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I N   A S S E M B L Y

(PREFILED)

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Introduced by M. of A. ENGLEBRIGHT, SWEENEY, CAHILL, WRIGHT, GABRYSZAK  
-- Multi-Sponsored by -- M. of A. BRENNAN, COLTON, CYMBROWITZ, JACOBS,  
ORTIZ -- 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

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

LBD05410-01-3

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

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

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

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

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

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

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

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

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

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

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

55 (D) INFORMATION RELATING TO QUALIFICATION FOR DISCOUNTS;

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

(F) DESIRED EFFECTIVE DATE OF THE POLICY;

(G) DESIRED COVERAGES; AND

(H) SUCH OTHER INFORMATION AS THE SUPERINTENDENT MAY BY REGULATION REQUIRE.

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

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

S 506. PUBLIC OUTREACH. THE DEPARTMENT SHALL CONDUCT PUBLIC EDUCATION AND OUTREACH TO INFORM CONSUMERS AS TO THE AVAILABILITY OF AND HOW TO ACCESS THE CONSUMER INFORMATION PRESCRIBED BY THIS ARTICLE. NOTWITHSTANDING ANY INCONSISTENT LAW TO THE CONTRARY, NO ADVERTISEMENT UTILIZING ELECTRONIC MEANS, (INCLUDING BUT NOT LIMITED TO RADIO, TELEVISION AND THE INTERNET) PUBLIC SERVICE ANNOUNCEMENT OR OTHER BROADCAST PRODUCED OR DISTRIBUTED PURSUANT TO THIS SECTION SHALL FEATURE THE LIKENESS, PICTURE OR VOICE OF A STATEWIDE ELECTED OFFICIAL OR A FAMILY MEMBER OF SUCH OFFICIAL.

S 2. If any provision of section one of this act or the application thereof to any person or circumstances be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the provision or application or persons or circumstances directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this act or the application thereof to other persons or circumstances.

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

#### ARTICLE 44-A

##### OFFICE OF PUBLIC INSURANCE CONSUMER ADVOCATE

SECTION 945. OFFICE OF PUBLIC INSURANCE CONSUMER ADVOCATE.

946. PUBLIC INSURANCE CONSUMER ADVOCATE.

947. POWERS AND DUTIES.

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

1 S 946. PUBLIC INSURANCE CONSUMER ADVOCATE. 1. THE GOVERNOR, WITH THE  
2 ADVICE AND CONSENT OF THE SENATE, SHALL APPOINT A PUBLIC INSURANCE  
3 CONSUMER ADVOCATE (HEREINAFTER REFERRED TO IN THIS ARTICLE AS "ADVO-  
4 CATE") WHO SHALL SERVE AS THE EXECUTIVE DIRECTOR OF THE OFFICE OF PUBLIC  
5 INSURANCE CONSUMER ADVOCATE AND SHALL RECEIVE AN ANNUAL SALARY TO BE  
6 FIXED BY THE GOVERNOR WITHIN THE AMOUNT AVAILABLE THEREFOR BY APPROPRI-  
7 ATION.

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

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

15 (I) IS EMPLOYED BY OR PARTICIPATES IN THE MANAGEMENT OF A BUSINESS  
16 ENTITY OR OTHER ORGANIZATION REGULATED BY THE DEPARTMENT OF FINANCIAL  
17 SERVICES OR RECEIVING FUNDS FROM SUCH DEPARTMENT;

18 (II) OWNS OR CONTROLS, DIRECTLY OR INDIRECTLY, MORE THAN TEN PERCENT  
19 INTEREST IN A BUSINESS ENTITY OR OTHER ORGANIZATION REGULATED BY THE  
20 DEPARTMENT OF FINANCIAL SERVICES OR RECEIVING FUNDS FROM THE DEPARTMENT  
21 OF FINANCIAL SERVICES OR THE OFFICE;

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

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

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

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

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

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

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

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

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

43 (B) A PERSON SERVING AS THE ADVOCATE SHALL NOT, FOR A PERIOD OF TWO  
44 YEARS AFTER THE DATE THE PERSON CEASES TO BE AN ADVOCATE, REPRESENT ANY  
45 PERSON IN A PROCEEDING BEFORE THE SUPERINTENDENT OF FINANCIAL SERVICES  
46 OR THE DEPARTMENT OF FINANCIAL SERVICES OR RECEIVE COMPENSATION FOR  
47 SERVICES RENDERED ON BEHALF OF ANY PERSON REGARDING A CASE BEFORE THE  
48 SUPERINTENDENT OF FINANCIAL SERVICES OR THE DEPARTMENT OF FINANCIAL  
49 SERVICES.

