



# House of Representatives

General Assembly

**File No. 9**

February Session, 2010

Substitute House Bill No. 5014

*House of Representatives, March 3, 2010*

The Committee on Insurance and Real Estate reported through REP. FONTANA, S. of the 87th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

## ***AN ACT CONCERNING AUTOMOBILE AND PERSONAL RISK INSURANCE.***

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

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 Section 38a-686 of the general statutes is repealed and the  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

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

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

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

11 (2) No rate shall be held inadequate unless (A) it is unreasonably

12 low for the insurance provided, and (B) continued use of it would  
13 endanger solvency of the insurer, or unless (C) such rate is  
14 unreasonably low for the insurance provided and the use of such rate  
15 by the insurer using same has, or, if continued will have, the effect of  
16 destroying competition or creating a monopoly.

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

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

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

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

45 profits; or (IV) contingencies.

46 (ii) With respect to private passenger nonfleet automobile insurance,  
47 an insurer shall allocate as flat dollar amounts to base rates: (I) At least  
48 ninety per cent of general expenses, including administration and  
49 overhead costs; (II) at least ninety per cent of other acquisition costs for  
50 marketing and agent field offices, which may be allocated over the  
51 expected life of such insurer's policies; and (III) miscellaneous taxes,  
52 licenses and fees.

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

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

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

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

89 [(4)] (5) Each rating plan shall establish appropriate eligibility  
90 criteria for determining significant risks [which] that are to qualify  
91 under the plan. Rating plans [which] that comply with the provisions  
92 of this subdivision shall be deemed to produce rates [which] that are  
93 not unfairly discriminatory.

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

97 (d) [The] Not later than January 1, 2012, the commissioner [may]  
98 shall adopt regulations<sub>2</sub> in accordance with the provisions of chapter  
99 54<sub>2</sub> [concerning rating plans to effectuate] to implement the provisions  
100 of this section and the most current guidelines and bulletins issued by  
101 the Insurance Department and in effect that pertain to territorial  
102 classifications.

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

106 (NEW) (6) With respect to personal risk insurance, an insurer shall  
107 not use an applicant's or insured's credit history as a factor in  
108 underwriting or rating except in accordance with this subdivision. For

109 the purposes of this section, "credit history" means any credit-related  
110 information derived from or found in a credit report or credit scoring  
111 program or provided in an application for personal risk insurance, and  
112 "financial history measurement program" means a program that uses  
113 an applicant's credit history to measure such applicant's risk of loss.

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

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

133 (ii) An insurer that uses a financial history measurement program  
134 shall disclose to each applicant for personal risk insurance, in writing,  
135 by telephone, by electronic mail or orally, at the time of application  
136 that the applicant's credit history may be used in the underwriting or  
137 rating of such applicant's policy, and that the applicant has the right to  
138 request, in writing, that the insurer consider, during its underwriting  
139 or rating process or during a review requested by such applicant of a  
140 rate quote, an extraordinary life circumstance, as set forth in  
141 subparagraph (D) of this subdivision, if such applicant's credit history

142 has been adversely impacted by such extraordinary life circumstance  
143 and such extraordinary life circumstance occurred within three years  
144 before the date of the application. In addition, such insurer shall  
145 provide to each purchaser of such policy, not later than the date of  
146 issuance of such policy, a written disclosure that includes: (I) The  
147 name, address, telephone number and toll-free telephone number, if  
148 applicable, of the insurer; (II) detailed information about how the  
149 insurer uses credit information to underwrite or rate such policies; and  
150 (III) a summary of consumer protections regarding the use of credit, in  
151 a form determined by the commissioner. Such written disclosure shall  
152 be printed in reasonably conspicuous type and be provided by the  
153 insurer electronically, by mail or by hand delivery.

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

159 (ii) An insurer shall not use the following characteristics in a  
160 financial history measurement program: (I) The number of credit  
161 inquiries in an applicant's or insured's credit report or credit history;  
162 (II) the applicant's or insured's use of a particular type of credit card,  
163 debit card or charge card; (III) the applicant's or insured's total  
164 available line of credit; (IV) any disputed credit information while such  
165 dispute is under review by a credit reporting company, provided such  
166 information is identified in an applicant's or insured's credit report or  
167 credit history as being in dispute; (V) collection accounts identified  
168 with a medical industry code in the applicant's or insured's credit  
169 report or credit history; and (VI) the applicant's or insured's lack of  
170 credit history, unless the insurer treats the applicant or insured as if  
171 such applicant or insured had neutral credit information, as defined by  
172 the insurer.

173 (iii) A financial history measurement program shall give the same  
174 weight to an applicant's or insured's purchase or financing of a specific

175 item regardless of the type of item purchased or financed.

