

# STATE OF NEW YORK

2297

2017-2018 Regular Sessions

## IN SENATE

January 12, 2017

Introduced by Sen. PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

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

### ARTICLE 44-A

#### OFFICE OF PUBLIC INSURANCE ADVOCATE

7 Section 945. Office of public insurance advocate.

8 946. Insurance consumer advocate.

9 947. Powers and duties.

10 § 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 § 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-  
22 strated a strong commitment and involvement in efforts to safeguard the  
23 rights of the public and who possesses the knowledge and experience  
24 necessary to practice effectively in insurance proceedings.

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

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1 (b) A person is not eligible for appointment as advocate if the person  
2 or the person's spouse:

3 (i) is employed by or participates in the management of a business  
4 entity or other organization regulated by the department of financial  
5 services or receiving funds from the department;

6 (ii) owns or controls, directly or indirectly, more than ten percent  
7 interest in a business entity or other organization regulated by the  
8 department of financial services or receiving funds from the department  
9 of financial services or the office;

10 (iii) uses or receives a substantial amount of tangible goods,  
11 services, or funds from the department of financial services or the  
12 office, other than compensation or reimbursement authorized by law for  
13 the department of financial services or office membership, attendance or  
14 expenses.

15 3. The advocate shall serve for a term of two years expiring on Febru-  
16 ary first of each odd-numbered year.

17 4. It is a ground for removal from office if the advocate:

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

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

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

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

26 5. The validity of an action of the office is not affected by the fact  
27 that it is taken when a ground for removal of the advocate exists.

28 6. (a) A person may not serve as the advocate or act as the general  
29 counsel for the office of advocate if the person is required to register  
30 as a lobbyist pursuant to article one-A of the legislative law.

31 (b) A person serving as the advocate may not, for a period of two  
32 years after the date the person ceases to be an advocate, represent any  
33 person in a proceeding before the superintendent of financial services  
34 or the department of financial services or receive compensation for  
35 services rendered on behalf of any person regarding a case before the  
36 superintendent of financial services or the department of financial  
37 services.

38 (c) An officer, employee or paid consultant of a trade association in  
39 the field of insurance may not serve as the advocate or be an employee  
40 of the office.

41 (d) A person who is the spouse of an officer, manager, or paid  
42 consultant of a trade association in the field of insurance may not  
43 serve as the advocate and may not be an office employee.

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

49 § 947. Powers and duties. 1. The advocate, as executive director of  
50 the office, shall be charged with the responsibility of administering,  
51 enforcing and carrying out the provisions of this article, including  
52 preparation of a budget for the office, employing all necessary profes-  
53 sional, technical, and other employees to carry out provisions of this  
54 article, approval of expenditures for professional services, travel, per  
55 diem, and other actual and necessary expenses incurred in administering  
56 the office. Expenses for the office shall be paid from the assessment

1 imposed in section nine thousand one hundred ten of the insurance law.  
2 The compensation of employees of the office shall be fixed by the advocate within the appropriation provided therefor.

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4 2. The office shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the office during the preceding fiscal year. The annual report must be in the form and reported as part of the executive budget.

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

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11 4. The office may assess the impact of insurance rates, rules, and regulations on nonbusiness automobile insurance consumers in New York state and, in its own name, may advocate on behalf of positions that are most advantageous to a substantial number of insurance consumers as determined by the advocate.

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16 5. The advocate:

17 (a) may appear or intervene as a matter of right before the superintendent of financial services or department of financial services as a party or otherwise on behalf of insurance consumers as a class in matters involving rates, rules, and regulations affecting nonbusiness automobile insurance;

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22 (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;

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26 (c) is entitled to access any records of the executive department 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;

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30 (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;

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

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42 (f) may appear or intervene as a matter of right as a party or otherwise on behalf of nonbusiness automobile insurance consumers as a class in all proceedings in which the advocate determines that such consumers need representation, except that the advocate may not intervene in any enforcement or parens patriae proceeding brought by the attorney general.

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46 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.

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49 (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.

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

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

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

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55 (d) Proceedings pursuant to subsections (b) and (c) ~~hereof~~ of this section may be instituted upon the initiative of the superintendent or

1 upon written application to the superintendent by any aggrieved person  
2 or organization, other than a rate service organization, for a hearing,  
3 if the superintendent finds that the application is made in good faith  
4 and that the grounds otherwise justify holding such a hearing which  
5 shall be held within fifteen days of the request; provided, however,  
6 that the superintendent shall hold such a hearing within fifteen days of  
7 an application therefor from the insurance consumer advocate established  
8 under article forty-four-A of the executive law. In the case of a denial  
9 of an application for a hearing filed by any aggrieved person or any  
10 other organization, the superintendent shall provide the reasons there-  
11 for in writing to the applicant within fifteen days of such denial.

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

14 (c) Rates filed with the superintendent shall be accompanied by the  
15 information upon which the insurer supports the rate as set forth in  
16 subsection (b) of section two thousand three hundred four of this arti-  
17 cle. With respect to rates filed for nonbusiness automobile policies,  
18 such filings shall include all statistical data relied upon to support  
19 the filing and such other information as the superintendent shall  
20 require. Such filings and supporting information shall conform with  
21 standards of uniformity which the superintendent shall prescribe by  
22 regulation on or before the January immediately following the effective  
23 date of the chapter of the laws of two thousand seventeen that amended  
24 this subsection.

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

28 § 89-d. Motor vehicle theft and insurance fraud prevention fund. 1.  
29 There is hereby established in the custody of the comptroller, a special  
30 fund to be known as the "motor vehicle theft and insurance fraud  
31 prevention fund".

