

3744

2011-2012 Regular Sessions

I N A S S E M B L Y

January 27, 2011

Introduced by M. of A. ENGLEBRIGHT -- read once and referred to the
Committee on Insurance

AN ACT to amend the insurance law, in relation to improving disclosure
to automobile insurance consumers; and to amend the executive law, the
insurance law and the state administrative procedure act, in relation
to establishing an independent office of public insurance consumer
advocate and establishing its powers and duties

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

1 Section 1. The insurance law is amended by adding a new article 5 to
2 read as follows:

3 ARTICLE 5

4 AUTOMOBILE INSURANCE CONSUMER INFORMATION

5 SECTION 501. TITLE; LEGISLATIVE DECLARATION AND PURPOSE.

6 502. AUTOMOBILE INSURANCE CONSUMER INFORMATION AND COMPLAINT
7 RANKINGS.

8 503. CONSUMER RATING FACTORS.

9 504. DISCLOSURE PROCEDURES.

10 505. NONINTERFERENCE WITH OBTAINING COVERAGE.

11 506. PUBLIC OUTREACH.

12 S 501. TITLE; LEGISLATIVE DECLARATION AND PURPOSE. THIS ARTICLE SHALL
13 BE KNOWN AND MAY BE CITED AS THE "AUTOMOBILE INSURANCE CONSUMER INFORMA-
14 TION ACT".

15 THE LEGISLATURE FINDS AND DECLARES THAT AUTOMOBILE INSURANCE IS
16 REQUIRED BY LAW FOR ALL RESIDENTS WHO DRIVE AND THAT THE COST OF AUTOMO-
17 BILE INSURANCE REPRESENTS A SUBSTANTIAL EXPENSE FOR MANY CONSUMERS. THE
18 LEGISLATURE FURTHER FINDS THAT THE PREMIUM COSTS FOR ANY GIVEN INDIVID-
19 UAL FOR IDENTICAL INSURANCE COVERAGE FROM DIFFERENT LICENSED INSURERS
20 CAN VARY WIDELY AND THAT WIDE VARIATIONS ALSO EXIST IN THE QUALITY OF
21 SERVICE PROVIDED BY INSURERS AS MEASURED BY THE DEPARTMENT'S ANNUAL
22 COMPLAINT HANDLING RANKINGS. IN ADDITION, THE LEGISLATURE FINDS THAT FEW

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

LBD06003-01-1

1 CONSUMERS ARE AWARE OF THESE WIDE COST AND QUALITY OF SERVICE VARI-
2 ATIONS, THAT AS A RESULT CONSUMERS AS A GROUP MAY PAY HUNDREDS OF
3 MILLIONS OF DOLLARS ANNUALLY FOR OVERPRICED POLICIES AND THAT INDIVIDUAL
4 CONSUMERS MAY ENCOUNTER UNNECESSARY DIFFICULTY IN HAVING THEIR AUTOMO-
5 BILE INSURANCE CLAIMS AND COMPLAINTS HANDLED EXPEDITIOUSLY. THE LEGIS-
6 LATURE FURTHER FINDS AND DECLARES THAT IT INTENDS FOR THE SUPERINTENDENT
7 AND THE DEPARTMENT TO HAVE BROAD AUTHORITY UNDER THIS ARTICLE TO ESTAB-
8 LISH MECHANISMS TO FULLY INFORM CONSUMERS AS TO WHICH POLICIES ARE
9 AVAILABLE TO THEM AT THE LOWEST POSSIBLE COST AND WHICH INSURERS PROVIDE
10 THE HIGHEST QUALITY OF SERVICE. THE LEGISLATURE INTENDS WITH THIS ARTI-
11 CLE TO CREATE CERTAIN DISCLOSURE REQUIREMENTS THAT WILL MAKE SUCH INFOR-
12 MATION MORE READILY AVAILABLE TO ALL CONSUMERS. INCREASED AVAILABILITY
13 OF INFORMATION IS INTENDED TO MAKE THE AUTOMOBILE INSURANCE SYSTEM MORE
14 COMPETITIVE WITH RESPECT TO BOTH COST OF COVERAGE AND THE QUALITY OF
15 SERVICE.

16 S 502. AUTOMOBILE INSURANCE CONSUMER INFORMATION AND COMPLAINT RANK-
17 INGS. (A) THE SUPERINTENDENT SHALL MAINTAIN A DATABASE CONTAINING
18 NONBUSINESS AUTOMOBILE INSURANCE RATE INFORMATION AND COMPLAINT RANKINGS
19 FOR ALL COMPANIES LICENSED TO DO BUSINESS IN THE STATE.

