S T A T E O F N E W Y O R K

1694

2009-2010 Regular Sessions

I N S E N A T E

February 5, 2009

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

AN ACT to amend the executive law, the insurance law and the state finance law, in relation to enacting the "Comprehensive Motor Vehicle Insurance Rate Reform Act" and extending certain expired provisions of the insurance law relating thereto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Short title. This act shall be known and may be cited as the "Comprehensive Motor Vehicle Insurance Rate Reform Act".

S 2. The executive law is amended by adding a new article 44-A to read as follows:

ARTICLE 44-A

OFFICE OF PUBLIC INSURANCE ADVOCATE

SECTION 945. OFFICE OF PUBLIC INSURANCE ADVOCATE.
946. INSURANCE CONSUMER ADVOCATE.
947. POWERS AND DUTIES.

S 945. OFFICE OF PUBLIC INSURANCE ADVOCATE. THERE IS HEREBY CREATED IN THE EXECUTIVE DEPARTMENT AN INDEPENDENT OFFICE OF INSURANCE CONSUMER ADVOCATE (HEREINAFTER REFERRED TO AS "OFFICE") TO REPRESENT THE INTERESTS OF NONBUSINESS AUTOMOBILE INSURANCE CONSUMERS IN NEW YORK STATE.

S 946. INSURANCE CONSUMER ADVOCATE. 1. THE GOVERNOR, WITH THE ADVICE AND CONSENT OF THE SENATE, SHALL APPOINT AN INSURANCE CONSUMER ADVOCATE (HEREINAFTER REFERRED TO AS "ADVOCATE") WHO SHALL SERVE AS THE EXECUTIVE DIRECTOR OF THE OFFICE OF INSURANCE CONSUMER ADVOCATE AND SHALL RECEIVE AN ANNUAL SALARY TO BE FIXED BY THE GOVERNOR WITHIN THE AMOUNT AVAILABLE THEREFOR BY APPROPRIATION.

2. (A) TO BE ELIGIBLE TO SERVE AS ADVOCATE, A PERSON MUST BE A RESIDENT OF NEW YORK STATE. THE ADVOCATE SHALL BE A PERSON WHO HAS DEMONSTRATED A STRONG COMMITMENT AND INVOLVEMENT IN EFFORTS TO SAFEGUARD THE

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

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RIGHTS OF THE PUBLIC AND WHO POSSESSES THE KNOWLEDGE AND EXPERIENCE NECESSARY TO PRACTICE EFFECTIVELY IN INSURANCE PROCEEDINGS.

(B) A PERSON IS NOT ELIGIBLE FOR APPOINTMENT AS ADVOCATE IF THE PERSON OR THE PERSON'S SPOUSE:

(I) IS EMPLOYED BY OR PARTICIPATES IN THE MANAGEMENT OF A BUSINESS ENTITY OR OTHER ORGANIZATION REGULATED BY THE INSURANCE DEPARTMENT OR RECEIVING FUNDS FROM THE DEPARTMENT;

(II) OWNS OR CONTROLS, DIRECTLY OR INDIRECTLY, MORE THAN TEN PERCENT INTEREST IN A BUSINESS ENTITY OR OTHER ORGANIZATION REGULATED BY THE INSURANCE DEPARTMENT OR RECEIVING FUNDS FROM THE INSURANCE DEPARTMENT OR THE OFFICE;

(III) USES OR RECEIVES A SUBSTANTIAL AMOUNT OF TANGIBLE GOODS, SERVICES, OR FUNDS FROM THE INSURANCE DEPARTMENT OR THE OFFICE, OTHER THAN COMPENSATION OR REIMBURSEMENT AUTHORIZED BY LAW FOR THE INSURANCE DEPARTMENT OR OFFICE MEMBERSHIP, ATTENDANCE OR EXPENSES.