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

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

198 (iii) If the insurer grants an exception pursuant to subparagraph  
199 (D)(i), the insurer shall (I) consider only credit information that is not  
200 affected by the extraordinary life circumstance, or (II) treat the  
201 applicant as if such applicant had neutral or better than neutral credit  
202 information, as defined by the insurer.

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

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

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

225 (F) After an insurer's financial history measurement program has  
226 been in effect for two years, the commissioner may require such  
227 insurer to submit a report to the commissioner on the use of such  
228 program in the state. Such report shall include information that  
229 demonstrates that such program results in rates that are supported by  
230 the data and that are not unfairly discriminatory, and an analysis of  
231 consumer complaints submitted in writing or by electronic mail to the  
232 insurer resulting from such insurer's use of a financial history  
233 measurement program, such that is sufficient to identify the basis for  
234 the complaints and any subsequent insurer action.

235 Sec. 3. (NEW) (*Effective January 1, 2011*) The declination, cancellation  
236 or nonrenewal of a personal risk insurance policy not subject to the  
237 provisions of section 38a-358 of the general statutes, as amended by  
238 this act, is prohibited if the declination, cancellation or nonrenewal is  
239 based solely on information contained in an insured's or applicant's

240 credit history or credit rating or solely on an applicant's lack of credit  
241 history. For the purposes of this section, an insurer shall not be  
242 deemed to have declined, cancelled or nonrenewed a policy if  
243 coverage is available through an affiliated insurer.

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

246 The declination, cancellation or nonrenewal of a policy for private  
247 passenger nonfleet automobile insurance is prohibited if the  
248 declination, cancellation or nonrenewal is based: (1) On the race,  
249 religion, nationality or ethnicity of the applicant or named insured; (2)  
250 solely on the lawful occupation or profession of the applicant or  
251 named insured, except that this provision shall not apply to any  
252 insurer which limits its market to one lawful occupation or profession  
253 or to several related lawful occupations or professions; (3) on the  
254 principal location of the insured motor vehicle unless such decision is  
255 for a business purpose which is not a mere pretext for unfair  
256 discrimination; (4) solely on the age, sex or marital status of an  
257 applicant or an insured, except that this subdivision shall not apply to  
258 an insurer in an insurer group if one or more other insurers in the  
259 group would not decline an application for essentially similar coverage  
260 based upon such reasons; (5) on the fact that the applicant or named  
261 insured previously obtained insurance coverage through a residual  
262 market; (6) on the fact that another insurer previously declined to  
263 insure the applicant or terminated an existing policy in which the  
264 applicant was the named insured; [or] (7) the first or second accident  
265 within the current experience period in relation to which the applicant  
266 or insured was not convicted of a moving traffic violation and was not  
267 at fault; or (8) solely on information contained in an insured's or  
268 applicant's credit history or credit rating or solely on an applicant's  
269 lack of credit history. For the purposes of subdivision (8) of this  
270 section, an insurer shall not be deemed to have declined, cancelled or  
271 nonrenewed a policy if coverage is available through an affiliated  
272 insurer.

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

276 (a) No notice of cancellation of a policy to which section 38a-342  
277 applies shall be effective unless sent, by registered or certified mail or  
278 by mail evidenced by a certificate of mailing, or delivered by the  
279 insurer to the named insured, and any third party designated pursuant  
280 to section 38a-323a, at least forty-five days before the effective date of  
281 cancellation, except that (1) where cancellation is for nonpayment of  
282 the first premium on a new policy, at least fifteen days' notice of  
283 cancellation accompanied by the reason for cancellation shall be given,  
284 and (2) where cancellation is for nonpayment of any other premium, at  
285 least ten days' notice of cancellation accompanied by the reason for  
286 cancellation shall be given. No notice of cancellation of a policy that  
287 has been in effect for less than sixty days shall be effective unless  
288 mailed or delivered by the insurer to the insured and any third party  
289 designee at least forty-five days before the effective date of  
290 cancellation, except that (A) at least fifteen days' notice shall be given  
291 where cancellation is for nonpayment of the first premium on a new  
292 policy, and (B) at least ten days' notice shall be given where  
293 cancellation is for nonpayment of any other premium or material  
294 misrepresentation. The notice of cancellation shall state or be  
295 accompanied by a statement specifying the reason for such  
296 cancellation. Any notice of cancellation for nonpayment of the first  
297 premium on a new policy may be retroactive to the effective date of  
298 such policy, provided at least fifteen days' notice has been given to the  
299 insured and any third party designee and payment of such premium  
300 has not been received during such notice period.