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

53 (D) A PERSON WHO IS THE SPOUSE OF AN OFFICER, MANAGER OR PAID CONSULT-  
54 ANT OF A TRADE ASSOCIATION IN THE FIELD OF INSURANCE SHALL NOT SERVE AS  
55 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. 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, TEMPORARY PRESIDENT OF THE SENATE AND SPEAKER OF THE ASSEMBLY A COMPLETE AND DETAILED WRITTEN REPORT ACCOUNTING FOR ALL FUNDS RECEIVED AND DISBURSED BY THE OFFICE DURING THE PRECEDING FISCAL YEAR. THE ANNUAL REPORT SHALL 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 INSURER PRACTICES AND PROPOSED AND IN-FORCE INSURANCE RATES, RULES AND REGULATIONS ON NONBUSINESS AUTOMOBILE AND HEALTH INSURANCE CONSUMERS IN THE STATE; IN ITS OWN NAME, ADVOCATE ON BEHALF OF POSITIONS THAT ARE MOST ADVANTAGEOUS TO A SUBSTANTIAL NUMBER OF INSURANCE CONSUMERS AS DETERMINED BY THE ADVOCATE; AND DO ALL THINGS NECESSARY AND PROPER FOR THESE PURPOSES, INCLUDING ENGAGING ATTORNEYS, AND EXPERTS IN ACTUARIAL SCIENCE, ECONOMICS, ACCOUNTING, FINANCE OR ANY OTHER DISCIPLINE WHICH MAY BE APPROPRIATE.

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 INSURER PRACTICES AND PROPOSED AND IN-FORCE RATES, RULES AND REGULATIONS AFFECTING NONBUSINESS AUTOMOBILE AND HEALTH 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 OF FINANCIAL SERVICES THAT ARE AVAILABLE TO ANY PARTY IN A PROCEEDING BEFORE THE SUPERINTENDENT OF FINANCIAL SERVICES OR DEPARTMENT OF FINANCIAL SERVICES 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 FINANCIAL SERVICES OR DEPARTMENT OF FINANCIAL SERVICES 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 AND HEALTH INSURANCE CONSUMERS;

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

1 (G) MAY CONDUCT ANY INQUIRY, HEARING, INVESTIGATION, SURVEY OR STUDY  
2 WHICH THE ADVOCATE DEEMS NECESSARY TO EFFECTIVELY CARRY OUT THE  
3 PROVISIONS OF THIS ARTICLE AND, FOR THAT PURPOSE, TO TAKE AND HEAR  
4 PROOFS AND TESTIMONY, SUBPOENA WITNESSES, COMPEL THEIR ATTENDANCE,  
5 ADMINISTER OATHS, EXAMINE ANY PERSON UNDER OATH AND TO COMPEL ANY PERSON  
6 TO SUBSCRIBE TO HIS OR HER TESTIMONY AFTER IT HAS BEEN CORRECTLY REDUCED  
7 TO WRITING, AND IN CONNECTION THEREWITH TO REQUIRE THE PRODUCTION OF ANY  
8 BOOKS, PAPERS, RECORDS, ACCOUNTS, CORRESPONDENCE OR OTHER DOCUMENTS  
9 WHICH THE ADVOCATE DEEMS RELEVANT TO THE INQUIRY. A SUBPOENA ISSUED  
10 UNDER THIS SECTION SHALL BE REGULATED BY THE CIVIL PRACTICE LAW AND  
11 RULES.

12 6. (A) THE OFFICE SHALL PREPARE INFORMATION OF PUBLIC INTEREST  
13 DESCRIBING THE FUNCTIONS OF THE OFFICE. THE OFFICE SHALL MAKE THE INFOR-  
14 MATION AVAILABLE TO THE PUBLIC, LAWMAKERS AND APPROPRIATE STATE AGEN-  
15 CIES.

