

# STATE OF NEW YORK

4469

2017-2018 Regular Sessions

## IN SENATE

February 15, 2017

Introduced by Sen. ADDABBO -- read twice and ordered printed, and when printed to be committed 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 Assembly, do enact as follows:

1 Section 1. The insurance law is amended by adding a new article 6 to  
2 read as follows:

### ARTICLE 6

#### AUTOMOBILE INSURANCE CONSUMER INFORMATION

3 Section 601. Title; legislative declaration and purpose.

4 602. Automobile insurance consumer information and complaint  
5 rankings.

6 603. Consumer rating factors.

7 604. Disclosure procedures.

8 605. Noninterference with obtaining coverage.

9 606. Public outreach.

10 § 601. Title; legislative declaration and purpose. This article shall  
11 be known and may be cited as the "automobile insurance consumer informa-  
12 tion act".

13 The legislature finds and declares that automobile insurance is  
14 required by law for all residents who drive and that the cost of automo-  
15 bile insurance represents a substantial expense for many consumers. The  
16 legislature further finds that the premium costs for any given individ-  
17 ual for identical insurance coverage from different licensed insurers  
18 can vary widely and that wide variations also exist in the quality of  
19 service provided by insurers as measured by the department's annual  
20 complaint handling rankings. In addition, the legislature finds that few  
21  
22

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

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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 § 602. 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 six hundred three of this arti-  
22 cle, shall be mailed within five business days, or, at the option of the  
23 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 § 603. Consumer rating factors. In order to receive the list of lowest  
46 cost insurers described in section six 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 § 604. 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 six hundred two and six  
9 hundred three of this article. Such notice shall include the depart-  
10 ment's address, telephone number and web site address.

11 § 605. 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 six 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 six 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 six 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 § 606. 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 § 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 § 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 § 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 § 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 department of financial  
14 services or 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 department of financial services or receiving funds from the department  
18 of financial services or the office;

19 (iii) uses or receives a substantial amount of tangible goods,  
20 services or funds from the department of financial services or the  
21 office, other than compensation or reimbursement authorized by law for  
22 the department of financial services or office membership, attendance or  
23 expenses.

24 3. The advocate shall serve for a term of two years.

25 4. It shall be a ground for removal from office if the advocate:

26 (a) does not have at the time of appointment the qualifications  
27 required by this section;

28 (b) does not maintain during service as advocate the qualifications  
29 required by this section;

30 (c) violates a prohibition established by this section; or

31 (d) cannot discharge the advocate's duties for a substantial part of  
32 the term for which the advocate is appointed because of illness or disa-  
33 bility.

34 5. The validity of an action of the office shall not be affected by  
35 the fact that it is taken when a ground for removal of the advocate  
36 exists.

37 6. (a) A person shall not serve as the advocate or act as the general  
38 counsel for the office of advocate if the person is required to register  
39 as a lobbyist pursuant to article one-A of the legislative law.

40 (b) A person serving as the advocate shall not, for a period of two  
41 years after the date the person ceases to be an advocate, represent any  
42 person in a proceeding before the superintendent of financial services  
43 or the department of financial services or receive compensation for  
44 services rendered on behalf of any person regarding a case before the  
45 superintendent of financial services or the department of financial  
46 services.

47 (c) A person shall not serve as the advocate or be an employee of the  
48 office if the person is an officer, employee or paid consultant of a  
49 trade association in the field of insurance.

50 (d) A person who is the spouse of an officer, manager or paid consult-  
51 ant of a trade association in the field of insurance shall not serve as  
52 the advocate and may not be an office employee.

53 (e) For the purposes of this section, a trade association is a nonpro-  
54 fit, cooperative and voluntarily joined association of business or  
55 professional competitors designed to assist its members and its industry

1 or profession in dealing with mutual business or professional problems  
2 and in promoting their common interest.

3 § 947. Powers and duties. 1. The advocate, as executive director of  
4 the office, shall be charged with the responsibility of administering,  
5 enforcing and carrying out the provisions of this article, including  
6 preparation of a budget for the office, employing all necessary profes-  
7 sional, technical and other employees to carry out provisions of this  
8 article, approval of expenditures for professional services, travel, per  
9 diem and other actual and necessary expenses incurred in administering  
10 the office. The compensation of employees of the office shall be fixed  
11 by the advocate within the appropriation provided therefor.

