§ 2339. Charging or receiving of rates; deviations. (a) This section shall apply only to kinds of insurance the rates for which are subject to prior approval pursuant to subsection (b) of section two thousand three hundred five of this article.

(b) No member of or subscriber to a rate service organization, and no insurer which makes and files its own rates, shall charge or receive any rate which deviates from the rates, rating plans, classifications, schedules, rules and standards made and filed by such rate service organization, or by such insurer, as the case may be, which are applicable to any kind or type of business done by such member or subscriber, or by such insurer, except as provided in this article.

(c) Any insurer which is a member of or subscriber to a rate service organization may make written application to the superintendent for permission to deviate from the rates, schedules, rating plans or rules filed on its behalf by the rate service organization. The application shall specify the basis for the modification and a copy shall also be sent simultaneously to such rate service organization. In considering the application to deviate the superintendent shall give consideration to the available statistics and the principles for rate making as provided in section two thousand three hundred four of this article. If the superintendent finds the deviation to be justified, he shall approve it to be effective for a period to be fixed by him, but in no event for a period of less than one year, unless sooner terminated by the applicant with the permission of the superintendent or unless sooner withdrawn or appropriately adjusted by an order of the superintendent made in accordance with the provisions of this article generally applicable to rate filings. If the superintendent finds that the deviation applied for does not meet the requirements of this article, he shall send to the applicant written notice of his disapproval, specifying in what respects he finds it fails to meet the requirements of this article. The superintendent shall inform the rate service organization of his action upon the deviation application.

(d) (1) Notwithstanding any other provision of law, except as provided in paragraph three of this subsection, the state insurance fund shall not charge an insured any rate, or receive from an insured any rate in excess of the total of (i) the applicable loss cost approved by the superintendent, (ii) the applicable expense component of the state

insurance fund and (iii) a fair and reasonable differential charge which takes into consideration the nature and hazards of the insured's business or operations, the insured's prior loss experience, the insured's prior and presently existing safety practices, the insured's prior premium payment history, the number of persons the insured employs in such business or operations and the specific type of work they perform, the insured's prior and current compliance with obligations imposed upon the insured by the workers' compensation law and other laws which require premium or other payments by the insured on the basis of earnings and other remuneration earned by persons engaged in the furtherance of the insured's enterprise or enterprises, the promptness and completeness of such reports as the insured has filed on accidents and claims, and such other factors as may be relevant to the appraisal of the insured or proposed insured as a risk in whole.

(2) A differential charge applied by the state insurance fund to a workers' compensation and employer's liability insurance policy may be challenged by the insured by an appeal to the superintendent after an exhaustion by the insured of all internal review procedures of the state insurance fund as established by rules adopted by the commissioners of the state insurance fund and filed with the secretary of state; provided that a writing setting forth the grounds upon which such appeal is based is served and filed with the superintendent and with the secretary to the board of commissioners of the state insurance fund within thirty days after a final determination by the state insurance fund. Appeals to the superintendent shall be determined upon papers and documents that were before the state insurance fund in connection with the internal review procedures, the writing setting forth the grounds of the insured's appeal and any answer to such appeal served by the state insurance fund upon the insured and filed with the superintendent within thirty days after the service of the insured's notice.

(3) The provisions of this section shall not apply to a policy sold by the state insurance fund under article six-G of the executive law. The rate which the state insurance fund may charge under such article shall be governed only by such regulations or guidelines as the superintendent may issue.