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

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

44 4. ~~The~~ Except as provided in this subdivision, the moneys received  
45 by such fund shall be expended pursuant to appropriation only to fund  
46 provider agencies which have been awarded grants by the motor vehicle  
47 theft and insurance fraud prevention board established pursuant to  
48 section eight hundred forty-six-1 of the executive law. All moneys  
49 expended pursuant to this subdivision shall be for the reimbursement of  
50 costs incurred by provider agencies; provided, however that no less than  
51 one million two hundred thousand dollars shall be used for the purposes  
52 of creating, administering and operating the office of insurance consum-  
53 er advocate created pursuant to article forty-four-A of the executive  
54 law.

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

1 § 2329. Motor vehicle insurance rates; excess profits. (a) In accord-  
2 ance with regulations prescribed by the superintendent, each insurer  
3 issuing policies that are subject to article fifty-one of this chapter,  
4 including policies of motor vehicle personal injury liability insurance  
5 or policies of motor vehicle property damage liability insurance or  
6 insurance for loss or damage to a motor vehicle, shall establish a fair,  
7 practicable, and nondiscriminatory plan for refunding or otherwise cred-  
8 iting to those purchasing such policies their share of the insurer's  
9 excess profit, if any, on such policies. An excess profit shall be a  
10 profit beyond a percentage rate of return on net worth attributable to  
11 such policies, computed in accordance with the regulation required by  
12 section two thousand three hundred twenty-three of this article, and  
13 determined by the superintendent to be so far above a reasonable average  
14 profit as to amount to an excess profit, taking into consideration the  
15 fact that losses or profits below a reasonable average profit will not  
16 be recouped from such policyholders. Each plan shall apply to policy  
17 periods for the periods January first, nineteen hundred seventy-four  
18 through August second, two thousand one, and the effective date of the  
19 property/casualty insurance availability act through June thirtieth, two  
20 thousand seventeen. In prescribing such regulations the superintendent  
21 may limit the duration of such plans, waive any requirement for refund  
22 or credit that he or she determines to be de minimis or impracticable,  
23 adopt forms of returns that shall be made to him or her in order to  
24 establish the amount of any refund or credit due, establish periods and  
25 times for the determination and distribution of refunds and credits, and  
26 shall provide that insurers receive appropriate credit against any  
27 refunds or credits required by any such plan for policyholder dividends  
28 and for return premiums that may be due under rate credit or retrospec-  
29 tive rating plans based on experience.

30 (b)(1) On or before November first, two thousand nineteen, and annual-  
31 ly thereafter, the superintendent shall complete a recalculation of the  
32 points for reasonable rate of return and excess profits established  
33 under the regulations promulgated pursuant to this section, using the  
34 most recent six year period for which data is available. If such recal-  
35 ulation results in a change in such points, the superintendent shall  
36 immediately adopt such points in regulation, and, if, under such recal-  
37 ulation, excess profits have been realized, shall immediately activate  
38 plans for refunding or otherwise crediting to those purchasing such  
39 policies their share of insurers' excess profit, in accordance with the  
40 regulations promulgated hereunder.

41 (2) On or before December first, two thousand nineteen, and annually  
42 thereafter, the superintendent shall hold a public hearing on the  
43 results of such recalculation and any actions instituted pursuant to  
44 this section as a result of such recalculation. On or before January  
45 first, two thousand twenty, and annually thereafter, the superintendent  
46 shall send a transcript of the hearing to the legislature and a report  
47 on the results of such recalculation and any actions instituted as  
48 required by this section.

49 (3) On or before October first, two thousand nineteen, the superinten-  
50 dent shall issue a request for proposals to conduct an independent audit  
51 and evaluation, with respect to nonbusiness automobile insurance, of  
52 insurer compliance with and the superintendent's implementation and  
53 enforcement of the provisions of this section. The superintendent shall  
54 provide the chairs of the assembly and senate committees on insurance  
55 with the responses to the request for proposals, and shall consult with  
56 such chairs on the selection of the firm to conduct the audit.

1 Such audit shall be completed and a report submitted by November  
2 first, two thousand twenty to the superintendent and the legislature.  
3 The scope of the audit shall include, but not be limited to:

4 (i) an identification and evaluation of events and conditions influ-  
5 encing insurer profits, including, but not limited to: the business  
6 climate and changes in economic conditions, including interest rates;

7 (ii) an assessment of the appropriateness of the methodology for  
8 selecting a reasonable rate of return and excess profit threshold under  
9 such regulation;

10 (iii) an assessment of the feasibility of using individual insurer  
11 results rather than aggregate industry data for testing profitability;

12 (iv) an assessment of the feasibility of averaging data over less than  
13 a six year period for measuring excess profits;

14 (v) an assessment of the department's activities with respect to  
15 recalculating the points for reasonable rate of return and excess  
16 profits;

17 (vi) a recalculation of the points for reasonable rate of return and  
18 excess profits using the most recent six year period for which data is  
19 available; and

20 (vii) an identification and evaluation of other states' excess profits  
21 laws, regulations, implementation of such laws and regulations, and  
22 methodologies for calculating points for reasonable rate of return.

23 The report shall include, but not be limited to: recommendations for  
24 changes to the law, regulations and implementation and enforcement of  
25 such provisions based on the findings of such audit and evaluation.  
26 Within three months of the receipt of such report, the superintendent  
27 shall hold a public hearing with regard to the department's response to  
28 the findings and recommendations of the report.

29 § 7. This act shall take effect immediately, provided, however, that  
30 this act shall apply to insurance contracts issued or renewed on or  
31 after such effective date, and shall apply at the next required policy  
32 period, commencing on or after such date, to any insurance contract  
33 written prior to the effective date of this act.