20 (B) EVERY PERSON, UPON MAKING AN INQUIRY TO THE DEPARTMENT AND PROVID-
21 ING THE INFORMATION SPECIFIED IN SECTION FIVE HUNDRED THREE OF THIS
22 ARTICLE, SHALL BE MAILED WITHIN FIVE BUSINESS DAYS, OR, AT THE OPTION OF
23 THE PERSON, RECEIVE AT THE TIME OF SUCH INQUIRY:

24 (1) THE NAMES, ADDRESSES, TELEPHONE NUMBERS AND, IF APPROPRIATE, WEB
25 SITE ADDRESSES OF THE FIVE COMPANIES HAVING THE LOWEST PREMIUMS FOR THE
26 REQUESTED PACKAGE OF COVERAGE THAT WOULD WRITE INSURANCE FOR SUCH
27 PERSON; THE TOTAL COST FOR THE PACKAGE OF COVERAGE FROM EACH SUCH INSUR-
28 ER; AND THE MOST RECENT COMPLAINT RANKING OF EACH SUCH INSURER;

29 (2) THE NAMES, ADDRESSES, TELEPHONE NUMBERS AND, IF APPROPRIATE, WEB
30 SITE ADDRESSES OF THE FIVE COMPANIES HAVING THE BEST COMPLAINT RANKINGS
31 THAT WOULD WRITE INSURANCE FOR SUCH PERSON, AND THE TOTAL COST FOR THE
32 PACKAGE OF COVERAGE FROM EACH INSURER LISTED;

33 (3) AN EXPLANATION OF HOW TO OBTAIN FROM SUCH COMPANIES THE NAMES,
34 ADDRESSES, TELEPHONE NUMBERS, AND, IF APPROPRIATE, WEB SITE ADDRESSES OF
35 THOSE AGENTS, BROKERS OR SALES REPRESENTATIVES OF SUCH COMPANIES THAT
36 ARE SITUATED IN A LOCATION REASONABLY CONVENIENT TO THE PERSON; AND

37 (4) UNTIL SUCH DATABASE IS ESTABLISHED, THE DEPARTMENT SHALL PROVIDE
38 PERSONS MAKING AN INQUIRY THE DEPARTMENT'S ANNUAL RANKING OF AUTOMOBILE
39 INSURANCE COMPLAINTS AND CONSUMERS GUIDE TO AUTO INSURANCE. AFTER THE
40 DATABASE IS ESTABLISHED, IF THE PERSON MAKING AN INQUIRY PREFERS, THE
41 DEPARTMENT MAY PROVIDE, IN LIEU OF THE INFORMATION SPECIFIED IN PARA-
42 GRAPHS ONE, TWO AND THREE OF THIS SUBSECTION, THE DEPARTMENT'S ANNUAL
43 RANKING OF AUTOMOBILE INSURANCE COMPLAINTS, AND CONSUMER GUIDE TO AUTO
44 INSURANCE.

45 S 503. CONSUMER RATING FACTORS. IN ORDER TO RECEIVE THE LIST OF LOWEST
46 COST INSURERS DESCRIBED IN SECTION FIVE HUNDRED TWO OF THIS ARTICLE, THE
47 PERSON SHALL PROVIDE THE FOLLOWING INFORMATION:

48 (A) THE PLACE IN WHICH THE VEHICLE IS GARAGED OR STORED, OR OTHER
49 INFORMATION NEEDED TO DETERMINE GEOGRAPHICAL TERRITORY;

50 (B) THE AGE, SEX, MARITAL STATUS AND OTHER INFORMATION NEEDED TO
51 DETERMINE THE DRIVER CLASS OF THE PRINCIPAL AND OCCASIONAL OPERATORS;

52 (C) THE MAKE, MODEL AND YEAR OF THE AUTOMOBILE;

53 (D) INFORMATION RELATING TO QUALIFICATION FOR DISCOUNTS;

54 (E) INFORMATION RELATING TO SURCHARGES OR CREDITS BASED ON DRIVING
55 RECORD OR DRIVING COURSES TAKEN;

56 (F) DESIRED EFFECTIVE DATE OF THE POLICY;

1 (G) DESIRED COVERAGES; AND
 2 (H) SUCH OTHER INFORMATION AS THE SUPERINTENDENT MAY BY REGULATION
 3 REQUIRE.

4 S 504. DISCLOSURE PROCEDURES. EVERY POLICY OF NONBUSINESS AUTOMOBILE
 5 INSURANCE DELIVERED, ISSUED FOR DELIVERY, RENEWED OR ISSUED FOR RENEWAL
 6 IN THIS STATE SHALL INCLUDE A NOTICE PRESCRIBED BY THE SUPERINTENDENT IN
 7 REGULATION OF THE AVAILABILITY OF THE INFORMATION AND PROCEDURE FOR
 8 OBTAINING SUCH INFORMATION DESCRIBED IN SECTIONS FIVE HUNDRED TWO AND
 9 FIVE HUNDRED THREE OF THIS ARTICLE. SUCH NOTICE SHALL INCLUDE THE
 10 DEPARTMENT'S ADDRESS, TELEPHONE NUMBER AND WEB SITE ADDRESS.

