

# STATE OF NEW YORK

5034

2021-2022 Regular Sessions

## IN SENATE

February 22, 2021

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.

LBD09199-02-1

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 section four hundred twenty-one of chapter 55 of the laws of  
3 1992. The compensation of employees of the office shall be fixed by the  
4 advocate within the appropriation 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 twenty-one 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 section three hundred eighty-six of chapter  
37 fifty-five of the laws of one thousand nine hundred ninety-two, that are  
38 transferred to the fund pursuant to paragraph one of subsection (e) of  
39 section nine thousand one hundred ten of the insurance law, as added by  
40 section three hundred eighty-six of chapter fifty-five of the laws of  
41 one thousand nine hundred ninety-two, and all other grants, bequests or  
42 other moneys appropriated, credited or transferred thereto from any  
43 other fund or source pursuant to law.

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

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

1 of creating, administering and operating the office of insurance consum-  
2 er advocate created pursuant to article forty-four-A of the executive  
3 law.

4 § 6. Section 2329 of the insurance law, as amended by section 5 of  
5 item JJ of subpart B of part XXX of chapter 58 of the laws of 2020, is  
6 amended to read as follows:

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

36 (b)(1) On or before November first, two thousand twenty-three, and  
37 annually thereafter, the superintendent shall complete a recalculation  
38 of the points for reasonable rate of return and excess profits estab-  
39 lished under the regulations promulgated pursuant to this section, using  
40 the most recent six year period for which data is available. If such  
41 recalculation results in a change in such points, the superintendent  
42 shall immediately adopt such points in regulation, and, if, under such  
43 recalculation, excess profits have been realized, shall immediately  
44 activate plans for refunding or otherwise crediting to those purchasing  
45 such policies their share of insurers' excess profit, in accordance with  
46 the regulations promulgated hereunder.

47 (2) On or before December first, two thousand twenty-three, and annu-  
48 ally thereafter, the superintendent shall hold a public hearing on the  
49 results of such recalculation and any actions instituted pursuant to  
50 this section as a result of such recalculation. On or before January  
51 first, two thousand twenty-four, and annually thereafter, the super-  
52 intendent shall send a transcript of the hearing to the legislature and  
53 a report on the results of such recalculation and any actions instituted  
54 as required by this section.

55 (3) On or before October first, two thousand twenty-three, the super-  
56 intendent shall issue a request for proposals to conduct an independent

1 audit and evaluation, with respect to nonbusiness automobile insurance,  
2 of insurer compliance with and the superintendent's implementation and  
3 enforcement of the provisions of this section. The superintendent shall  
4 provide the chairs of the assembly and senate committees on insurance  
5 with the responses to the request for proposals, and shall consult with  
6 such chairs on the selection of the firm to conduct the audit.

7 Such audit shall be completed and a report submitted by November  
8 first, two thousand twenty-four to the superintendent and the legisla-  
9 ture. The scope of the audit shall include, but not be limited to:

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

13 (ii) an assessment of the appropriateness of the methodology for  
14 selecting a reasonable rate of return and excess profit threshold under  
15 such regulation;

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

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

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

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

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

29 The report shall include, but not be limited to: recommendations for  
30 changes to the law, regulations and implementation and enforcement of  
31 such provisions based on the findings of such audit and evaluation.  
32 Within three months of the receipt of such report, the superintendent  
33 shall hold a public hearing with regard to the department's response to  
34 the findings and recommendations of the report.

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