3. THE ADVOCATE SHALL SERVE FOR A TERM OF TWO YEARS EXPIRING ON FEBRUARY FIRST OF EACH ODD-NUMBERED YEAR.

4. IT IS A GROUND FOR REMOVAL FROM OFFICE IF THE ADVOCATE:

(A) DOES NOT HAVE AT THE TIME OF APPOINTMENT THE QUALIFICATIONS REQUIRED BY THIS SECTION;

(B) DOES NOT MAINTAIN DURING SERVICE AS ADVOCATE THE QUALIFICATIONS REQUIRED BY THIS SECTION;

(C) VIOLATES A PROHIBITION ESTABLISHED BY THIS SECTION; OR

(D) CANNOT DISCHARGE THE ADVOCATE'S DUTIES FOR A SUBSTANTIAL PART OF THE TERM FOR WHICH THE ADVOCATE IS APPOINTED BECAUSE OF ILLNESS OR DISABILITY.

5. THE VALIDITY OF AN ACTION OF THE OFFICE IS NOT AFFECTED BY THE FACT THAT IT IS TAKEN WHEN A GROUND FOR REMOVAL OF THE ADVOCATE EXISTS.

6. (A) A PERSON MAY NOT SERVE AS THE ADVOCATE OR ACT AS THE GENERAL COUNSEL FOR THE OFFICE OF ADVOCATE IF THE PERSON IS REQUIRED TO REGISTER AS A LOBBYIST PURSUANT TO ARTICLE ONE-A OF THE LEGISLATIVE LAW.

(B) A PERSON SERVING AS THE ADVOCATE MAY NOT, FOR A PERIOD OF TWO YEARS AFTER THE DATE THE PERSON CEASES TO BE AN ADVOCATE, REPRESENT ANY PERSON IN A PROCEEDING BEFORE THE SUPERINTENDENT OF INSURANCE OR THE INSURANCE DEPARTMENT OR RECEIVE COMPENSATION FOR SERVICES RENDERED ON BEHALF OF ANY PERSON REGARDING A CASE BEFORE THE SUPERINTENDENT OF INSURANCE OR THE INSURANCE DEPARTMENT.

(C) AN OFFICER, EMPLOYEE OR PAID CONSULTANT OF A TRADE ASSOCIATION IN THE FIELD OF INSURANCE MAY NOT SERVE AS THE ADVOCATE OR BE AN EMPLOYEE OF THE OFFICE.

(D) A PERSON WHO IS THE SPOUSE OF AN OFFICER, MANAGER, OR PAID CONSULTANT OF A TRADE ASSOCIATION IN THE FIELD OF INSURANCE MAY NOT SERVE AS THE ADVOCATE AND MAY NOT BE AN OFFICE EMPLOYEE.

(E) FOR THE PURPOSES OF THIS SECTION, A TRADE ASSOCIATION IS A NONPROFIT, COOPERATIVE, AND VOLUNTARILY JOINED ASSOCIATION OF BUSINESS OR PROFESSIONAL COMPETITORS DESIGNED TO ASSIST ITS MEMBERS AND ITS INDUSTRY OR PROFESSION IN DEALING WITH MUTUAL BUSINESS OR PROFESSIONAL PROBLEMS AND IN PROMOTING THEIR COMMON INTEREST.

S 947. POWERS AND DUTIES. 1. THE ADVOCATE, AS EXECUTIVE DIRECTOR OF THE OFFICE, SHALL BE CHARGED WITH THE RESPONSIBILITY OF ADMINISTERING, ENFORCING AND CARRYING OUT THE PROVISIONS OF THIS ARTICLE, INCLUDING PREPARATION OF A BUDGET FOR THE OFFICE, EMPLOYING ALL NECESSARY PROFESSIONAL, TECHNICAL, AND OTHER EMPLOYEES TO CARRY OUT PROVISIONS OF THIS ARTICLE, APPROVAL OF EXPENDITURES FOR PROFESSIONAL SERVICES, TRAVEL, PER DIEM, AND OTHER ACTUAL AND NECESSARY EXPENSES INCURRED IN ADMINISTERING THE OFFICE. EXPENSES FOR THE OFFICE SHALL BE PAID FROM THE ASSESSMENT

IMPOSED IN SECTION NINE THOUSAND ONE HUNDRED TEN OF THE INSURANCE LAW. THE COMPENSATION OF EMPLOYEES OF THE OFFICE SHALL BE FIXED BY THE ADVOCATE WITHIN THE APPROPRIATION PROVIDED THEREFOR.