11 S 505. NONINTERFERENCE WITH OBTAINING COVERAGE. NO APPLICANT FOR AUTO-
 12 MOBILE INSURANCE SHALL BE PREVENTED OR DELAYED IN EFFECTING OR APPLYING
 13 FOR COVERAGE BY THE REQUIREMENTS OF SECTION FIVE HUNDRED FOUR OF THIS
 14 ARTICLE. IN THOSE CASES WHERE, PRIOR TO OR AT THE TIME AN APPLICATION IS
 15 TAKEN, IT IS IMPRACTICAL TO PROVIDE ANY DISCLOSURE DOCUMENTS PRESCRIBED
 16 BY SECTION FIVE HUNDRED FOUR OF THIS ARTICLE, SUCH DOCUMENTS SHALL BE
 17 FURNISHED AS SOON THEREAFTER AS PRACTICAL AND, IN ANY EVENT, NO LATER
 18 THAN AT THE TIME THE POLICY IS DELIVERED. WHERE ANY SUCH DOCUMENT IS
 19 NOT PROVIDED AS REQUIRED BY SECTION FIVE HUNDRED FOUR OF THIS ARTICLE,
 20 THE APPLICANT MAY, NO LATER THAN THIRTY DAYS FOLLOWING RECEIPT OF THE
 21 POLICY, AND NOTWITHSTANDING THE PROVISIONS OF SECTION THREE THOUSAND
 22 FOUR HUNDRED TWENTY-EIGHT OF THIS CHAPTER, RETURN THE POLICY FOR A PRO
 23 RATA REFUND OF PREMIUMS PAID. A CLEAR AND CONSPICUOUS WRITTEN NOTICE
 24 EXPLAINING THIS REFUND PROVISION, IN LANGUAGE PROMULGATED BY THE SUPER-
 25 INTENDENT, SHALL BE DELIVERED WITH THE POLICY.

26 S 506. PUBLIC OUTREACH. THE DEPARTMENT SHALL CONDUCT PUBLIC EDUCATION
 27 AND OUTREACH TO INFORM CONSUMERS AS TO THE AVAILABILITY OF AND HOW TO
 28 ACCESS THE CONSUMER INFORMATION PRESCRIBED BY THIS ARTICLE. NOTWITH-
 29 STANDING ANY INCONSISTENT LAW TO THE CONTRARY, NO ADVERTISEMENT UTILIZ-
 30 ING ELECTRONIC MEANS, (INCLUDING BUT NOT LIMITED TO RADIO, TELEVISION
 31 AND THE INTERNET) PUBLIC SERVICE ANNOUNCEMENT OR OTHER BROADCAST
 32 PRODUCED OR DISTRIBUTED PURSUANT TO THIS SECTION SHALL FEATURE THE LIKE-
 33 NESS, PICTURE OR VOICE OF A STATEWIDE ELECTED OFFICIAL OR A FAMILY
 34 MEMBER OF SUCH OFFICIAL.

35 S 2. If any provision of section one of this act or the application
 36 thereof to any person or circumstances be adjudged invalid by any court
 37 of competent jurisdiction, such judgment shall be confined in its opera-
 38 tion to the provision or application or persons or circumstances direct-
 39 ly involved in the controversy in which such judgment shall have been
 40 rendered and shall not affect or impair the validity of the remainder of
 41 this act or the application thereof to other persons or circumstances.

42 S 3. The executive law is amended by adding a new article 44-A to read
 43 as follows:

44 ARTICLE 44-A

45 OFFICE OF PUBLIC INSURANCE CONSUMER ADVOCATE

46 SECTION 945. OFFICE OF PUBLIC INSURANCE CONSUMER ADVOCATE.

47 946. PUBLIC INSURANCE CONSUMER ADVOCATE.

48 947. POWERS AND DUTIES.

49 S 945. OFFICE OF PUBLIC INSURANCE CONSUMER ADVOCATE. THERE IS HEREBY
 50 CREATED IN THE EXECUTIVE DEPARTMENT AN INDEPENDENT OFFICE OF PUBLIC
 51 INSURANCE CONSUMER ADVOCATE (HEREINAFTER REFERRED TO IN THIS ARTICLE AS
 52 "OFFICE") TO REPRESENT THE INTERESTS OF NONBUSINESS AUTOMOBILE AND
 53 HEALTH INSURANCE CONSUMERS IN THE STATE.

54 S 946. PUBLIC INSURANCE CONSUMER ADVOCATE. 1. THE GOVERNOR, WITH THE
 55 ADVICE AND CONSENT OF THE SENATE, SHALL APPOINT A PUBLIC INSURANCE
 56 CONSUMER ADVOCATE (HEREINAFTER REFERRED TO IN THIS ARTICLE AS "ADVO-

1 CATE") WHO SHALL SERVE AS THE EXECUTIVE DIRECTOR OF THE OFFICE OF PUBLIC
2 INSURANCE CONSUMER ADVOCATE AND SHALL RECEIVE AN ANNUAL SALARY TO BE
3 FIXED BY THE GOVERNOR WITHIN THE AMOUNT AVAILABLE THEREFOR BY APPROPRI-
4 ATION.

