



Substitute House Bill No. 5014

Public Act No. 10-7

AN ACT CONCERNING AUTOMOBILE AND PERSONAL RISK INSURANCE.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 38a-686 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective January 1, 2011*):

The following standards, methods and criteria shall apply to the making and use of rates pertaining to personal risk insurance:

(a) Rates shall not be excessive, inadequate or unfairly discriminatory.

(1) A rate in a competitive market is not excessive. A rate in a noncompetitive market including a rate for insurance provided pursuant to sections 38a-328, 38a-329 and 38a-670 is excessive if it is unreasonably high for the insurance provided.

(2) No rate shall be held inadequate unless (A) it is unreasonably low for the insurance provided, and (B) continued use of it would endanger solvency of the insurer, or unless (C) such rate is unreasonably low for the insurance provided and the use of such rate by the insurer using same has, or, if continued will have, the effect of destroying competition or creating a monopoly.

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(b) In determining whether rates comply with the excessiveness standard in a noncompetitive market under subdivision (1) of subsection (a) of this section, the inadequacy standard under subdivision (2) of subsection (a) of this section and the requirement that rates not be unfairly discriminatory, the following criteria shall apply:

(1) Consideration may be given, to the extent possible, to past and prospective loss experience within and outside this state, to conflagration and catastrophe hazards, to a reasonable margin for underwriting profit and contingencies, to past and prospective expenses both country-wide and those specially applicable to this state, to investment income earned or realized by insurers both from their unearned premium and loss reserve funds, and to all other factors, including judgment factors, deemed relevant within and outside this state and in the case of fire insurance rates, consideration may be given to the experience of the fire insurance business during the most recent five-year period for which such experience is available. Consideration may be given in the making and use of rates to dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers.

(2) (A) The systems of expense provisions included in the rates for use by an insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the operating methods of any such insurer or group with respect to any kind of insurance, or with respect to any subdivision or combination thereof.

(B) (i) With respect to private passenger nonfleet automobile insurance, an insurer shall not allocate as flat dollar amounts to base rates: (I) Producer commissions; (II) premium taxes; (III) underwriting profits; or (IV) contingencies.

(ii) With respect to private passenger nonfleet automobile insurance,

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an insurer shall allocate as flat dollar amounts to base rates: (I) At least ninety per cent of general expenses, including administration and overhead costs; (II) at least ninety per cent of other acquisition costs for marketing and agent field offices, which may be allocated over the expected life of such insurer's policies; and (III) miscellaneous taxes, licenses and fees.

(iii) Each insurer shall allocate such flat dollar amounts set forth in subparagraph (B)(ii) of this subdivision after any classification factors set forth in subdivisions (3) to (5), inclusive, of this subsection have been applied to base rates.

(3) Risks may be grouped by classifications for the establishment of rates and minimum premiums, provided that with respect to private passenger nonfleet automobile insurance, any change in territorial classifications shall be subject to prior approval by the Insurance Commissioner, and provided no surcharge on any motor vehicle liability or physical damage insurance premium [may] shall be assigned for (A) any accident involving only property damage of one thousand dollars or less, [or] (B) the first accident involving only property damage of more than one thousand dollars which would otherwise result in a surcharge to the policy of the insured, within the experience period set forth in the insurer's safe driver classification plan, [or] (C) any violation of section 14-219 unless such violation results in the suspension or revocation of the operator's license under section 14-111b, [or] (D) less than three violations of section 14-218a within any one-year period, [or] (E) any accident caused by an operator other than the named insured, a relative residing in the named insured's household, or a person who customarily operates the insured vehicle, [or] (F) the first or second accident within the current experience period in relation to which the insured was not convicted of a moving traffic violation and was not at fault, or (G) any motor vehicle infraction. Subparagraph (G) of this subdivision shall not be

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applicable to any plan established pursuant to section 38a-329. Classification rates may be modified to produce rates for individual risks in accordance with rating plans [which] that provide for recognition of variations in hazards or expense provisions or both. Such rating plans may include application of the judgment of the insurer and may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses.