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

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

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

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

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

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

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

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

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

1 S 6. The insurance law is amended by adding a new section 2353 to read  
2 as follows:

3 S 2353. MUNICIPAL PETITIONS; MOTOR VEHICLE INSURANCE FOR NONBUSINESS  
4 AUTOMOBILES. (A) NOTWITHSTANDING ANY INCONSISTENT PROVISION OF LAW, ANY  
5 MUNICIPALITY OR COMBINATION OF CONTIGUOUS MUNICIPALITIES MAY PETITION  
6 THE DEPARTMENT FOR A REDUCTION IN RATES OF POLICIES COVERING LOSSES OR  
7 LIABILITIES ARISING OUT OF THE OWNERSHIP OF A MOTOR VEHICLE PREDOMINANT-  
8 LY USED FOR NONBUSINESS PURPOSES, WHEN A NATURAL PERSON IS THE NAMED  
9 INSURED UNDER A POLICY OF AUTO INSURANCE, WHEN SUCH RATES DO NOT REFLECT  
10 ACCURATELY THE CURRENT DATA PERTINENT TO THE RISK OF LOSS IN THE MUNICI-  
11 PALITY OR MUNICIPALITIES BASED ON REASONABLE AND SOUND UNDERWRITING AND  
12 ACTUARIAL CRITERIA.

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

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

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

26 S 342. COOPERATION WITH OFFICE OF PUBLIC INSURANCE CONSUMER ADVOCATE.  
27 (A) THE SUPERINTENDENT, AND EVERY DEPUTY AND EMPLOYEE OF THE DEPARTMENT  
28 SHALL COOPERATE FULLY AND COMPLETELY WITH THE OFFICE OF PUBLIC INSURANCE  
29 CONSUMER ADVOCATE AND PROVIDE WITHOUT CHARGE TO SUCH OFFICE, ACCESS AND,  
30 UPON REQUEST OF THE PUBLIC INSURANCE CONSUMER ADVOCATE, COPIES OF ALL  
31 BOOKS, RECORDS AND FILES OF THE DEPARTMENT AND OF EACH LICENSEE OF THE  
32 DEPARTMENT TO THE EXTENT THAT THE DEPARTMENT HAS ACCESS OR COPIES OF  
33 SUCH BOOKS, RECORDS AND FILES, WHICH SUCH ADVOCATE DEEMS NECESSARY AND  
34 APPROPRIATE TO CARRY OUT THE PURPOSES OF ARTICLE FORTY-FOUR-A OF THE  
35 EXECUTIVE LAW, INCLUDING, BUT NOT LIMITED TO FILINGS AND APPLICATIONS  
36 WHICH MAY BE SUBJECT TO A HEARING PURSUANT TO THIS SECTION, AND ALL  
37 INFORMATION FURNISHED THE SUPERINTENDENT IN SUPPORT OF SUCH FILINGS AND  
38 APPLICATIONS.

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

1 (C) THE PUBLIC INSURANCE CONSUMER ADVOCATE MAY REQUEST THE SUPERINTEN-  
2 DENT HOLD A HEARING ON ANY MATTER DEEMED NECESSARY AND APPROPRIATE TO  
3 CARRY OUT THE PURPOSES OF ARTICLE FORTY-FOUR-A OF THE EXECUTIVE LAW,  
4 WHICH SHALL BE HELD WITHIN FIFTEEN DAYS OF THE REQUEST. NO PROPOSED  
5 CHANGE IN RULE OR REGULATION, FILING FOR A NONBUSINESS AUTOMOBILE RATE-  
6 RELATED CHANGE OR RATE INCREASE, FILING FOR A RATE INCREASE PURSUANT TO  
7 SECTIONS THREE THOUSAND TWO HUNDRED THIRTY-ONE AND FOUR THOUSAND THREE  
8 HUNDRED EIGHT OF THIS CHAPTER, OR APPLICATION FOR MATERIAL CHANGE IN  
9 BENEFITS OR DELIVERY OF BENEFITS SUBJECT TO A HEARING UNDER THIS SECTION  
10 SHALL BECOME EFFECTIVE PENDING THE CLOSE OF SUCH HEARING, PROVIDED THAT  
11 SUCH REQUEST IS MADE WITHIN THIRTY DAYS OF SUCH ADVOCATE HAVING RECEIVED  
12 NOTICE OF SUCH PROPOSED CHANGE, FILING OR APPLICATION. WITHIN FIFTEEN  
13 DAYS AFTER THE CLOSE OF THE HEARING, OR SUCH TIME AS THE SUPERINTENDENT  
14 APPROVES THE PROPOSED RULE, REGULATION, FILING OR APPLICATION, THE  
15 SUPERINTENDENT SHALL ISSUE A WRITTEN OPINION BASED UPON THE HEARING  
16 RECORD, EXPLAINING THE REASONS FOR APPROVING OR DENYING, IN WHOLE OR IN  
17 PART, THE CHANGE SOUGHT.