5 2. (A) TO BE ELIGIBLE TO SERVE AS ADVOCATE, A PERSON MUST BE A RESI-
6 DENT OF THE STATE. THE ADVOCATE SHALL BE A PERSON WHO HAS DEMONSTRATED A
7 STRONG COMMITMENT TO AND INVOLVEMENT IN EFFORTS TO SAFEGUARD THE RIGHTS
8 OF THE PUBLIC, AND WHO POSSESSES THE KNOWLEDGE AND EXPERIENCE NECESSARY
9 TO PRACTICE EFFECTIVELY IN INSURANCE PROCEEDINGS.

10 (B) A PERSON SHALL NOT BE ELIGIBLE FOR APPOINTMENT AS ADVOCATE IF SUCH
11 PERSON OR THE PERSON'S SPOUSE:

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

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

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

23 3. THE ADVOCATE SHALL SERVE FOR A TERM OF TWO YEARS.

24 4. IT SHALL BE A GROUND FOR REMOVAL FROM OFFICE IF THE ADVOCATE:

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

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

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

30 (D) CANNOT DISCHARGE THE ADVOCATE'S DUTIES FOR A SUBSTANTIAL PART OF
31 THE TERM FOR WHICH THE ADVOCATE IS APPOINTED BECAUSE OF ILLNESS OR DISA-
32 BILITY.

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

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

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

45 (C) A PERSON SHALL NOT SERVE AS THE ADVOCATE OR BE AN EMPLOYEE OF THE
46 OFFICE IF THE PERSON IS AN OFFICER, EMPLOYEE OR PAID CONSULTANT OF A
47 TRADE ASSOCIATION IN THE FIELD OF INSURANCE.

48 (D) A PERSON WHO IS THE SPOUSE OF AN OFFICER, MANAGER OR PAID CONSULT-
49 ANT OF A TRADE ASSOCIATION IN THE FIELD OF INSURANCE SHALL NOT SERVE AS
50 THE ADVOCATE AND MAY NOT BE AN OFFICE EMPLOYEE.

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

1 S 947. POWERS AND DUTIES. 1. THE ADVOCATE, AS EXECUTIVE DIRECTOR OF
2 THE OFFICE, SHALL BE CHARGED WITH THE RESPONSIBILITY OF ADMINISTERING,
3 ENFORCING AND CARRYING OUT THE PROVISIONS OF THIS ARTICLE, INCLUDING
4 PREPARATION OF A BUDGET FOR THE OFFICE, EMPLOYING ALL NECESSARY PROFES-
5 SIONAL, TECHNICAL AND OTHER EMPLOYEES TO CARRY OUT PROVISIONS OF THIS
6 ARTICLE, APPROVAL OF EXPENDITURES FOR PROFESSIONAL SERVICES, TRAVEL, PER
7 DIEM AND OTHER ACTUAL AND NECESSARY EXPENSES INCURRED IN ADMINISTERING
8 THE OFFICE. THE COMPENSATION OF EMPLOYEES OF THE OFFICE SHALL BE FIXED
9 BY THE ADVOCATE WITHIN THE APPROPRIATION PROVIDED THEREFOR.

10 2. THE OFFICE SHALL FILE ANNUALLY WITH THE GOVERNOR, TEMPORARY PRESI-
11 DENT OF THE SENATE AND SPEAKER OF THE ASSEMBLY A COMPLETE AND DETAILED
12 WRITTEN REPORT ACCOUNTING FOR ALL FUNDS RECEIVED AND DISBURSED BY THE
13 OFFICE DURING THE PRECEDING FISCAL YEAR. THE ANNUAL REPORT SHALL BE IN
14 THE FORM AND REPORTED AS PART OF THE EXECUTIVE BUDGET.

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

17 4. THE OFFICE MAY ASSESS THE IMPACT OF INSURER PRACTICES AND PROPOSED
18 AND IN-FORCE INSURANCE RATES, RULES AND REGULATIONS ON NONBUSINESS AUTO-
19 MOBILE AND HEALTH INSURANCE CONSUMERS IN THE STATE; IN ITS OWN NAME,
20 ADVOCATE ON BEHALF OF POSITIONS THAT ARE MOST ADVANTAGEOUS TO A SUBSTAN-
21 TIAL NUMBER OF INSURANCE CONSUMERS AS DETERMINED BY THE ADVOCATE; AND DO
22 ALL THINGS NECESSARY AND PROPER FOR THESE PURPOSES, INCLUDING ENGAGING
23 ATTORNEYS, AND EXPERTS IN ACTUARIAL SCIENCE, ECONOMICS, ACCOUNTING,
24 FINANCE OR ANY OTHER DISCIPLINE WHICH MAY BE APPROPRIATE.

