

STATE OF NEW YORK

4149

2019-2020 Regular Sessions

IN SENATE

March 1, 2019

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 as added by chapter 55 of the laws of 1992. The compensation of employ-
3 ees of the office shall be fixed by the advocate within the appropri-
4 ation provided therefor.

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

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

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

17 5. The advocate:

18 (a) may appear or intervene as a matter of right before the super-
19 intendent of financial services or department of financial services as a
20 party or otherwise on behalf of insurance consumers as a class in
21 matters involving rates, rules, and regulations affecting nonbusiness
22 automobile insurance;

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

27 (c) is entitled to access any records of the executive department that
28 are available to any party in a proceeding before the superintendent of
29 financial services or department of financial services under the author-
30 ity granted by this article;

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

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

38 (f) may appear or intervene as a matter of right as a party or other-
39 wise on behalf of nonbusiness automobile insurance consumers as a class
40 in all proceedings in which the advocate determines that such consumers
41 need representation, except that the advocate may not intervene in any
42 enforcement or parens patriae proceeding brought by the attorney gener-
43 al.

44 6. (a) The office shall prepare information of public interest
45 describing the functions of the office. The office shall make the infor-
46 mation available to the public, lawmakers and appropriate state agen-
47 cies.

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

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

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

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

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

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

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

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

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

34 2. Such fund shall consist of all moneys received by the state pursu-
35 ant to subsection (b) of section nine thousand one hundred ten of the
36 insurance law, as added by chapter 55 of the laws of 1992, that are
37 transferred to the fund pursuant to paragraph one of subsection (e) of
38 section nine thousand one hundred ten of the insurance law, as added by
39 chapter 55 of the laws of 1992, and all other grants, bequests or other
40 moneys appropriated, credited or transferred thereto from any other fund
41 or source pursuant to law.

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

47 4. [~~The~~] Except as provided in this subdivision, the moneys received
48 by such fund shall be expended pursuant to appropriation only to fund
49 provider agencies which have been awarded grants by the motor vehicle
50 theft and insurance fraud prevention board established pursuant to
51 section eight hundred forty-six-1 of the executive law. All moneys
52 expended pursuant to this subdivision shall be for the reimbursement of
53 costs incurred by provider agencies; provided, however that no less than
54 one million two hundred thousand dollars shall be used for the purposes
55 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 § 6. Section 2329 of the insurance law, as amended by chapter 69 of
4 the laws of 2017, is amended to read as follows:

5 § 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 twenty. In prescribing such regulations the superintendent may
25 limit the duration of such plans, waive any requirement for refund or
26 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 twenty-one, and annu-
35 ally thereafter, the superintendent shall complete a recalculation of
36 the 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 ulation results in a change in such points, the superintendent shall
40 immediately adopt such points in regulation, and, if, under such recal-
41 ulation, 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 twenty-one, 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 twenty-two, 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 twenty-one, the super-
54 intendent shall issue a request for proposals to conduct an independent
55 audit and evaluation, with respect to nonbusiness automobile insurance,
56 of 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 twenty-two to the superintendent and the legisla-
7 ture. 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 § 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.