2. THE OFFICE SHALL FILE ANNUALLY WITH THE GOVERNOR AND THE PRESIDING OFFICER OF EACH HOUSE OF THE LEGISLATURE A COMPLETE AND DETAILED WRITTEN REPORT ACCOUNTING FOR ALL FUNDS RECEIVED AND DISBURSED BY THE OFFICE DURING THE PRECEDING FISCAL YEAR. THE ANNUAL REPORT MUST BE IN THE FORM AND REPORTED AS PART OF THE EXECUTIVE BUDGET.

3. ALL MONEY PAID TO THE OFFICE UNDER THIS ARTICLE SHALL BE DEPOSITED IN THE STATE TREASURY.

4. THE OFFICE MAY ASSESS THE IMPACT OF INSURANCE RATES, RULES, AND REGULATIONS ON NONBUSINESS AUTOMOBILE INSURANCE CONSUMERS IN NEW YORK STATE AND, IN ITS OWN NAME, MAY ADVOCATE ON BEHALF OF POSITIONS THAT ARE MOST ADVANTAGEOUS TO A SUBSTANTIAL NUMBER OF INSURANCE CONSUMERS AS DETERMINED BY THE ADVOCATE.

5. THE ADVOCATE:

(A) MAY APPEAR OR INTERVENE AS A MATTER OF RIGHT BEFORE THE SUPERINTENDENT OF INSURANCE OR INSURANCE DEPARTMENT AS A PARTY OR OTHERWISE ON BEHALF OF INSURANCE CONSUMERS AS A CLASS IN MATTERS INVOLVING RATES, RULES, AND REGULATIONS AFFECTING NONBUSINESS AUTOMOBILE INSURANCE;

(B) MAY INITIATE OR INTERVENE AS A MATTER OF RIGHT OR OTHERWISE APPEAR IN ANY JUDICIAL PROCEEDING INVOLVING OR ARISING OUT OF ANY ACTION TAKEN BY AN ADMINISTRATIVE AGENCY IN A PROCEEDING IN WHICH THE ADVOCATE PREVIOUSLY APPEARED UNDER THE AUTHORITY GRANTED BY THIS ARTICLE;

(C) IS ENTITLED TO ACCESS ANY RECORDS OF THE DEPARTMENT THAT ARE AVAILABLE TO ANY PARTY IN A PROCEEDING BEFORE THE SUPERINTENDENT OF INSURANCE OR INSURANCE DEPARTMENT UNDER THE AUTHORITY GRANTED BY THIS ARTICLE;

(D) IS ENTITLED TO OBTAIN DISCOVERY OF ANY NON-PRIVILEGED MATTER THAT IS RELEVANT TO THE SUBJECT MATTER INVOLVED IN A PROCEEDING OR SUBMISSION BEFORE THE SUPERINTENDENT OF INSURANCE OR INSURANCE DEPARTMENT AS AUTHORIZED BY THIS ARTICLE;

(E) MAY RECOMMEND LEGISLATION TO THE LEGISLATURE THAT, IN THE JUDGMENT OF THE ADVOCATE, WOULD AFFECT POSITIVELY THE INTERESTS OF NONBUSINESS AUTOMOBILE INSURANCE CONSUMERS;

(F) MAY APPEAR OR INTERVENE AS A MATTER OF RIGHT AS A PARTY OR OTHERWISE ON BEHALF OF NONBUSINESS AUTOMOBILE INSURANCE CONSUMERS AS A CLASS IN ALL PROCEEDINGS IN WHICH THE ADVOCATE DETERMINES THAT SUCH CONSUMERS NEED REPRESENTATION, EXCEPT THAT THE ADVOCATE MAY NOT INTERVENE IN ANY ENFORCEMENT OR PARENS PATRIAE PROCEEDING BROUGHT BY THE ATTORNEY GENERAL.