(4) Each rating plan for private passenger nonfleet automobile insurance that includes territorial classifications shall assign a weight of seventy-five per cent to individual territorial loss cost indication and twenty-five per cent to the state-wide average loss cost indication.

[(4)] (5) Each rating plan shall establish appropriate eligibility criteria for determining significant risks [which] that are to qualify under the plan. Rating plans [which] that comply with the provisions of this subdivision shall be deemed to produce rates [which] that are not unfairly discriminatory.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, no rate shall include any adjustment designed to recover underwriting or operating losses incurred out-of-state.

(d) [The] Not later than January 1, 2012, the commissioner [may] shall adopt regulations_z in accordance with the provisions of chapter 54_z [concerning rating plans to effectuate] to implement the provisions of this section and the most current guidelines and bulletins issued by the Insurance Department and in effect that pertain to territorial classifications.

Sec. 2. Subsection (b) of section 38a-686 of the general statutes, as amended by section 1 of this act, is amended by adding subdivision (6) as follows (*Effective July 1, 2011*):

(NEW) (6) With respect to personal risk insurance, an insurer shall

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not use an applicant's or insured's credit history as a factor in underwriting or rating except in accordance with this subdivision. For the purposes of this section, "credit history" means any credit-related information derived from or found in a credit report or credit scoring program or provided in an application for personal risk insurance, and "financial history measurement program" means a program that uses an applicant's credit history to measure such applicant's risk of loss.

(A) An insurer shall file with the commissioner any financial history measurement program it uses to underwrite or rate risks for personal risk insurance. Such filing shall (i) include a description of the program, (ii) identify the characteristics used in such program from which a measurement is derived, (iii) include the rules and procedures of such program, and (iv) include an explanation of the impact of credit information and items of public record on insurance rates over time. Such program shall not unfairly discriminate among applicants or produce rates that are excessive for the risk assumed. Any filing made pursuant to this subparagraph shall be considered a trade secret for the purposes of section 1-210.

(B) (i) An insurer that uses a financial history measurement program shall submit to the commissioner documentation that demonstrates the correlation between such program and the expected risk of loss, and how such program impacts consumers (I) in urban territories, versus consumers in nonurban territories, and (II) based on consumers' ages. The commissioner may request the insurer to provide a financial history measurement for a set of test examples that reflect various characteristics.

(ii) An insurer that uses a financial history measurement program shall disclose to each applicant for personal risk insurance, in writing, by telephone, by electronic mail or orally, at the time of application that the applicant's credit history may be used in the underwriting or rating of such applicant's policy, and that the applicant has the right to

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request, in writing, that the insurer consider, during its underwriting or rating process or during a review requested by such applicant of a rate quote, an extraordinary life circumstance, as set forth in subparagraph (D) of this subdivision, if such applicant's credit history has been adversely impacted by such extraordinary life circumstance and such extraordinary life circumstance occurred within three years before the date of the application. In addition, such insurer shall provide to each purchaser of such policy, not later than the date of issuance of such policy, a written disclosure that includes: (I) The name, address, telephone number and toll-free telephone number, if applicable, of the insurer; (II) detailed information about how the insurer uses credit information to underwrite or rate such policies; and (III) a summary of consumer protections regarding the use of credit, in a form determined by the commissioner. Such written disclosure shall be printed in reasonably conspicuous type and be provided by the insurer electronically, by mail or by hand delivery.

(C) (i) An insurer may use a financial history measurement program to underwrite or rate risks only (I) for new personal risk insurance policies, or (II) upon renewal, either at the request of an insured or if such use reduces the premium for the insured in accordance with the insurer's filed rates and rules.

