

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

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

3
4 2. THE OFFICE SHALL FILE ANNUALLY WITH THE GOVERNOR AND THE PRESIDING
5 OFFICER OF EACH HOUSE OF THE LEGISLATURE A COMPLETE AND DETAILED WRITTEN
6 REPORT ACCOUNTING FOR ALL FUNDS RECEIVED AND DISBURSED BY THE OFFICE
7 DURING THE PRECEDING FISCAL YEAR. THE ANNUAL REPORT MUST BE IN THE FORM
8 AND REPORTED AS PART OF THE EXECUTIVE BUDGET.

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

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

16 5. THE ADVOCATE:

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

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

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

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

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

36 (F) MAY APPEAR OR INTERVENE AS A MATTER OF RIGHT AS A PARTY OR OTHER-
37 WISE ON BEHALF OF NONBUSINESS AUTOMOBILE INSURANCE CONSUMERS AS A CLASS
38 IN ALL PROCEEDINGS IN WHICH THE ADVOCATE DETERMINES THAT SUCH CONSUMERS
39 NEED REPRESENTATION, EXCEPT THAT THE ADVOCATE MAY NOT INTERVENE IN ANY
40 ENFORCEMENT OR PARENS PATRIAE PROCEEDING BROUGHT BY THE ATTORNEY GENER-
41 AL.

42 6. (A) THE OFFICE SHALL PREPARE INFORMATION OF PUBLIC INTEREST
43 DESCRIBING THE FUNCTIONS OF THE OFFICE. THE OFFICE SHALL MAKE THE INFOR-
44 MATION AVAILABLE TO THE PUBLIC, LAWMAKERS AND APPROPRIATE STATE AGEN-
45 CIES.

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

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

51 (D) THE OFFICE MAY PARTICIPATE IN TRADE ASSOCIATIONS.

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

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

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

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

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

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

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

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

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

40 4. [The] EXCEPT AS PROVIDED IN THIS SUBDIVISION, THE moneys received
41 by such fund shall be expended pursuant to appropriation only to fund
42 provider agencies which have been awarded grants by the motor vehicle
43 theft and insurance fraud prevention board established pursuant to
44 section eight hundred forty-six-1 of the executive law. All moneys
45 expended pursuant to this subdivision shall be for the reimbursement of
46 costs incurred by provider agencies; PROVIDED, HOWEVER THAT NO LESS THAN
47 ONE MILLION TWO HUNDRED THOUSAND DOLLARS SHALL BE USED FOR THE PURPOSES
48 OF CREATING, ADMINISTERING AND OPERATING THE OFFICE OF INSURANCE CONSUM-
49 ER ADVOCATE CREATED PURSUANT TO ARTICLE FORTY-FOUR-A OF THE EXECUTIVE
50 LAW.

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

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

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

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

37 (2) ON OR BEFORE DECEMBER FIRST, TWO THOUSAND TEN, AND ANNUALLY THERE-
38 AFTER, THE SUPERINTENDENT SHALL HOLD A PUBLIC HEARING ON THE RESULTS OF
39 SUCH RECALCULATION AND ANY ACTIONS INSTITUTED PURSUANT TO THIS SECTION
40 AS A RESULT OF SUCH RECALCULATION. ON OR BEFORE JANUARY FIRST, TWO THOU-
41 SAND ELEVEN, AND ANNUALLY THEREAFTER, THE SUPERINTENDENT SHALL SEND A
42 TRANSCRIPT OF THE HEARING TO THE LEGISLATURE AND A REPORT ON THE RESULTS
43 OF SUCH RECALCULATION AND ANY ACTIONS INSTITUTED AS REQUIRED BY THIS
44 SECTION.

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

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

1 (I) AN IDENTIFICATION AND EVALUATION OF EVENTS AND CONDITIONS INFLU-
2 ENCING INSURER PROFITS, INCLUDING, BUT NOT LIMITED TO: THE BUSINESS
3 CLIMATE AND CHANGES IN ECONOMIC CONDITIONS, INCLUDING INTEREST RATES;
4 (II) AN ASSESSMENT OF THE APPROPRIATENESS OF THE METHODOLOGY FOR
5 SELECTING A REASONABLE RATE OF RETURN AND EXCESS PROFIT THRESHOLD UNDER
6 SUCH REGULATION;
7 (III) AN ASSESSMENT OF THE FEASIBILITY OF USING INDIVIDUAL INSURER
8 RESULTS RATHER THAN AGGREGATE INDUSTRY DATA FOR TESTING PROFITABILITY;
9 (IV) AN ASSESSMENT OF THE FEASIBILITY OF AVERAGING DATA OVER LESS THAN
10 A SIX YEAR PERIOD FOR MEASURING EXCESS PROFITS;
11 (V) AN ASSESSMENT OF THE DEPARTMENT'S ACTIVITIES WITH RESPECT TO
12 RECALCULATING THE POINTS FOR REASONABLE RATE OF RETURN AND EXCESS
13 PROFITS;
14 (VI) A RECALCULATION OF THE POINTS FOR REASONABLE RATE OF RETURN AND
15 EXCESS PROFITS USING THE MOST RECENT SIX YEAR PERIOD FOR WHICH DATA IS
16 AVAILABLE; AND
17 (VII) AN IDENTIFICATION AND EVALUATION OF OTHER STATES' EXCESS PROFITS
18 LAWS, REGULATIONS, IMPLEMENTATION OF SUCH LAWS AND REGULATIONS, AND
19 METHODOLOGIES FOR CALCULATING POINTS FOR REASONABLE RATE OF RETURN.
20 THE REPORT SHALL INCLUDE, BUT NOT BE LIMITED TO: RECOMMENDATIONS FOR
21 CHANGES TO THE LAW, REGULATIONS AND IMPLEMENTATION AND ENFORCEMENT OF
22 SUCH PROVISIONS BASED ON THE FINDINGS OF SUCH AUDIT AND EVALUATION.
23 WITHIN THREE MONTHS OF THE RECEIPT OF SUCH REPORT, THE SUPERINTENDENT
24 SHALL HOLD A PUBLIC HEARING WITH REGARD TO THE DEPARTMENT'S RESPONSE TO
25 THE FINDINGS AND RECOMMENDATIONS OF THE REPORT.
26 S 7. This act shall take effect immediately, provided, however, that
27 the amendments made to section 89-d of the state finance law by section
28 five of this act shall not affect the expiration of such section and
29 shall be deemed to expire therewith; provided, further, that this act
30 shall apply to insurance contracts issued or renewed on or after such
31 effective date, and shall apply at the next required policy period,
32 commencing on or after such date, to any insurance contract written
33 prior to the effective date of this act.