

1927--A

2015-2016 Regular Sessions

I N S E N A T E

January 15, 2015

Introduced by Sen. PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Finance -- recommitted to the Committee on Finance in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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"

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

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

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

5 ARTICLE 44-A

6 OFFICE OF PUBLIC INSURANCE ADVOCATE

7 SECTION 945. OFFICE OF PUBLIC INSURANCE ADVOCATE.

8 946. INSURANCE CONSUMER ADVOCATE.

9 947. POWERS AND DUTIES.

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

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

20 2. (A) TO BE ELIGIBLE TO SERVE AS ADVOCATE, A PERSON MUST BE A RESI-  
21 DENT OF NEW YORK STATE. THE ADVOCATE SHALL BE A PERSON WHO HAS DEMON-

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

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1 STRATED A STRONG COMMITMENT AND INVOLVEMENT IN EFFORTS TO SAFEGUARD THE  
2 RIGHTS OF THE PUBLIC AND WHO POSSESSES THE KNOWLEDGE AND EXPERIENCE  
3 NECESSARY TO PRACTICE EFFECTIVELY IN INSURANCE PROCEEDINGS.

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

6 (I) IS EMPLOYED BY OR PARTICIPATES IN THE MANAGEMENT OF A BUSINESS  
7 ENTITY OR OTHER ORGANIZATION REGULATED BY THE DEPARTMENT OF FINANCIAL  
8 SERVICES OR RECEIVING FUNDS FROM THE DEPARTMENT;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

52 S 947. POWERS AND DUTIES. 1. THE ADVOCATE, AS EXECUTIVE DIRECTOR OF  
53 THE OFFICE, SHALL BE CHARGED WITH THE RESPONSIBILITY OF ADMINISTERING,  
54 ENFORCING AND CARRYING OUT THE PROVISIONS OF THIS ARTICLE, INCLUDING  
55 PREPARATION OF A BUDGET FOR THE OFFICE, EMPLOYING ALL NECESSARY PROFES-  
56 SIONAL, TECHNICAL, AND OTHER EMPLOYEES TO CARRY OUT PROVISIONS OF THIS

1 ARTICLE, APPROVAL OF EXPENDITURES FOR PROFESSIONAL SERVICES, TRAVEL, PER  
2 DIEM, AND OTHER ACTUAL AND NECESSARY EXPENSES INCURRED IN ADMINISTERING  
3 THE OFFICE. EXPENSES FOR THE OFFICE SHALL BE PAID FROM THE ASSESSMENT  
4 IMPOSED IN SECTION NINE THOUSAND ONE HUNDRED TEN OF THE INSURANCE LAW.  
5 THE COMPENSATION OF EMPLOYEES OF THE OFFICE SHALL BE FIXED BY THE ADVO-  
6 CATE WITHIN THE APPROPRIATION PROVIDED THEREFOR.

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

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

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

19 5. THE ADVOCATE:

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

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

29 (C) IS ENTITLED TO ACCESS ANY RECORDS OF THE EXECUTIVE DEPARTMENT THAT  
30 ARE AVAILABLE TO ANY PARTY IN A PROCEEDING BEFORE THE SUPERINTENDENT OF  
31 FINANCIAL SERVICES OR DEPARTMENT OF FINANCIAL SERVICES UNDER THE AUTHOR-  
32 ITY GRANTED BY THIS ARTICLE;

33 (D) IS ENTITLED TO OBTAIN DISCOVERY OF ANY NON-PRIVILEGED MATTER THAT  
34 IS RELEVANT TO THE SUBJECT MATTER INVOLVED IN A PROCEEDING OR SUBMISSION  
35 BEFORE THE SUPERINTENDENT OF FINANCIAL SERVICES OR DEPARTMENT OF FINAN-  
36 CIAL SERVICES AS AUTHORIZED BY THIS ARTICLE;

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

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

46 6. (A) THE OFFICE SHALL PREPARE INFORMATION OF PUBLIC INTEREST  
47 DESCRIBING THE FUNCTIONS OF THE OFFICE. THE OFFICE SHALL MAKE THE INFOR-  
48 MATION AVAILABLE TO THE PUBLIC, LAWMAKERS AND APPROPRIATE STATE AGEN-  
49 CIES.