(ii) An insurer shall not use the following characteristics in a financial history measurement program: (I) The number of credit inquiries in an applicant's or insured's credit report or credit history; (II) the applicant's or insured's use of a particular type of credit card, debit card or charge card; (III) the applicant's or insured's total available line of credit; (IV) any disputed credit information while such dispute is under review by a credit reporting company, provided such information is identified in an applicant's or insured's credit report or credit history as being in dispute; (V) collection accounts identified with a medical industry code in the applicant's or insured's credit

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report or credit history; and (VI) the applicant's or insured's lack of credit history, unless the insurer treats the applicant or insured as if such applicant or insured had neutral credit information, as defined by the insurer.

(iii) A financial history measurement program shall give the same weight to an applicant's or insured's purchase or financing of a specific item regardless of the type of item purchased or financed.

(D) (i) Upon written request by an applicant, an insurer shall consider, during its underwriting or rating process or during a review requested by such applicant of a rate quote, an extraordinary life circumstance of such applicant if such extraordinary life circumstance occurred within three years before the date of application. If such insurer determines that such applicant's credit history has been adversely impacted by such extraordinary life circumstance, such insurer shall grant a reasonable exception to such insurer's rates, rating classifications or underwriting rules for such applicant. As used in this subparagraph, "extraordinary life circumstance" means (I) a catastrophic illness or injury, (II) divorce, (III) the death of a spouse, child or parent, (IV) the involuntary loss of employment for more than three consecutive months, (V) identity theft, (VI) total or other loss that makes a home uninhabitable, (VII) other circumstances as may be adopted in regulations by the commissioner, in accordance with chapter 54, or (VIII) any other circumstance an insurer may choose to recognize.

(ii) An insurer may require the applicant to provide reasonable, independently verifiable written documentation of the extraordinary life circumstance and the effect of such extraordinary life circumstance on such applicant's credit report or credit history. Any such documentation shall be kept confidential by the insurer.

(iii) If the insurer grants an exception pursuant to subparagraph

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(D)(i), the insurer shall (I) consider only credit information that is not affected by the extraordinary life circumstance, or (II) treat the applicant as if such applicant had neutral or better than neutral credit information, as defined by the insurer.

(iv) An insurer shall not be deemed to be out of compliance with any provision of the general statutes or regulations adopted thereunder concerning underwriting, rating or rate filing solely on the basis of the granting of an exception pursuant to this subparagraph.

(E) (i) If an insurer takes an adverse action that is due at least in part to the information contained in an applicant's or insured's credit report, such insurer shall disclose to such applicant or insured: (I) That such adverse action was based on the credit report of such insured or applicant; (II) that such applicant or insured is entitled to a free copy of such credit report and where such report can be obtained; (III) the types of extraordinary life circumstances set forth in subparagraph (D) of this subdivision; and (IV) the procedures for an applicant to inform the insurer of an extraordinary life circumstance and to submit any required documentation pursuant to subparagraph (D) of this subdivision.

(ii) For the purposes of this subdivision, an "adverse action" means (I) the denial of coverage to an applicant or insured or the offering of restricted coverage, (II) the offering of a higher rate, (III) the assignment of an applicant or insured to a higher rate tier or to a higher-priced company within an insurer group, or (IV) any other action that adversely impacts an applicant or insured due to the financial history measurement program.

(F) After an insurer's financial history measurement program has been in effect for two years, the commissioner may require such insurer to submit a report to the commissioner on the use of such program in the state. Such report shall include information that

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demonstrates that such program results in rates that are supported by the data and that are not unfairly discriminatory, and an analysis of consumer complaints submitted in writing or by electronic mail to the insurer resulting from such insurer's use of a financial history measurement program, such that is sufficient to identify the basis for the complaints and any subsequent insurer action.

