295.4420  
[apiazza@hblaw.com](mailto:apiazza@hblaw.com)

Gary H. Abelson  
David B. Cabaniss  
John R. Casey  
William C. Foster  
Thomas J. O'Connor  
Mark T. Whitford, Jr.  
Joseph A. Wilson

## Proposed Legislation Prohibits Insurers from Demanding Personal, Financial and Tax Information in Ordinary Theft Claims

On January 7, 2009, a Bill was filed in the New York State Assembly which would amend the Insurance Law to restrict insurers from “demanding intrusive personal, financial and tax information from insureds as a standard practice in processing ordinary theft claims.” (New York State Assembly Bill - A00534)

As currently proposed, the Bill would amend the Insurance Law as follows:  
Section 1. The insurance law is amended by adding a new section 2616 to read as follows:

S 2616. Intrusive requests for personal, financial and tax information; ordinary theft claims. (A) it shall be an unfair claim settlement act or practice under paragraphs three and four of subsection (A) of section two thousand six hundred one of this article for an insurer, in the course of investigating or settling a theft claim, to demand of its insured personal, financial and tax information unless special articulable circumstances have been discovered which directly relate to the particular individual facts of such theft and which warrant the making of such demand for the specific purpose of determining if such claim is fraudulent.

(B) as used in this section, a demand for personal, financial and tax information is a demand that any of the following material or information be provided:

- (1) copies of the insured's personal and business tax returns;
- (2) permits or licenses which the insured holds in New York State other than those for operating a motor vehicle;
- (3) loan applications which the insured filed;
- (4) statement setting forth the county and state in which the insured has been registered to vote over a period of time, other than from his or her present residence;
- (5) copies of any bank statements of banks in which the insured has accounts;
- (6) copies of any “doing business as” certificates or certificates of incorporation for any business the insured owns; or
- (7) information or material of a similar personal, financial, tax or private nature which the Superintendent by regulation finds to be intrusive or which constitutes an unwarranted invasion of privacy in the context of a standard or ordinary theft claim.

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The proposed legislation would place a new burden upon insurers to demonstrate “special articulable circumstances which directly relate to the particular individual facts of such theft and which warrant the making of such demand for the specific purpose of determining if such claim is fraudulent.” Experience demonstrates that most theft claims have unique circumstances, and that it is difficult if not impossible to categorize theft claims as “ordinary”, just as such categorization cannot be uniformly applied to fire claims or other losses. Very often, the insured’s financial status is critical to determining motive in a theft loss where the sole evidence of the occurrence of a theft is the statement of the insured. This proposed law highlights the delicate balance which needs to be achieved when analyzing privacy issues and an insurer’s need to conduct a thorough investigation of claims. ■

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