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

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

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

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

3 (d) Proceedings pursuant to subsections (b) and (c) [hereof] OF THIS  
4 SECTION may be instituted upon the initiative of the superintendent or  
5 upon written application to the superintendent by any aggrieved person  
6 or organization, other than a rate service organization, for a hearing,  
7 if the superintendent finds that the application is made in good faith  
8 and that the grounds otherwise justify holding such a hearing WHICH  
9 SHALL BE HELD WITHIN FIFTEEN DAYS OF THE REQUEST; PROVIDED, HOWEVER,  
10 THAT THE SUPERINTENDENT SHALL HOLD SUCH A HEARING WITHIN FIFTEEN DAYS OF  
11 AN APPLICATION THEREFOR FROM THE INSURANCE CONSUMER ADVOCATE ESTABLISHED  
12 UNDER ARTICLE FORTY-FOUR-A OF THE EXECUTIVE LAW. IN THE CASE OF A DENIAL  
13 OF AN APPLICATION FOR A HEARING FILED BY ANY AGGRIEVED PERSON OR ANY  
14 OTHER ORGANIZATION, THE SUPERINTENDENT SHALL PROVIDE THE REASONS THERE-  
15 FOR IN WRITING TO THE APPLICANT WITHIN FIFTEEN DAYS OF SUCH DENIAL.

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

18 (c) Rates filed with the superintendent shall be accompanied by the  
19 information upon which the insurer supports the rate as set forth in  
20 subsection (b) of section two thousand three hundred four of this arti-  
21 cle. WITH RESPECT TO RATES FILED FOR NONBUSINESS AUTOMOBILE POLICIES,  
22 SUCH FILINGS SHALL INCLUDE ALL STATISTICAL DATA RELIED UPON TO SUPPORT  
23 THE FILING AND SUCH OTHER INFORMATION AS THE SUPERINTENDENT SHALL  
24 REQUIRE. SUCH FILINGS AND SUPPORTING INFORMATION SHALL CONFORM WITH  
25 STANDARDS OF UNIFORMITY WHICH THE SUPERINTENDENT SHALL PRESCRIBE BY  
26 REGULATION ON OR BEFORE THE JANUARY IMMEDIATELY FOLLOWING THE EFFECTIVE  
27 DATE OF THE CHAPTER OF THE LAWS OF TWO THOUSAND SIXTEEN THAT AMENDED  
28 THIS SUBSECTION.

29 S 5. Section 89-d of the state finance law, as amended by chapter 170  
30 of the laws of 1994 and subdivision 2 as amended by section 4 of part T  
31 of chapter 56 of the laws of 2009, is amended to read as follows:

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

36 2. Such fund shall consist of all moneys received by the state pursu-  
37 ant to subsection (b) of section nine thousand one hundred ten of the  
38 insurance law that are transferred to the fund pursuant to paragraph one  
39 of subsection (e) of section nine thousand one hundred ten of the insur-  
40 ance law and all other grants, bequests or other moneys appropriated,  
41 credited or transferred thereto from any other fund or source pursuant  
42 to law.

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

48 4. [The] EXCEPT AS PROVIDED IN THIS SUBDIVISION, THE moneys received  
49 by such fund shall be expended pursuant to appropriation only to fund  
50 provider agencies which have been awarded grants by the motor vehicle  
51 theft and insurance fraud prevention board established pursuant to  
52 section eight hundred forty-six-1 of the executive law. All moneys  
53 expended pursuant to this subdivision shall be for the reimbursement of  
54 costs incurred by provider agencies; PROVIDED, HOWEVER THAT NO LESS THAN  
55 ONE MILLION TWO HUNDRED THOUSAND DOLLARS SHALL BE USED FOR THE PURPOSES  
56 OF CREATING, ADMINISTERING AND OPERATING THE OFFICE OF INSURANCE CONSUM-

1 ER ADVOCATE CREATED PURSUANT TO ARTICLE FORTY-FOUR-A OF THE EXECUTIVE  
2 LAW.

3 S 6. Section 2329 of the insurance law, as amended by section 1 of  
4 part B of chapter 78 of the laws of 2014, is amended to read as follows:

5 S 2329. Motor vehicle insurance rates; excess profits. (A) In accord-  
6 ance with regulations prescribed by the superintendent, each insurer  
7 issuing policies that are subject to article fifty-one of this chapter,  
8 including policies of motor vehicle personal injury liability insurance  
9 or policies of motor vehicle property damage liability insurance or  
10 insurance for loss or damage to a motor vehicle, shall establish a fair,  
11 practicable, and nondiscriminatory plan for refunding or otherwise cred-  
12 iting to those purchasing such policies their share of the insurer's  
13 excess profit, if any, on such policies. An excess profit shall be a  
14 profit beyond a percentage rate of return on net worth attributable to  
15 such policies, computed in accordance with the regulation required by  
16 section two thousand three hundred twenty-three of this article, and  
17 determined by the superintendent to be so far above a reasonable average  
18 profit as to amount to an excess profit, taking into consideration the  
19 fact that losses or profits below a reasonable average profit will not  
20 be recouped from such policyholders. Each plan shall apply to policy  
21 periods for the periods January first, nineteen hundred seventy-four  
22 through August second, two thousand one, and the effective date of the  
23 property/casualty insurance availability act through June thirtieth, two  
24 thousand seventeen. In prescribing such regulations the superintendent  
25 may limit the duration of such plans, waive any requirement for refund  
26 or credit that he or she determines to be de minimis or impracticable,  
27 adopt forms of returns that shall be made to him or her in order to  
28 establish the amount of any refund or credit due, establish periods and  
29 times for the determination and distribution of refunds and credits, and  
30 shall provide that insurers receive appropriate credit against any  
31 refunds or credits required by any such plan for policyholder dividends  
32 and for return premiums that may be due under rate credit or retrospec-  
33 tive rating plans based on experience.

34 (B)(1) ON OR BEFORE NOVEMBER FIRST, TWO THOUSAND EIGHTEEN, AND ANNUAL-  
35 LY THEREAFTER, THE SUPERINTENDENT SHALL COMPLETE A RECALCULATION OF THE  
36 POINTS FOR REASONABLE RATE OF RETURN AND EXCESS PROFITS ESTABLISHED  
37 UNDER THE REGULATIONS PROMULGATED PURSUANT TO THIS SECTION, USING THE  
38 MOST RECENT SIX YEAR PERIOD FOR WHICH DATA IS AVAILABLE. IF SUCH RECAL-  
39 CULATION RESULTS IN A CHANGE IN SUCH POINTS, THE SUPERINTENDENT SHALL  
40 IMMEDIATELY ADOPT SUCH POINTS IN REGULATION, AND, IF, UNDER SUCH RECAL-  
41 CULATION, EXCESS PROFITS HAVE BEEN REALIZED, SHALL IMMEDIATELY ACTIVATE  
42 PLANS FOR REFUNDING OR OTHERWISE CREDITING TO THOSE PURCHASING SUCH  
43 POLICIES THEIR SHARE OF INSURERS' EXCESS PROFIT, IN ACCORDANCE WITH THE  
44 REGULATIONS PROMULGATED HEREUNDER.

45 (2) ON OR BEFORE DECEMBER FIRST, TWO THOUSAND EIGHTEEN, AND ANNUALLY  
46 THEREAFTER, THE SUPERINTENDENT SHALL HOLD A PUBLIC HEARING ON THE  
47 RESULTS OF SUCH RECALCULATION AND ANY ACTIONS INSTITUTED PURSUANT TO  
48 THIS SECTION AS A RESULT OF SUCH RECALCULATION. ON OR BEFORE JANUARY  
49 FIRST, TWO THOUSAND NINETEEN, AND ANNUALLY THEREAFTER, THE SUPERINTEN-  
50 DENT SHALL SEND A TRANSCRIPT OF THE HEARING TO THE LEGISLATURE AND A  
51 REPORT ON THE RESULTS OF SUCH RECALCULATION AND ANY ACTIONS INSTITUTED  
52 AS REQUIRED BY THIS SECTION.

53 (3) ON OR BEFORE OCTOBER FIRST, TWO THOUSAND EIGHTEEN, THE SUPERINTEN-  
54 DENT SHALL ISSUE A REQUEST FOR PROPOSALS TO CONDUCT AN INDEPENDENT AUDIT  
55 AND EVALUATION, WITH RESPECT TO NONBUSINESS AUTOMOBILE INSURANCE, OF  
56 INSURER COMPLIANCE WITH AND THE SUPERINTENDENT'S IMPLEMENTATION AND

1 ENFORCEMENT OF THE PROVISIONS OF THIS SECTION. THE SUPERINTENDENT SHALL  
2 PROVIDE THE CHAIRS OF THE ASSEMBLY AND SENATE COMMITTEES ON INSURANCE  
3 WITH THE RESPONSES TO THE REQUEST FOR PROPOSALS, AND SHALL CONSULT WITH  
4 SUCH CHAIRS ON THE SELECTION OF THE FIRM TO CONDUCT THE AUDIT.

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

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

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

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

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

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

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

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

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

33 S 7. This act shall take effect immediately, provided, however, that  
34 this act shall apply to insurance contracts issued or renewed on or  
35 after such effective date, and shall apply at the next required policy  
36 period, commencing on or after such date, to any insurance contract  
37 written prior to the effective date of this act.