301 (b) Where a private passenger motor vehicle liability insurance  
302 company sends a notice of cancellation under subsection (a) of this  
303 section to the named insured of a private passenger motor vehicle  
304 liability insurance policy, or a third party designee, such company  
305 shall provide with such notice a warning, in a form approved by the  
306 Commissioner of Motor Vehicles and the Insurance Commissioner,

307 that informs the named insured that (1) the cancellation will be  
308 reported to the Commissioner of Motor Vehicles; (2) the named  
309 insured may be receiving one or more mail inquiries from the  
310 Commissioner of Motor Vehicles, concerning whether or not required  
311 insurance coverage is being maintained, and that the named insured  
312 must respond to these inquiries; (3) if the required insurance coverage  
313 lapses at any time, the Commissioner of Motor Vehicles may suspend  
314 the registration or registrations for the vehicle or vehicles under the  
315 policy and the number plates will be subject to confiscation and any  
316 person operating any such vehicle will be subject to legal penalties for  
317 operating a motor vehicle with a suspended registration; (4) the named  
318 insured will not be able to have the registration restored or obtain a  
319 new registration, or any other registration or renewal in the insured's  
320 name, except upon presentation to the Commissioner of Motor  
321 Vehicles of evidence of required security or coverage and the entering  
322 into of a consent agreement with the commissioner in accordance with  
323 the provisions of section 14-12g.

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

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

337 [(d)] (e) No insurance company that renews, amends or endorses in  
338 this state a private passenger motor vehicle liability insurance policy  
339 shall charge any fee or other charge exceeding one hundred dollars in

340 the aggregate to an insured who cancels such policy prior to the  
341 expiration of such policy.

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

344 (a) The Commissioner of Motor Vehicles shall compile and maintain  
345 a record of all registrations suspended in accordance with the  
346 provisions of sections 14-12c and 14-12g. The commissioner shall  
347 update the information contained in such record not less than once per  
348 week and shall make available to all law enforcement agencies in this  
349 state a list of all registration number plates for vehicles whose  
350 registration has been suspended. Such list shall contain the number  
351 plate numbers, letters or number and letter combinations and the  
352 address at which the vehicle was registered. The commissioner may  
353 make available the entire list or a portion thereof and may utilize one  
354 or more formats for presenting the information contained therein to  
355 facilitate its use.

356 (b) (1) If any police officer observes a motor vehicle being operated  
357 upon the public highway, and such motor vehicle is displaying  
358 registration number plates identified as suspended on the list made  
359 available by the commissioner, such police officer may (A) stop or  
360 detain such vehicle and its occupants, (B) issue to the operator a  
361 complaint for operating an unregistered motor vehicle, or expired  
362 registration if the vehicle is not being operated, in violation of section  
363 14-12, and (C) remove the registration number plates from the vehicle  
364 and return them to any branch office of the Department of Motor  
365 Vehicles. If any police officer, motor vehicle inspector or constable  
366 observes a motor vehicle parked in any parking area, as defined in  
367 section 14-212, and such motor vehicle is displaying registration  
368 number plates identified as suspended on the list made available by  
369 the commissioner, such police officer, motor vehicle inspector or  
370 constable is authorized to remove the registration number plates from  
371 the vehicle and to return them to any branch office of the Department  
372 of Motor Vehicles. If a number plate is identified as suspended on the

373 list provided by the commissioner and such identification is in error,  
374 the state shall indemnify any police officer, motor vehicle inspector or  
375 constable for any claim for damages made against that individual as a  
376 result of such individual's good faith reliance on the accuracy of the list  
377 provided by the commissioner regarding the confiscation of number  
378 plates.

379 (2) If any police officer observes a motor vehicle being operated  
380 upon the public highway or parked in any parking area, as defined in  
381 section 14-212, displaying registration number plates identified on the  
382 list made available by the commissioner as being suspended, such  
383 police officer may seize and impound the vehicle. If a police officer  
384 seizes and impounds a vehicle pursuant to this subdivision, such  
385 officer shall give notice to the commissioner in such form as the  
386 commissioner may require. The police officer shall give such notice not  
387 later than three days after seizing and impounding the vehicle.

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

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

398 (a) Whenever any damaged motor vehicle covered under an  
399 automobile insurance policy has been declared to be a constructive  
400 total loss by the insurer, the insurer shall, in calculating the value of  
401 such vehicle for purposes of determining the settlement amount to be  
402 paid to the claimant, use at least the average of the retail values given  
403 such vehicle by (1) the National Automobile Dealers Association used  
404 car guide or any other publicly available automobile industry source  
405 that has been approved for such use by the Insurance Commissioner,

406 and (2) one other automobile industry source [which] that has been  
407 approved for such use by [the Insurance Commissioner] said  
408 commissioner. For the purposes of this section, "constructive total loss"  
409 means the cost to repair or salvage damaged property, or the cost to  
410 both repair and salvage such property, equals or exceeds the total  
411 value of the property at the time of loss.

