

STATE OF NEW YORK

2596--A

2017-2018 Regular Sessions

IN ASSEMBLY

January 20, 2017

Introduced by M. of A. ENGLEBRIGHT, CAHILL -- Multi-Sponsored by -- M. of A. COLTON, CYMBROWITZ, ORTIZ -- read once and referred to the Committee on Insurance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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
4 Section 601. Title; legislative declaration and purpose.

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

7
8 603. Consumer rating factors.

9 604. Disclosure procedures.

10 605. Noninterference with obtaining coverage.

11 606. Public outreach.

12 § 601. 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.

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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 § 602. 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 six hundred three of this arti-
24 cle, shall be mailed within five business days, or, at the option of the
25 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 § 603. Consumer rating factors. In order to receive the list of lowest
48 cost insurers described in section six 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;

1 (e) Information relating to surcharges or credits based on driving
2 record or driving courses taken;

3 (f) Desired effective date of the policy;

4 (g) Desired coverages; and

5 (h) Such other information as the superintendent may by regulation
6 require.

7 § 604. Disclosure procedures. Every policy of nonbusiness automobile
8 insurance delivered, issued for delivery, renewed or issued for renewal
9 in this state shall include a notice prescribed by the superintendent in
10 regulation of the availability of the information and procedure for
11 obtaining such information described in sections six hundred two and six
12 hundred three of this article. Such notice shall include the depart-
13 ment's address, telephone number and web site address.

14 § 605. Noninterference with obtaining coverage. No applicant for auto-
15 mobile insurance shall be prevented or delayed in effecting or applying
16 for coverage by the requirements of section six hundred four of this
17 article. In those cases where, prior to or at the time an application is
18 taken, it is impractical to provide any disclosure documents prescribed
19 by section six hundred four of this article, such documents shall be
20 furnished as soon thereafter as practical and, in any event, no later
21 than at the time the policy is delivered. Where any such document is
22 not provided as required by section six hundred four of this article,
23 the applicant may, no later than thirty days following receipt of the
24 policy, and notwithstanding the provisions of section three thousand
25 four hundred twenty-eight of this chapter, return the policy for a pro
26 rata refund of premiums paid. A clear and conspicuous written notice
27 explaining this refund provision, in language promulgated by the super-
28 intendent, shall be delivered with the policy.

29 § 606. Public outreach. The department shall conduct public education
30 and outreach to inform consumers as to the availability of and how to
31 access the consumer information prescribed by this article. Notwith-
32 standing any inconsistent law to the contrary, no advertisement utiliz-
33 ing electronic means, (including but not limited to radio, television
34 and the internet) public service announcement or other broadcast
35 produced or distributed pursuant to this section shall feature the like-
36 ness, picture or voice of a statewide elected official or a family
37 member of such official.

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

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

47 ARTICLE 44-A

48 OFFICE OF PUBLIC INSURANCE CONSUMER ADVOCATE

49 Section 945. Office of public insurance consumer advocate.

50 946. Public insurance consumer advocate.

51 947. Powers and duties.

52 § 945. Office of public insurance consumer advocate. There is hereby
53 created in the executive department an independent office of public
54 insurance consumer advocate (hereinafter referred to in this article as
55 "office") to represent the interests of nonbusiness automobile and
56 health insurance consumers in the state.

1 § 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 "advoc-
4 ate") 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.

1 (e) For the purposes of this section, a trade association is a nonpro-
2 fit, cooperative and voluntarily joined association of business or
3 professional competitors designed to assist its members and its industry
4 or profession in dealing with mutual business or professional problems
5 and in promoting their common interest.

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

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

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

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

30 5. The advocate:

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

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

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

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

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

52 (f) may appear or intervene as a matter of right as a party or other-
53 wise on behalf of nonbusiness automobile and health insurance consumers
54 as a class in all proceedings and actions in which the advocate deter-
55 mines that such consumers need representation, except that the advocate

1 shall not intervene in any enforcement or parens patriae proceeding
2 brought by the attorney general;

3 (g) may conduct any inquiry, hearing, investigation, survey or study
4 which the advocate deems necessary to effectively carry out the
5 provisions of this article and, for that purpose, to take and hear
6 proofs and testimony, subpoena witnesses, compel their attendance,
7 administer oaths, examine any person under oath and to compel any person
8 to subscribe to his or her testimony after it has been correctly reduced
9 to writing, and in connection therewith to require the production of any
10 books, papers, records, accounts, correspondence or other documents
11 which the advocate deems relevant to the inquiry. A subpoena issued
12 under this section shall be regulated by the civil practice law and
13 rules.

14 6. (a) The office shall prepare information of public interest
15 describing the functions of the office. The office shall make the infor-
16 mation available to the public, lawmakers and appropriate state agen-
17 cies.

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

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

23 (d) The office may participate in trade associations.

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

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

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

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

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

52 (2) With respect to rates filed for nonbusiness automobile policies,
53 such filings shall include all statistical data relied upon to support
54 the filing and such other information as the superintendent shall
55 require. Such filings and supporting information shall conform with
56 standards of uniformity which the superintendent shall prescribe by

1 regulation within one hundred eighty days of the effective date of this
2 paragraph.

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

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

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

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

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

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

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

1 shall forward any filings and applications so requested and all informa-
2 tion furnished in support of such filings and applications.

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

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

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

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

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

1 or group remittance contract be more than one hundred five percent of
2 the anticipated earned premium, and (B) the corporation submits, as part
3 of such filing, a certification by a member of the American Academy of
4 Actuaries or other individual acceptable to the superintendent that that
5 corporation is in compliance with the provisions of this subsection,
6 based upon that person's examination, including a review of the appro-
7 priate records and of the actuarial assumptions and methods used by the
8 corporation in establishing premium rates for contracts subject to this
9 section, unless the public insurance consumer advocate has requested a
10 public hearing on such rate filing or application pursuant to section
11 three hundred forty-three of this chapter. A corporation shall not
12 utilize the alternate procedure pursuant to this subsection to implement
13 a change in rates to be effective on or after October first, two thou-
14 sand ten. For purposes of this section, a small group is any group whose
15 contract is subject to the requirements of section [~~forty-three~~] four
16 thousand three hundred seventeen of this article.

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

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

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

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

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