6. (A) THE OFFICE SHALL PREPARE INFORMATION OF PUBLIC INTEREST DESCRIBING THE FUNCTIONS OF THE OFFICE. THE OFFICE SHALL MAKE THE INFORMATION AVAILABLE TO THE PUBLIC, LAWMAKERS AND APPROPRIATE STATE AGENCIES.

(B) THE OFFICE SHALL PREPARE AND MAINTAIN A WRITTEN PLAN THAT DESCRIBES HOW EACH PERSON WHO DOES NOT SPEAK ENGLISH CAN BE PROVIDED REASONABLE ACCESS TO THE OFFICE'S PROGRAMS.

(C) THE OFFICE SHALL PREPARE AND DISTRIBUTE PUBLIC EDUCATION MATERIALS FOR CONSUMERS, LEGISLATORS AND REGULATORS.

(D) THE OFFICE MAY PARTICIPATE IN TRADE ASSOCIATIONS.

S 3. Subsection (d) of section 2321 of the insurance law is amended to read as follows:

(d) Proceedings pursuant to subsections (b) and (c) [hereof] OF THIS SECTION may be instituted upon the initiative of the superintendent or upon written application to the superintendent by any aggrieved person

or organization, other than a rate service organization, for a hearing, if the superintendent finds that the application is made in good faith and that the grounds otherwise justify holding such a hearing WHICH SHALL BE HELD WITHIN FIFTEEN DAYS OF THE REQUEST; PROVIDED, HOWEVER, THAT THE SUPERINTENDENT SHALL HOLD SUCH A HEARING WITHIN FIFTEEN DAYS OF AN APPLICATION THEREFOR FROM THE INSURANCE CONSUMER ADVOCATE ESTABLISHED UNDER ARTICLE FORTY-FOUR-A OF THE EXECUTIVE LAW. IN THE CASE OF A DENIAL OF AN APPLICATION FOR A HEARING FILED BY ANY AGGRIEVED PERSON OR ANY OTHER ORGANIZATION, THE SUPERINTENDENT SHALL PROVIDE THE REASONS THEREFOR IN WRITING TO THE APPLICANT WITHIN FIFTEEN DAYS OF SUCH DENIAL.

S 4. Subsection (c) of section 2305 of the insurance law is amended to read as follows:

(c) Rates filed with the superintendent shall be accompanied by the information upon which the insurer supports the rate as set forth in subsection (b) of section two thousand three hundred four of this article. WITH RESPECT TO RATES FILED FOR NONBUSINESS AUTOMOBILE POLICIES, SUCH FILINGS SHALL INCLUDE ALL STATISTICAL DATA RELIED UPON TO SUPPORT THE FILING AND SUCH OTHER INFORMATION AS THE SUPERINTENDENT SHALL REQUIRE. SUCH FILINGS AND SUPPORTING INFORMATION SHALL CONFORM WITH STANDARDS OF UNIFORMITY WHICH THE SUPERINTENDENT SHALL PRESCRIBE BY REGULATION ON OR BEFORE JANUARY FIRST, TWO THOUSAND NINE.

S 5. Section 89-d of the state finance law, as amended by chapter 170 of the laws of 1994, is amended to read as follows:

S 89-d. Motor vehicle theft and insurance fraud prevention fund. 1. There is hereby established in the custody of the comptroller, a special fund to be known as the "motor vehicle theft and insurance fraud prevention fund".

2. Such fund shall consist of all moneys received by the state pursuant to subsection (f) of section nine thousand one hundred ten of the insurance law including any moneys received by the state pursuant to subsection (e) of section nine thousand one hundred ten of the insurance law that are [transfered] TRANSFERRED to the fund and all other grants, bequests or other moneys appropriated, credited or transferred thereto from any other fund or source pursuant to law.

3. Moneys in the motor vehicle theft and insurance fraud prevention fund shall be kept separate and apart and shall not be commingled with any other moneys in the custody of the comptroller and shall only be expended herein and in such amounts as approved by the division of the budget.