25 5. THE ADVOCATE:

26 (A) MAY APPEAR OR INTERVENE AS A MATTER OF RIGHT BEFORE THE SUPER-
27 INTENDENT OF INSURANCE OR INSURANCE DEPARTMENT AS A PARTY OR OTHERWISE
28 ON BEHALF OF INSURANCE CONSUMERS AS A CLASS IN MATTERS INVOLVING INSURER
29 PRACTICES AND PROPOSED AND IN-FORCE RATES, RULES AND REGULATIONS AFFECT-
30 ING NONBUSINESS AUTOMOBILE AND HEALTH INSURANCE;

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

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

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

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

46 (F) MAY APPEAR OR INTERVENE AS A MATTER OF RIGHT AS A PARTY OR OTHER-
47 WISE ON BEHALF OF NONBUSINESS AUTOMOBILE AND HEALTH INSURANCE CONSUMERS
48 AS A CLASS IN ALL PROCEEDINGS AND ACTIONS IN WHICH THE ADVOCATE DETER-
49 MINES THAT SUCH CONSUMERS NEED REPRESENTATION, EXCEPT THAT THE ADVOCATE
50 SHALL NOT INTERVENE IN ANY ENFORCEMENT OR PARENS PATRIAE PROCEEDING
51 BROUGHT BY THE ATTORNEY GENERAL;

52 (G) MAY CONDUCT ANY INQUIRY, HEARING, INVESTIGATION, SURVEY OR STUDY
53 WHICH THE ADVOCATE DEEMS NECESSARY TO EFFECTIVELY CARRY OUT THE
54 PROVISIONS OF THIS ARTICLE AND, FOR THAT PURPOSE, TO TAKE AND HEAR
55 PROOFS AND TESTIMONY, SUBPOENA WITNESSES, COMPEL THEIR ATTENDANCE,
56 ADMINISTER OATHS, EXAMINE ANY PERSON UNDER OATH AND TO COMPEL ANY PERSON

1 TO SUBSCRIBE TO HIS OR HER TESTIMONY AFTER IT HAS BEEN CORRECTLY REDUCED
2 TO WRITING, AND IN CONNECTION THEREWITH TO REQUIRE THE PRODUCTION OF ANY
3 BOOKS, PAPERS, RECORDS, ACCOUNTS, CORRESPONDENCE OR OTHER DOCUMENTS
4 WHICH THE ADVOCATE DEEMS RELEVANT TO THE INQUIRY. A SUBPOENA ISSUED
5 UNDER THIS SECTION SHALL BE REGULATED BY THE CIVIL PRACTICE LAW AND
6 RULES.

7 6. (A) THE OFFICE SHALL PREPARE INFORMATION OF PUBLIC INTEREST
8 DESCRIBING THE FUNCTIONS OF THE OFFICE. THE OFFICE SHALL MAKE THE INFOR-
9 MATION AVAILABLE TO THE PUBLIC, LAWMAKERS AND APPROPRIATE STATE AGEN-
10 CIES.

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

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

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

17 7. THE OFFICE SHALL BE SUBJECT TO ARTICLES SIX AND SIX-A OF THE PUBLIC
18 OFFICERS LAW; PROVIDED, HOWEVER, THAT DOCUMENTS, RECORDS, FILES, REPORTS
19 OR OTHER INFORMATION CONCERNING CONFIDENTIAL MATTERS OF THE BOARD, AS
20 DEFINED AND DESCRIBED IN REGULATIONS PROMULGATED BY THE BOARD, ARE
21 SPECIFICALLY EXEMPTED FROM DISCLOSURE PURSUANT TO SECTION EIGHTY-SEVEN
22 OF THE PUBLIC OFFICERS LAW.

23 S 4. Subsection (d) of section 2321 of the insurance law is amended to
24 read as follows:

25 (d) Proceedings pursuant to subsections (b) and (c) [hereof] OF THIS
26 SECTION may be instituted upon the initiative of the superintendent or
27 upon written application to the superintendent by any aggrieved person
28 or organization, other than a rate service organization, for a hearing,
29 if the superintendent finds that the application is made in good faith
30 and that the grounds otherwise justify holding such a hearing WHICH
31 SHALL BE HELD WITHIN FIFTEEN DAYS OF THE REQUEST; PROVIDED, HOWEVER,
32 THAT THE SUPERINTENDENT SHALL HOLD SUCH A HEARING WITHIN FIFTEEN DAYS OF
33 AN APPLICATION THEREFOR FROM THE PUBLIC INSURANCE CONSUMER ADVOCATE
34 ESTABLISHED UNDER ARTICLE FORTY-FOUR-A OF THE EXECUTIVE LAW. IN THE CASE
35 OF A DENIAL OF AN APPLICATION FOR A HEARING FILED BY ANY AGGRIEVED
36 PERSON OR ANY OTHER ORGANIZATION, THE SUPERINTENDENT SHALL PROVIDE THE
37 REASONS THEREFOR IN WRITING TO THE APPLICANT WITHIN FIFTEEN DAYS OF SUCH
38 DENIAL.

39 S 5. Subsection (c) of section 2305 of the insurance law is amended to
40 read as follows:

41 (c) (1) Rates filed with the superintendent shall be accompanied by
42 the information upon which the insurer supports the rate as set forth in
43 subsection (b) of section two thousand three hundred four of this arti-
44 cle.