12 2. The office shall file annually with the governor, temporary presi-  
13 dent of the senate and speaker of the assembly a complete and detailed  
14 written report accounting for all funds received and disbursed by the  
15 office during the preceding fiscal year. The annual report shall be in  
16 the form and reported as part of the executive budget.

17 3. All money paid to the office under this article shall be deposited  
18 in the state treasury.

19 4. The office may assess the impact of insurer practices and proposed  
20 and in-force insurance rates, rules and regulations on nonbusiness auto-  
21 mobile and health insurance consumers in the state; in its own name,  
22 advocate on behalf of positions that are most advantageous to a substan-  
23 tial number of insurance consumers as determined by the advocate; and do  
24 all things necessary and proper for these purposes, including engaging  
25 attorneys, and experts in actuarial science, economics, accounting,  
26 finance or any other discipline which may be appropriate.

27 5. The advocate:

28 (a) may appear or intervene as a matter of right before the super-  
29 intendent of financial services or department of financial services as a  
30 party or otherwise on behalf of insurance consumers as a class in  
31 matters involving insurer practices and proposed and in-force rates,  
32 rules and regulations affecting nonbusiness automobile and health insur-  
33 ance;

34 (b) may initiate or intervene as a matter of right or otherwise appear  
35 in any judicial proceeding involving or arising out of any action taken  
36 by an administrative agency in a proceeding in which the advocate previ-  
37 ously appeared under the authority granted by this article;

38 (c) is entitled to access any records of the department of financial  
39 services that are available to any party in a proceeding before the  
40 superintendent of financial services or department of financial services  
41 under the authority granted by this article;

42 (d) is entitled to obtain discovery of any non-privileged matter that  
43 is relevant to the subject matter involved in a proceeding or submission  
44 before the superintendent of financial services or department of finan-  
45 cial services as authorized by this article;

46 (e) may recommend legislation to the legislature that, in the judgment  
47 of the advocate, would affect positively the interests of nonbusiness  
48 automobile and health insurance consumers;

49 (f) may appear or intervene as a matter of right as a party or other-  
50 wise on behalf of nonbusiness automobile and health insurance consumers  
51 as a class in all proceedings and actions in which the advocate deter-  
52 mines that such consumers need representation, except that the advocate  
53 shall not intervene in any enforcement or parens patriae proceeding  
54 brought by the attorney general;

55 (g) may conduct any inquiry, hearing, investigation, survey or study  
56 which the advocate deems necessary to effectively carry out the



provisions of this article and, for that purpose, to take and hear proofs and testimony, subpoena witnesses, compel their attendance, administer oaths, examine any person under oath and to compel any person to subscribe to his or her testimony after it has been correctly reduced to writing, and in connection therewith to require the production of any books, papers, records, accounts, correspondence or other documents which the advocate deems relevant to the inquiry. A subpoena issued under this section shall be regulated by the civil practice law and rules.

6. (a) The office shall prepare information of public interest describing the functions of the office. The office shall make the information available to the public, lawmakers and appropriate state agencies.

(b) The office shall prepare and maintain a written plan that describes how each person who does not speak English can be provided reasonable access to the office's programs.

(c) The office shall prepare and distribute public education materials for consumers, legislators and regulators.

(d) The office may participate in trade associations.

7. The office shall be subject to articles six and six-A of the public officers law; provided, however, that documents, records, files, reports or other information concerning confidential matters of the board, as defined and described in regulations promulgated by the board, are specifically exempted from disclosure pursuant to section eighty-seven of the public officers law.

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

(d) Proceedings pursuant to subsections (b) and (c) [hereof] of this section may be instituted upon the initiative of the superintendent or upon written application to the superintendent by any aggrieved person or organization, other than a rate service organization, for a hearing, if the superintendent finds that the application is made in good faith and that the grounds otherwise justify holding such a hearing which shall be held within fifteen days of the request; provided, however, that the superintendent shall hold such a hearing within fifteen days of an application therefor from the public insurance consumer advocate established under article forty-four-A of the executive law. In the case of a denial of an application for a hearing filed by any aggrieved person or any other organization, the superintendent shall provide the reasons therefor in writing to the applicant within fifteen days of such denial.