Sec. 3. (NEW) (*Effective January 1, 2011*) The declination, cancellation or nonrenewal of a personal risk insurance policy not subject to the provisions of section 38a-358 of the general statutes, as amended by this act, is prohibited if the declination, cancellation or nonrenewal is based solely on information contained in an insured's or applicant's credit history or credit rating or solely on an applicant's lack of credit history. For the purposes of this section, an insurer shall not be deemed to have declined, cancelled or nonrenewed a policy if coverage is available through an affiliated insurer.

Sec. 4. Section 38a-358 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective January 1, 2011*):

The declination, cancellation or nonrenewal of a policy for private passenger nonfleet automobile insurance is prohibited if the declination, cancellation or nonrenewal is based: (1) On the race, religion, nationality or ethnicity of the applicant or named insured; (2) solely on the lawful occupation or profession of the applicant or named insured, except that this provision shall not apply to any insurer which limits its market to one lawful occupation or profession or to several related lawful occupations or professions; (3) on the principal location of the insured motor vehicle unless such decision is for a business purpose which is not a mere pretext for unfair discrimination; (4) solely on the age, sex or marital status of an applicant or an insured, except that this subdivision shall not apply to an insurer in an insurer group if one or more other insurers in the group would not decline an application for essentially similar coverage

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based upon such reasons; (5) on the fact that the applicant or named insured previously obtained insurance coverage through a residual market; (6) on the fact that another insurer previously declined to insure the applicant or terminated an existing policy in which the applicant was the named insured; [or] (7) the first or second accident within the current experience period in relation to which the applicant or insured was not convicted of a moving traffic violation and was not at fault; or (8) solely on information contained in an insured's or applicant's credit history or credit rating or solely on an applicant's lack of credit history. For the purposes of subdivision (8) of this section, an insurer shall not be deemed to have declined, cancelled or nonrenewed a policy if coverage is available through an affiliated insurer.

Sec. 5. Section 38a-343 of the 2010 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2010*):

(a) No notice of cancellation of a policy to which section 38a-342 applies shall be effective unless sent, by registered or certified mail or by mail evidenced by a certificate of mailing, or delivered by the insurer to the named insured, and any third party designated pursuant to section 38a-323a, at least forty-five days before the effective date of cancellation, except that (1) where cancellation is for nonpayment of the first premium on a new policy, at least fifteen days' notice of cancellation accompanied by the reason for cancellation shall be given, and (2) where cancellation is for nonpayment of any other premium, at least ten days' notice of cancellation accompanied by the reason for cancellation shall be given. No notice of cancellation of a policy that has been in effect for less than sixty days shall be effective unless mailed or delivered by the insurer to the insured and any third party designee at least forty-five days before the effective date of cancellation, except that (A) at least fifteen days' notice shall be given

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where cancellation is for nonpayment of the first premium on a new policy, and (B) at least ten days' notice shall be given where cancellation is for nonpayment of any other premium or material misrepresentation. The notice of cancellation shall state or be accompanied by a statement specifying the reason for such cancellation. Any notice of cancellation for nonpayment of the first premium on a new policy may be retroactive to the effective date of such policy, provided at least fifteen days' notice has been given to the insured and any third party designee and payment of such premium has not been received during such notice period.

(b) Where a private passenger motor vehicle liability insurance company sends a notice of cancellation under subsection (a) of this section to the named insured of a private passenger motor vehicle liability insurance policy, or a third party designee, such company shall provide with such notice a warning, in a form approved by the Commissioner of Motor Vehicles and the Insurance Commissioner, that informs the named insured that (1) the cancellation will be reported to the Commissioner of Motor Vehicles; (2) the named insured may be receiving one or more mail inquiries from the Commissioner of Motor Vehicles, concerning whether or not required insurance coverage is being maintained, and that the named insured must respond to these inquiries; (3) if the required insurance coverage lapses at any time, the Commissioner of Motor Vehicles may suspend the registration or registrations for the vehicle or vehicles under the policy and the number plates will be subject to confiscation and any person operating any such vehicle will be subject to legal penalties for operating a motor vehicle with a suspended registration; (4) the named insured will not be able to have the registration restored or obtain a new registration, or any other registration or renewal in the insured's name, except upon presentation to the Commissioner of Motor Vehicles of evidence of required security or coverage and the entering into of a consent agreement with the commissioner in accordance with

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the provisions of section 14-12g.