45 (2) WITH RESPECT TO RATES FILED FOR NONBUSINESS AUTOMOBILE POLICIES,
46 SUCH FILINGS SHALL INCLUDE ALL STATISTICAL DATA RELIED UPON TO SUPPORT
47 THE FILING AND SUCH OTHER INFORMATION AS THE SUPERINTENDENT SHALL
48 REQUIRE. SUCH FILINGS AND SUPPORTING INFORMATION SHALL CONFORM WITH
49 STANDARDS OF UNIFORMITY WHICH THE SUPERINTENDENT SHALL PRESCRIBE BY
50 REGULATION WITHIN ONE HUNDRED EIGHTY DAYS OF THE EFFECTIVE DATE OF THIS
51 PARAGRAPH.

52 S 6. The insurance law is amended by adding a new section 2352 to read
53 as follows:

54 S 2352. MUNICIPAL PETITIONS; MOTOR VEHICLE INSURANCE FOR NONBUSINESS
55 AUTOMOBILES. (A) NOTWITHSTANDING ANY INCONSISTENT PROVISION OF LAW, ANY
56 MUNICIPALITY OR COMBINATION OF CONTIGUOUS MUNICIPALITIES MAY PETITION

1 THE DEPARTMENT FOR A REDUCTION IN RATES OF POLICIES COVERING LOSSES OR
2 LIABILITIES ARISING OUT OF THE OWNERSHIP OF A MOTOR VEHICLE PREDOMINANT-
3 LY USED FOR NONBUSINESS PURPOSES, WHEN A NATURAL PERSON IS THE NAMED
4 INSURED UNDER A POLICY OF AUTO INSURANCE, WHEN SUCH RATES DO NOT REFLECT
5 ACCURATELY THE CURRENT DATA PERTINENT TO THE RISK OF LOSS IN THE MUNICI-
6 PALITY OR MUNICIPALITIES BASED ON REASONABLE AND SOUND UNDERWRITING AND
7 ACTUARIAL CRITERIA.

8 (B) WITHIN FIFTEEN DAYS OF RECEIPT OF SUCH A PETITION, THE DEPARTMENT
9 SHALL HOLD A PUBLIC HEARING THEREON, AT WHICH MUNICIPAL REPRESENTATIVES,
10 INSURERS AND THE PUBLIC SHALL HAVE THE RIGHT TO BE HEARD. THE DEPARTMENT
11 SHALL EXPLAIN IN WRITING ITS REASONS FOR GRANTING OR DENYING, IN WHOLE
12 OR IN PART, THE RELIEF SOUGHT IN THE PETITION. IF THE DEPARTMENT GRANTS
13 SUCH RELIEF, IT SHALL IMMEDIATELY ORDER AN APPROPRIATE REDUCTION, WHICH
14 MAY INCLUDE RETROACTIVE RELIEF, IF JUSTIFIED, NOTWITHSTANDING ANY INCON-
15 SISTENT PROVISION OF LAW.

16 (C) FOR THE PURPOSES OF THIS SECTION, THE TERM "MUNICIPALITY" SHALL
17 MEAN ANY COUNTY NOT WHOLLY CONTAINED WITHIN A CITY AND ANY CITY COMPRIS-
18 ING MORE THAN ONE COUNTY.

19 S 7. The insurance law is amended by adding a new section 342 to read
20 as follows:

21 S 342. COOPERATION WITH OFFICE OF PUBLIC INSURANCE CONSUMER ADVOCATE.

22 (A) THE SUPERINTENDENT, AND EVERY DEPUTY AND EMPLOYEE OF THE DEPARTMENT
23 SHALL COOPERATE FULLY AND COMPLETELY WITH THE OFFICE OF PUBLIC INSURANCE
24 CONSUMER ADVOCATE AND PROVIDE WITHOUT CHARGE TO SUCH OFFICE, ACCESS AND,
25 UPON REQUEST OF THE PUBLIC INSURANCE CONSUMER ADVOCATE, COPIES OF ALL
26 BOOKS, RECORDS AND FILES OF THE DEPARTMENT AND OF EACH LICENSEE OF THE
27 DEPARTMENT TO THE EXTENT THAT THE DEPARTMENT HAS ACCESS OR COPIES OF
28 SUCH BOOKS, RECORDS AND FILES, WHICH SUCH ADVOCATE DEEMS NECESSARY AND
29 APPROPRIATE TO CARRY OUT THE PURPOSES OF ARTICLE FORTY-FOUR-A OF THE
30 EXECUTIVE LAW, INCLUDING, BUT NOT LIMITED TO FILINGS AND APPLICATIONS
31 WHICH MAY BE SUBJECT TO A HEARING PURSUANT TO THIS SECTION, AND ALL
32 INFORMATION FURNISHED THE SUPERINTENDENT IN SUPPORT OF SUCH FILINGS AND
33 APPLICATIONS.