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

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

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

43 (1) Until September thirtieth, two thousand ten, as an alternate  
44 procedure to the requirements of subsection (c) of this section, a  
45 corporation subject to the provisions of this article desiring to  
46 increase or decrease premiums for any contract subject to this section  
47 may instead submit a rate filing or application to the superintendent  
48 and such application or filing shall be deemed approved, provided that  
49 (A) the anticipated incurred loss ratio for a contract form shall not be  
50 less than eighty-two percent for individual direct payment contracts or  
51 eighty-two percent for small group and small group remittance contracts,  
52 nor, except in the case of individual direct payment contracts with a  
53 loss ratio of greater than one hundred five percent during nineteen  
54 hundred ninety-four, shall the loss ratio for any direct payment, group  
55 or group remittance contract be more than one hundred five percent of  
56 the anticipated earned premium, and (B) the corporation submits, as part



1 of such filing, a certification by a member of the American Academy of  
2 Actuaries or other individual acceptable to the superintendent that that  
3 corporation is in compliance with the provisions of this subsection,  
4 based upon that person's examination, including a review of the appro-  
5 priate records and of the actuarial assumptions and methods used by the  
6 corporation in establishing premium rates for contracts subject to this  
7 section, UNLESS THE PUBLIC INSURANCE CONSUMER ADVOCATE HAS REQUESTED A  
8 PUBLIC HEARING ON SUCH RATE FILING OR APPLICATION PURSUANT TO SECTION  
9 THREE HUNDRED FORTY-TWO OF THIS CHAPTER. A corporation shall not  
10 utilize the alternate procedure pursuant to this subsection to implement  
11 a change in rates to be effective on or after October first, two thou-  
12 sand ten. For purposes of this section, a small group is any group whose  
13 contract is subject to the requirements of section [forty-three] FOUR  
14 THOUSAND THREE hundred seventeen of this article.

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

17 4. NOTICES SUBMITTED PURSUANT TO SECTION THREE HUNDRED FORTY-TWO OF  
18 THE INSURANCE LAW SHALL BE IN SUCH FORMAT AS THE SECRETARY OF STATE  
19 SHALL REQUIRE, AND SHALL BE PUBLISHED IN A SEPARATE SECTION OF THE  
20 REGISTER WHICH SHALL INCLUDE TELEPHONE NUMBERS, ADDRESSES AND E-MAIL  
21 ADDRESSES WHICH THE PUBLIC MAY USE TO CONTACT THE OFFICE OF PUBLIC  
22 INSURANCE CONSUMER ADVOCATE AND THE DEPARTMENT OF FINANCIAL SERVICES.

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

25 1-A. IN ADDITION TO THE REQUIREMENTS OF THIS SECTION, ANY NOTICE OF  
26 PROPOSED RULEMAKING, NOTICE OF REVISED RULEMAKING OR NOTICE OF EMERGENCY  
27 ADOPTION SUBMITTED BY THE DEPARTMENT OF FINANCIAL SERVICES THAT IMPACTS  
28 NONBUSINESS AUTOMOBILE OR HEALTH INSURANCE CONSUMERS SHALL ALSO INCLUDE  
29 THE TELEPHONE NUMBER, ADDRESS AND E-MAIL ADDRESS WHICH THE PUBLIC MAY  
30 USE TO CONTACT THE OFFICE OF PUBLIC INSURANCE CONSUMER ADVOCATE.

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