(c) If a passenger motor vehicle liability insurance company cancels a private passenger motor vehicle liability insurance policy pursuant to section 38a-342, such company shall send a written notice of such cancellation to any lienholder shown on the records of such company as having a legal interest in such motor vehicle.

[(c)] (d) Subsections (a) and (b) of this section shall not apply to nonrenewal or if the private passenger motor vehicle liability insurance policy is transferred from an insurer to an affiliate of such insurer for another policy with no interruption of coverage and contains the same terms, conditions and provisions, including policy limits, as the transferred policy, except that the insurer to which the policy is transferred shall not be prohibited from applying its rates and rating plans at the time of renewal.

[(d)] (e) No insurance company that renews, amends or endorses in this state a private passenger motor vehicle liability insurance policy shall charge any fee or other charge exceeding one hundred dollars in the aggregate to an insured who cancels such policy prior to the expiration of such policy.

Sec. 6. Section 14-12h of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2010*):

(a) The Commissioner of Motor Vehicles shall compile and maintain a record of all registrations suspended in accordance with the provisions of sections 14-12c and 14-12g. The commissioner shall update the information contained in such record not less than once per week and shall make available to all law enforcement agencies in this state a list of all registration number plates for vehicles whose registration has been suspended. Such list shall contain the number plate numbers, letters or number and letter combinations and the

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address at which the vehicle was registered. The commissioner may make available the entire list or a portion thereof and may utilize one or more formats for presenting the information contained therein to facilitate its use.

(b) (1) If any police officer observes a motor vehicle being operated upon the public highway, and such motor vehicle is displaying registration number plates identified as suspended on the list made available by the commissioner, such police officer may (A) stop or detain such vehicle and its occupants, (B) issue to the operator a complaint for operating an unregistered motor vehicle, or expired registration if the vehicle is not being operated, in violation of section 14-12, and (C) remove the registration number plates from the vehicle and return them to any branch office of the Department of Motor Vehicles. If any police officer, motor vehicle inspector or constable observes a motor vehicle parked in any parking area, as defined in section 14-212, and such motor vehicle is displaying registration number plates identified as suspended on the list made available by the commissioner, such police officer, motor vehicle inspector or constable is authorized to remove the registration number plates from the vehicle and to return them to any branch office of the Department of Motor Vehicles. If a number plate is identified as suspended on the list provided by the commissioner and such identification is in error, the state shall indemnify any police officer, motor vehicle inspector or constable for any claim for damages made against that individual as a result of such individual's good faith reliance on the accuracy of the list provided by the commissioner regarding the confiscation of number plates.

(2) If any police officer observes a motor vehicle being operated upon the public highway or parked in any parking area, as defined in section 14-212, displaying registration number plates identified on the list made available by the commissioner as being suspended, such

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police officer may seize and impound the vehicle. If a police officer seizes and impounds a vehicle pursuant to this subdivision, such officer shall give notice to the commissioner in such form as the commissioner may require. The police officer shall give such notice not later than three days after seizing and impounding the vehicle.

(c) Any motor vehicle [which] that has been impounded in accordance with the provisions of subdivision (2) of subsection (b) of this section shall not be released to the owner or person otherwise entitled to possession of the vehicle unless such owner or person presents a valid registration and a current automobile insurance identification card. Any such impounded motor vehicle that is not reclaimed by the owner of such motor vehicle within forty-five days after impounding [,] shall be subject to forfeiture to the state.