4. [The] EXCEPT AS PROVIDED IN THIS SUBDIVISION, THE moneys received by such fund shall be expended pursuant to appropriation only to fund provider agencies which have been awarded grants by the motor vehicle theft and insurance fraud prevention board established pursuant to section eight hundred forty-six-l of the executive law. All moneys expended pursuant to this subdivision shall be for the reimbursement of costs incurred by provider agencies; PROVIDED, HOWEVER THAT NO LESS THAN ONE MILLION TWO HUNDRED THOUSAND DOLLARS SHALL BE USED FOR THE PURPOSES OF CREATING, ADMINISTERING AND OPERATING THE OFFICE OF INSURANCE CONSUMER ADVOCATE CREATED PURSUANT TO ARTICLE FORTY-FOUR-A OF THE EXECUTIVE LAW.

S 6. Section 2329 of the insurance law, as amended by chapter 136 of the laws of 2008, is amended to read as follows:

S 2329. Motor vehicle insurance rates; excess profits. (A) In accordance with regulations prescribed by the superintendent, each insurer issuing policies which are subject to article fifty-one of this chapter, including policies of motor vehicle personal injury liability insurance

or policies of motor vehicle property damage liability insurance or insurance for loss or damage to a motor vehicle, shall establish a fair, practicable, and nondiscriminatory plan for refunding or otherwise crediting to those purchasing such policies their share of the insurer's excess profit, if any, on such policies. An excess profit shall be a profit beyond a percentage rate of return on net worth attributable to such policies, computed in accordance with the regulation required by section two thousand three hundred twenty-three of this article, and determined by the superintendent to be so far above a reasonable average profit as to amount to an excess profit, taking into consideration the fact that losses or profits below a reasonable average profit will not be recouped from such policyholders. Each plan shall apply to policy periods for the periods January first, nineteen hundred seventy-four through August second, two thousand one, and the effective date of the property/casualty insurance availability act through June thirtieth, two thousand [eleven] NINE. In prescribing such regulations the superintendent may limit the duration of such plans, waive any requirement for refund or credit which he or she determines to be de minimis or impracticable, adopt forms of returns which shall be made to him or her in order to establish the amount of any refund or credit due, establish periods and times for the determination and distribution of refunds and credits, and shall provide that insurers receive appropriate credit against any refunds or credits required by any such plan for policyholder dividends and for return premiums which may be due under rate credit or retrospective rating plans based on experience.

(B)(1) ON OR BEFORE NOVEMBER FIRST, TWO THOUSAND TEN, AND ANNUALLY THEREAFTER, THE SUPERINTENDENT SHALL COMPLETE A RECALCULATION OF THE POINTS FOR REASONABLE RATE OF RETURN AND EXCESS PROFITS ESTABLISHED UNDER THE REGULATIONS PROMULGATED PURSUANT TO THIS SECTION, USING THE MOST RECENT SIX YEAR PERIOD FOR WHICH DATA IS AVAILABLE. IF SUCH RECALCULATION RESULTS IN A CHANGE IN SUCH POINTS, THE SUPERINTENDENT SHALL IMMEDIATELY ADOPT SUCH POINTS IN REGULATION, AND, IF, UNDER SUCH RECALCULATION, EXCESS PROFITS HAVE BEEN REALIZED, SHALL IMMEDIATELY ACTIVATE PLANS FOR REFUNDING OR OTHERWISE CREDITING TO THOSE PURCHASING SUCH POLICIES THEIR SHARE OF INSURERS' EXCESS PROFIT, IN ACCORDANCE WITH THE REGULATIONS PROMULGATED HEREUNDER.

(2) ON OR BEFORE DECEMBER FIRST, TWO THOUSAND TEN, AND ANNUALLY THEREAFTER, THE SUPERINTENDENT SHALL HOLD A PUBLIC HEARING ON THE RESULTS OF SUCH RECALCULATION AND ANY ACTIONS INSTITUTED PURSUANT TO THIS SECTION AS A RESULT OF SUCH RECALCULATION. ON OR BEFORE JANUARY FIRST, TWO THOUSAND ELEVEN, AND ANNUALLY THEREAFTER, THE SUPERINTENDENT SHALL SEND A TRANSCRIPT OF THE HEARING TO THE LEGISLATURE AND A REPORT ON THE RESULTS OF SUCH RECALCULATION AND ANY ACTIONS INSTITUTED AS REQUIRED BY THIS SECTION.