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

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

(2) With respect to rates filed for nonbusiness automobile policies, such filings shall include all statistical data relied upon to support the filing and such other information as the superintendent shall require. Such filings and supporting information shall conform with standards of uniformity which the superintendent shall prescribe by regulation within one hundred eighty days of the effective date of this paragraph.

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

1     § 2353. Municipal petitions; motor vehicle insurance for nonbusiness  
2 automobiles. (a) Notwithstanding any inconsistent provision of law, any  
3 municipality or combination of contiguous municipalities may petition  
4 the department for a reduction in rates of policies covering losses or  
5 liabilities arising out of the ownership of a motor vehicle predominant-  
6 ly used for nonbusiness purposes, when a natural person is the named  
7 insured under a policy of auto insurance, when such rates do not reflect  
8 accurately the current data pertinent to the risk of loss in the munici-  
9 pality or municipalities based on reasonable and sound underwriting and  
10 actuarial criteria.

11     (b) Within fifteen days of receipt of such a petition, the department  
12 shall hold a public hearing thereon, at which municipal representatives,  
13 insurers and the public shall have the right to be heard. The department  
14 shall explain in writing its reasons for granting or denying, in whole  
15 or in part, the relief sought in the petition. If the department grants  
16 such relief, it shall immediately order an appropriate reduction, which  
17 may include retroactive relief, if justified, notwithstanding any incon-  
18 sistent provision of law.

19     (c) For the purposes of this section, the term "municipality" shall  
20 mean any county not wholly contained within a city and any city compris-  
21 ing more than one county.

22     § 7. The insurance law is amended by adding a new section 343 to read  
23 as follows:

24     § 343. Cooperation with office of public insurance consumer advocate.

25     (a) The superintendent, and every deputy and employee of the department  
26 shall cooperate fully and completely with the office of public insurance  
27 consumer advocate and provide without charge to such office, access and,  
28 upon request of the public insurance consumer advocate, copies of all  
29 books, records and files of the department and of each licensee of the  
30 department to the extent that the department has access or copies of  
31 such books, records and files, which such advocate deems necessary and  
32 appropriate to carry out the purposes of article forty-four-A of the  
33 executive law, including, but not limited to filings and applications  
34 which may be subject to a hearing pursuant to this section, and all  
35 information furnished the superintendent in support of such filings and  
36 applications.

37     (b) Notwithstanding any inconsistent law, rule or regulation to the  
38 contrary, the superintendent shall notify the office of public insurance  
39 consumer advocate of all rate-related filings made under article twen-  
40 ty-three of this chapter with respect to nonbusiness automobile insur-  
41 ance, filings for rate increases pursuant to sections three thousand two  
42 hundred thirty-one and four thousand three hundred eight of this chapter  
43 and applications for material change in benefits or delivery of benefits  
44 under a contract, within five business days of having received such  
45 filings and applications. Such notification shall include a summary of  
46 each filing or application, to include, but not be limited to: the  
47 number of policyholders, subscribers or enrollees affected; the amount  
48 of rate increase; the regions or territories affected; and a description  
49 of the change in benefits or delivery of benefits. The superintendent  
50 shall simultaneously submit for publication in the state register all  
51 such notifications to the public insurance consumer advocate. Within  
52 five business days of the request of such advocate, the superintendent  
53 shall forward any filings and applications so requested and all informa-  
54 tion furnished in support of such filings and applications.