Sec. 7. Section 38a-353 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective January 1, 2011*):

(a) Whenever any damaged motor vehicle covered under an automobile insurance policy has been declared to be a constructive total loss by the insurer, the insurer shall, in calculating the value of such vehicle for purposes of determining the settlement amount to be paid to the claimant, use at least the average of the retail values given such vehicle by (1) the National Automobile Dealers Association used car guide or any other publicly available automobile industry source that has been approved for such use by the Insurance Commissioner, and (2) one other automobile industry source [which] that has been approved for such use by [the Insurance Commissioner] said commissioner. For the purposes of this section, "constructive total loss" means the cost to repair or salvage damaged property, or the cost to both repair and salvage such property, equals or exceeds the total value of the property at the time of loss.

(b) The insurer shall provide to the claimant, not later than the date

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the insurer pays the claimant the settlement amount for such vehicle, (1) a detailed copy of such insurer's calculation of such vehicle's constructive total loss value, (2) if applicable, a copy of any valuation report provided to the insurer by any automobile industry source that is not publicly available, and (3) a written notice disclosing that the claimant may dispute such settlement amount by contacting the Insurance Department. The written notice shall include the following statement, which shall appear in the final paragraph of the notice in not less than twelve-point type: "If you do not agree with this valuation, you may contact the Consumer Affairs Division within the Insurance Department". The notice shall include the address and toll-free telephone number for the division and the Insurance Department's Internet address.

Sec. 8. Subdivision (2) of subsection (b) of section 38a-9 of the 2010 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective January 1, 2011*):

(2) The commissioner shall prepare a list of at least ten persons, who have not been employed by the department or an insurance company during the preceding twelve months, to serve as arbitrators in the settlement of such disputes. The arbitrators shall be members of any dispute resolution organization approved by the commissioner. One arbitrator shall be appointed to hear and decide each complaint. Appointment shall be based solely on the order of the list. If an arbitrator is unable to serve on a given day, or if either party objects to the arbitrator, then the next arbitrator on the list will be selected. The department shall schedule arbitration hearings as often, and in such locations, as it deems necessary. Parties to the dispute shall be provided written notice of the hearing, at least ten days prior to the hearing date. The commissioner may issue subpoenas on behalf of the arbitrator to compel the attendance of witnesses and the production of documents, papers and records relevant to the dispute. Decisions shall

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be made on the basis of the evidence presented at the arbitration hearing. Where the arbitrator believes that technical expertise is necessary to decide a case, [he] such arbitrator may consult with an independent expert recommended by the commissioner. The arbitrator and any independent technical expert shall be paid by the department on a per dispute basis as established by the commissioner. The arbitrator, as expeditiously as possible, but not later than fifteen days after the arbitration hearing, shall render a written decision based on the information gathered and disclose the findings and the reasons to the parties involved. The arbitrator shall award filing fees to the prevailing party. If the decision favors the consumer the decision shall provide specific and appropriate remedies including interest at the rate of [ten] fifteen per cent per year on the arbitration award concerning the disputed amount of the claim, retroactive to the date of payment for the undisputed amount of the claim. The decision may include costs for loss of use and storage of the motor vehicle and shall specify a date for performance and completion of all awarded remedies. Notwithstanding any provision of the general statutes or any regulation to the contrary, the Insurance Department shall not amend, reverse, rescind, or revoke any decision or action of any arbitrator. The department shall contact the consumer within ten working days after the date for performance, to determine whether performance has occurred. Either party may make application to the superior court for the judicial district in which one of the parties resides or, when the court is not in session, any judge thereof for an order confirming, vacating, modifying or correcting any award, in accordance with the provisions of sections 52-417, 52-418, 52-419 and 52-420. If it is determined by the court that either party's position after review has been improved by at least ten per cent over that party's position after arbitration, the court, in its discretion, may grant to that party its costs and reasonable attorney's fees. No evidence, testimony, findings, or decision from the department arbitration procedure shall be admissible in any civil proceeding, except judicial review of the

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arbitrator's decision as contemplated by this subsection.

Approved May 5, 2010