(3) ON OR BEFORE OCTOBER FIRST, TWO THOUSAND TEN, THE SUPERINTENDENT SHALL ISSUE A REQUEST FOR PROPOSALS TO CONDUCT AN INDEPENDENT AUDIT AND EVALUATION, WITH RESPECT TO NONBUSINESS AUTOMOBILE INSURANCE, OF INSURER COMPLIANCE WITH AND THE SUPERINTENDENT'S IMPLEMENTATION AND ENFORCEMENT OF THE PROVISIONS OF THIS SECTION. THE SUPERINTENDENT SHALL PROVIDE THE CHAIRS OF THE ASSEMBLY AND SENATE COMMITTEES ON INSURANCE WITH THE RESPONSES TO THE REQUEST FOR PROPOSALS, AND SHALL CONSULT WITH SUCH CHAIRS ON THE SELECTION OF THE FIRM TO CONDUCT THE AUDIT.

SUCH AUDIT SHALL BE COMPLETED AND A REPORT SUBMITTED BY NOVEMBER FIRST, TWO THOUSAND ELEVEN TO THE SUPERINTENDENT AND THE LEGISLATURE. THE SCOPE OF THE AUDIT SHALL INCLUDE, BUT NOT BE LIMITED TO:

(I) AN IDENTIFICATION AND EVALUATION OF EVENTS AND CONDITIONS INFLUENCING INSURER PROFITS, INCLUDING, BUT NOT LIMITED TO: THE BUSINESS CLIMATE AND CHANGES IN ECONOMIC CONDITIONS, INCLUDING INTEREST RATES;

(II) AN ASSESSMENT OF THE APPROPRIATENESS OF THE METHODOLOGY FOR SELECTING A REASONABLE RATE OF RETURN AND EXCESS PROFIT THRESHOLD UNDER SUCH REGULATION;

(III) AN ASSESSMENT OF THE FEASIBILITY OF USING INDIVIDUAL INSURER RESULTS RATHER THAN AGGREGATE INDUSTRY DATA FOR TESTING PROFITABILITY;

(IV) AN ASSESSMENT OF THE FEASIBILITY OF AVERAGING DATA OVER LESS THAN A SIX YEAR PERIOD FOR MEASURING EXCESS PROFITS;

(V) AN ASSESSMENT OF THE DEPARTMENT'S ACTIVITIES WITH RESPECT TO RECALCULATING THE POINTS FOR REASONABLE RATE OF RETURN AND EXCESS PROFITS;

(VI) A RECALCULATION OF THE POINTS FOR REASONABLE RATE OF RETURN AND EXCESS PROFITS USING THE MOST RECENT SIX YEAR PERIOD FOR WHICH DATA IS AVAILABLE; AND

(VII) AN IDENTIFICATION AND EVALUATION OF OTHER STATES' EXCESS PROFITS LAWS, REGULATIONS, IMPLEMENTATION OF SUCH LAWS AND REGULATIONS, AND METHODOLOGIES FOR CALCULATING POINTS FOR REASONABLE RATE OF RETURN.

THE REPORT SHALL INCLUDE, BUT NOT BE LIMITED TO: RECOMMENDATIONS FOR CHANGES TO THE LAW, REGULATIONS AND IMPLEMENTATION AND ENFORCEMENT OF SUCH PROVISIONS BASED ON THE FINDINGS OF SUCH AUDIT AND EVALUATION. WITHIN THREE MONTHS OF THE RECEIPT OF SUCH REPORT, THE SUPERINTENDENT SHALL HOLD A PUBLIC HEARING WITH REGARD TO THE DEPARTMENT'S RESPONSE TO THE FINDINGS AND RECOMMENDATIONS OF THE REPORT.

S 7. This act shall take effect immediately, provided, however, that the amendments made to section 89-d of the state finance law by section five of this act shall not affect the expiration of such section and shall be deemed to expire therewith; provided, further, that this act shall apply to insurance contracts issued or renewed on or after such effective date, and shall apply at the next required policy period, commencing on or after such date, to any insurance contract written prior to the effective date of this act.