34 (B) NOTWITHSTANDING ANY INCONSISTENT LAW, RULE OR REGULATION TO THE
35 CONTRARY, THE SUPERINTENDENT SHALL NOTIFY THE OFFICE OF PUBLIC INSURANCE
36 CONSUMER ADVOCATE OF ALL RATE-RELATED FILINGS MADE UNDER ARTICLE TWEN-
37 TY-THREE OF THIS CHAPTER WITH RESPECT TO NONBUSINESS AUTOMOBILE INSUR-
38 ANCE, FILINGS FOR RATE INCREASES PURSUANT TO SECTIONS THREE THOUSAND TWO
39 HUNDRED THIRTY-ONE AND FOUR THOUSAND THREE HUNDRED EIGHT OF THIS CHAPTER
40 AND APPLICATIONS FOR MATERIAL CHANGE IN BENEFITS OR DELIVERY OF BENEFITS
41 UNDER A CONTRACT, WITHIN FIVE BUSINESS DAYS OF HAVING RECEIVED SUCH
42 FILINGS AND APPLICATIONS. SUCH NOTIFICATION SHALL INCLUDE A SUMMARY OF
43 EACH FILING OR APPLICATION, TO INCLUDE, BUT NOT BE LIMITED TO: THE
44 NUMBER OF POLICYHOLDERS, SUBSCRIBERS OR ENROLLEES AFFECTED; THE AMOUNT
45 OF RATE INCREASE; THE REGIONS OR TERRITORIES AFFECTED; AND A DESCRIPTION
46 OF THE CHANGE IN BENEFITS OR DELIVERY OF BENEFITS. THE SUPERINTENDENT
47 SHALL SIMULTANEOUSLY SUBMIT FOR PUBLICATION IN THE STATE REGISTER ALL
48 SUCH NOTIFICATIONS TO THE PUBLIC INSURANCE CONSUMER ADVOCATE. WITHIN
49 FIVE BUSINESS DAYS OF THE REQUEST OF SUCH ADVOCATE, THE SUPERINTENDENT
50 SHALL FORWARD ANY FILINGS AND APPLICATIONS SO REQUESTED AND ALL INFORMA-
51 TION FURNISHED IN SUPPORT OF SUCH FILINGS AND APPLICATIONS.

52 (C) THE PUBLIC INSURANCE CONSUMER ADVOCATE MAY REQUEST THE SUPERINTEN-
53 DENT HOLD A HEARING ON ANY MATTER DEEMED NECESSARY AND APPROPRIATE TO
54 CARRY OUT THE PURPOSES OF ARTICLE FORTY-FOUR-A OF THE EXECUTIVE LAW,
55 WHICH SHALL BE HELD WITHIN FIFTEEN DAYS OF THE REQUEST. NO PROPOSED
56 CHANGE IN RULE OR REGULATION, FILING FOR A NONBUSINESS AUTOMOBILE RATE-

1 RELATED CHANGE OR RATE INCREASE, FILING FOR A RATE INCREASE PURSUANT TO
2 SECTIONS THREE THOUSAND TWO HUNDRED THIRTY-ONE AND FOUR THOUSAND THREE
3 HUNDRED EIGHT OF THIS CHAPTER, OR APPLICATION FOR MATERIAL CHANGE IN
4 BENEFITS OR DELIVERY OF BENEFITS SUBJECT TO A HEARING UNDER THIS SECTION
5 SHALL BECOME EFFECTIVE PENDING THE CLOSE OF SUCH HEARING, PROVIDED THAT
6 SUCH REQUEST IS MADE WITHIN THIRTY DAYS OF SUCH ADVOCATE HAVING RECEIVED
7 NOTICE OF SUCH PROPOSED CHANGE, FILING OR APPLICATION. WITHIN FIFTEEN
8 DAYS AFTER THE CLOSE OF THE HEARING, OR SUCH TIME AS THE SUPERINTENDENT
9 APPROVES THE PROPOSED RULE, REGULATION, FILING OR APPLICATION, THE
10 SUPERINTENDENT SHALL ISSUE A WRITTEN OPINION BASED UPON THE HEARING
11 RECORD, EXPLAINING THE REASONS FOR APPROVING OR DENYING, IN WHOLE OR IN
12 PART, THE CHANGE SOUGHT.

13 S 8. Subparagraph (A) of paragraph 2 of subsection (e) of section 3231
14 of the insurance law, as amended by chapter 107 of the laws of 2010, is
15 amended to read as follows:

16 (A) Until September thirtieth, two thousand ten, as an alternate
17 procedure to the requirements of paragraph one of this subsection, an
18 insurer desiring to increase or decrease premiums for any policy form
19 subject to this section may instead submit a rate filing or application
20 to the superintendent and such application or filing shall be deemed
21 approved, provided that: (i) the anticipated minimum loss ratio for a
22 policy form shall not be less than eighty-two percent of the premium;
23 and (ii) the insurer submits, as part of such filing, a certification by
24 a member of the American Academy of Actuaries or other individual
25 acceptable to the superintendent that the insurer is in compliance with
26 the provisions of this paragraph, based upon that person's examination,
27 including a review of the appropriate records and of the actuarial
28 assumptions and methods used by the insurer in establishing premium
29 rates for policy forms subject to this section, UNLESS THE PUBLIC INSUR-
30 ANCE CONSUMER ADVOCATE HAS REQUESTED A PUBLIC HEARING ON SUCH RATE
31 FILING OR APPLICATION PURSUANT TO SECTION THREE HUNDRED FORTY-TWO OF
32 THIS CHAPTER. An insurer shall not utilize the alternate procedure
33 pursuant to this paragraph to implement a change in rates to be effec-
34 tive on or after October first, two thousand ten.