55     (c) The public insurance consumer advocate may request the superinten-  
56 dent hold a hearing on any matter deemed necessary and appropriate to

1 carry out the purposes of article forty-four-A of the executive law,  
2 which shall be held within fifteen days of the request. No proposed  
3 change in rule or regulation, filing for a nonbusiness automobile rate-  
4 related change or rate increase, filing for a rate increase pursuant to  
5 sections three thousand two hundred thirty-one and four thousand three  
6 hundred eight of this chapter, or application for material change in  
7 benefits or delivery of benefits subject to a hearing under this section  
8 shall become effective pending the close of such hearing, provided that  
9 such request is made within thirty days of such advocate having received  
10 notice of such proposed change, filing or application. Within fifteen  
11 days after the close of the hearing, or such time as the superintendent  
12 approves the proposed rule, regulation, filing or application, the  
13 superintendent shall issue a written opinion based upon the hearing  
14 record, explaining the reasons for approving or denying, in whole or in  
15 part, the change sought.

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

19 (A) Until September thirtieth, two thousand ten, as an alternate  
20 procedure to the requirements of paragraph one of this subsection, an  
21 insurer desiring to increase or decrease premiums for any policy form  
22 subject to this section may instead submit a rate filing or application  
23 to the superintendent and such application or filing shall be deemed  
24 approved, provided that: (i) the anticipated minimum loss ratio for a  
25 policy form shall not be less than eighty-two percent of the premium;  
26 and (ii) the insurer submits, as part of such filing, a certification by  
27 a member of the American Academy of Actuaries or other individual  
28 acceptable to the superintendent that the insurer is in compliance with  
29 the provisions of this paragraph, based upon that person's examination,  
30 including a review of the appropriate records and of the actuarial  
31 assumptions and methods used by the insurer in establishing premium  
32 rates for policy forms subject to this section, unless the public insur-  
33 ance consumer advocate has requested a public hearing on such rate  
34 filing or application pursuant to section three hundred forty-three of  
35 this chapter. An insurer shall not utilize the alternate procedure  
36 pursuant to this paragraph to implement a change in rates to be effec-  
37 tive on or after October first, two thousand ten.

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

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



1 corporation is in compliance with the provisions of this subsection,  
2 based upon that person's examination, including a review of the appro-  
3 priate records and of the actuarial assumptions and methods used by the  
4 corporation in establishing premium rates for contracts subject to this  
5 section, unless the public insurance consumer advocate has requested a  
6 public hearing on such rate filing or application pursuant to section  
7 three hundred forty-three of this chapter. A corporation shall not  
8 utilize the alternate procedure pursuant to this subsection to implement  
9 a change in rates to be effective on or after October first, two thou-  
10 sand ten. For purposes of this section, a small group is any group whose  
11 contract is subject to the requirements of section [~~forty-three~~] four  
12 thousand three hundred seventeen of this article.

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

15 4. Notices submitted pursuant to section three hundred forty-three of  
16 the insurance law shall be in such format as the secretary of state  
17 shall require, and shall be published in a separate section of the  
18 register which shall include telephone numbers, addresses and e-mail  
19 addresses which the public may use to contact the office of public  
20 insurance consumer advocate and the department of financial services.

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

23 1-a. In addition to the requirements of this section, any notice of  
24 proposed rulemaking, notice of revised rulemaking or notice of emergency  
25 adoption submitted by the department of financial services that impacts  
26 nonbusiness automobile or health insurance consumers shall also include  
27 the telephone number, address and e-mail address which the public may  
28 use to contact the office of public insurance consumer advocate.

29 § 12. This act shall take effect immediately; provided, however, that  
30 within twelve months of the effective date of this act, the database  
31 required by section 602 of the insurance law, as added by section one of  
32 this act, shall be completed; and, provided further, that within ninety  
33 days of the effective date of this act, notice of the availability of  
34 the department of financial services' Annual Ranking of Automobile  
35 Insurance Complaints and Consumers Guide to Auto Insurance, and the  
36 department of financial services' address, telephone number and web site  
37 address shall be provided with all nonbusiness automobile policies  
38 delivered, issued for delivery, renewed or issued for renewal in this  
39 state. The disclosure requirement of section 604 of the insurance law,  
40 as added by section one of this act shall take effect twelve months  
41 after the effective date of this act. The public insurance consumer  
42 advocate shall be appointed, pursuant to article 44-A of the executive  
43 law, as added by section three of this act for a two year term. Any  
44 regulations necessary for the implementation of the provisions of this  
45 act shall be promulgated within one hundred eighty days after the effec-  
46 tive date of this act.