35 S 9. Paragraph 1 of subsection (g) of section 4308 of the insurance
36 law, as amended by chapter 107 of the laws of 2010, is amended to read
37 as follows:

38 (1) Until September thirtieth, two thousand ten, as an alternate
39 procedure to the requirements of subsection (c) of this section, a
40 corporation subject to the provisions of this article desiring to
41 increase or decrease premiums for any contract subject to this section
42 may instead submit a rate filing or application to the superintendent
43 and such application or filing shall be deemed approved, provided that
44 (A) the anticipated incurred loss ratio for a contract form shall not be
45 less than eighty-two percent for individual direct payment contracts or
46 eighty-two percent for small group and small group remittance contracts,
47 nor, except in the case of individual direct payment contracts with a
48 loss ratio of greater than one hundred five percent during nineteen
49 hundred ninety-four, shall the loss ratio for any direct payment, group
50 or group remittance contract be more than one hundred five percent of
51 the anticipated earned premium, and (B) the corporation submits, as part
52 of such filing, a certification by a member of the American Academy of
53 Actuaries or other individual acceptable to the superintendent that that
54 corporation is in compliance with the provisions of this subsection,
55 based upon that person's examination, including a review of the appro-
56 priate records and of the actuarial assumptions and methods used by the

1 corporation in establishing premium rates for contracts subject to this
2 section, UNLESS THE PUBLIC INSURANCE CONSUMER ADVOCATE HAS REQUESTED A
3 PUBLIC HEARING ON SUCH RATE FILING OR APPLICATION PURSUANT TO SECTION
4 THREE HUNDRED FORTY-TWO OF THIS CHAPTER. A corporation shall not
5 utilize the alternate procedure pursuant to this subsection to implement
6 a change in rates to be effective on or after October first, two thou-
7 sand ten. For purposes of this section, a small group is any group whose
8 contract is subject to the requirements of section [forty-three] FOUR
9 THOUSAND THREE hundred seventeen of this article.

10 S 10. Section 149 of the executive law is amended by adding a new
11 subdivision 4 to read as follows:

12 4. NOTICES SUBMITTED PURSUANT TO SECTION THREE HUNDRED FORTY-TWO OF
13 THE INSURANCE LAW SHALL BE IN SUCH FORMAT AS THE SECRETARY OF STATE
14 SHALL REQUIRE, AND SHALL BE PUBLISHED IN A SEPARATE SECTION OF THE
15 REGISTER WHICH SHALL INCLUDE TELEPHONE NUMBERS, ADDRESSES AND E-MAIL
16 ADDRESSES WHICH THE PUBLIC MAY USE TO CONTACT THE OFFICE OF PUBLIC
17 INSURANCE CONSUMER ADVOCATE AND THE INSURANCE DEPARTMENT.

18 S 11. Section 202 of the state administrative procedure act is amended
19 by adding a new subdivision 1-a to read as follows:

20 1-A. IN ADDITION TO THE REQUIREMENTS OF THIS SECTION, ANY NOTICE OF
21 PROPOSED RULEMAKING, NOTICE OF REVISED RULEMAKING OR NOTICE OF EMERGENCY
22 ADOPTION SUBMITTED BY THE INSURANCE DEPARTMENT THAT IMPACTS NONBUSINESS
23 AUTOMOBILE OR HEALTH INSURANCE CONSUMERS SHALL ALSO INCLUDE THE TELE-
24 PHONE NUMBER, ADDRESS AND E-MAIL ADDRESS WHICH THE PUBLIC MAY USE TO
25 CONTACT THE OFFICE OF PUBLIC INSURANCE CONSUMER ADVOCATE.

26 S 12. This act shall take effect immediately; provided, however, that
27 within twelve months of the effective date of this act, the database
28 required by section 502 of the insurance law, as added by section one of
29 this act, shall be completed; and, provided further, that within ninety
30 days of the effective date of this act, notice of the availability of
31 the insurance department's Annual Ranking of Automobile Insurance
32 Complaints and Consumers Guide to Auto Insurance, and the insurance
33 department's address, telephone number and web site address shall be
34 provided with all nonbusiness automobile policies delivered, issued for
35 delivery, renewed or issued for renewal in this state. The disclosure
36 requirement of section 504 of the insurance law, as added by section one
37 of this act shall take effect twelve months after the effective date of
38 this act. The public insurance consumer advocate shall be appointed,
39 pursuant to article 44-A of the executive law, as added by section three
40 of this act for a two year term. Any regulations necessary for the
41 implementation of the provisions of this act shall be promulgated within
42 one hundred eighty days after the effective date of this act.