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

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

429 (2) The commissioner shall prepare a list of at least ten persons, who  
430 have not been employed by the department or an insurance company  
431 during the preceding twelve months, to serve as arbitrators in the  
432 settlement of such disputes. The arbitrators shall be members of any  
433 dispute resolution organization approved by the commissioner. One  
434 arbitrator shall be appointed to hear and decide each complaint.  
435 Appointment shall be based solely on the order of the list. If an  
436 arbitrator is unable to serve on a given day, or if either party objects to  
437 the arbitrator, then the next arbitrator on the list will be selected. The  
438 department shall schedule arbitration hearings as often, and in such

439 locations, as it deems necessary. Parties to the dispute shall be  
440 provided written notice of the hearing, at least ten days prior to the  
441 hearing date. The commissioner may issue subpoenas on behalf of the  
442 arbitrator to compel the attendance of witnesses and the production of  
443 documents, papers and records relevant to the dispute. Decisions shall  
444 be made on the basis of the evidence presented at the arbitration  
445 hearing. Where the arbitrator believes that technical expertise is  
446 necessary to decide a case, [he] such arbitrator may consult with an  
447 independent expert recommended by the commissioner. The arbitrator  
448 and any independent technical expert shall be paid by the department  
449 on a per dispute basis as established by the commissioner. The  
450 arbitrator, as expeditiously as possible, but not later than fifteen days  
451 after the arbitration hearing, shall render a written decision based on  
452 the information gathered and disclose the findings and the reasons to  
453 the parties involved. The arbitrator shall award filing fees to the  
454 prevailing party. If the decision favors the consumer the decision shall  
455 provide specific and appropriate remedies including interest at the rate  
456 of [ten] fifteen per cent per year on the arbitration award concerning  
457 the disputed amount of the claim, retroactive to the date of payment  
458 for the undisputed amount of the claim. The decision may include  
459 costs for loss of use and storage of the motor vehicle and shall specify a  
460 date for performance and completion of all awarded remedies.  
461 Notwithstanding any provision of the general statutes or any  
462 regulation to the contrary, the Insurance Department shall not amend,  
463 reverse, rescind, or revoke any decision or action of any arbitrator. The  
464 department shall contact the consumer within ten working days after  
465 the date for performance, to determine whether performance has  
466 occurred. Either party may make application to the superior court for  
467 the judicial district in which one of the parties resides or, when the  
468 court is not in session, any judge thereof for an order confirming,  
469 vacating, modifying or correcting any award, in accordance with the  
470 provisions of sections 52-417, 52-418, 52-419 and 52-420. If it is  
471 determined by the court that either party's position after review has  
472 been improved by at least ten per cent over that party's position after  
473 arbitration, the court, in its discretion, may grant to that party its costs

474 and reasonable attorney's fees. No evidence, testimony, findings, or  
 475 decision from the department arbitration procedure shall be  
 476 admissible in any civil proceeding, except judicial review of the  
 477 arbitrator's decision as contemplated by this subsection.

This act shall take effect as follows and shall amend the following sections:		
Section 1	January 1, 2011	38a-686
Sec. 2	July 1, 2011	38a-686(b)
Sec. 3	January 1, 2011	New section
Sec. 4	January 1, 2011	38a-358
Sec. 5	October 1, 2010	38a-343
Sec. 6	October 1, 2010	14-12h
Sec. 7	January 1, 2011	38a-353
Sec. 8	January 1, 2011	38a-9(b)(2)

**Statement of Legislative Commissioners:**

In the prefatory language of sections 5 and 8, "2010 supplement to the" was inserted before "general statutes" for accuracy, and in section 7(b), "including" after "The written notice shall" was changed to "include" for proper grammar.

**INS**      *Joint Favorable Subst.-LCO*

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The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

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**OFA Fiscal Note**

**State Impact:** None

**Municipal Impact:** None

**Explanation**

The bill requires the Department of Insurance (DOI) to adopt regulations related to territorial rating classifications. There is no fiscal impact to DOI to adopt regulations.

**The Out Years**

**State Impact:** None

**Municipal Impact:** None

*Sources: 2/09/10 Public Hearing Testimony*

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**OLR Bill Analysis****sHB 5014*****AN ACT CONCERNING AUTOMOBILE AND PERSONAL RISK INSURANCE.*****SUMMARY:**

This bill makes numerous changes in laws relating to personal risk insurance policies (e.g., homeowners and private passenger nonfleet automobile (auto)).

The bill:

1. requires an auto insurer to allocate certain expenses on a “flat dollar basis” when determining policy rates;
2. requires auto insurance rating plans that use territorial classifications to assign a weight of 75% to individual loss-costs and 25% to state wide average loss-costs, as currently required by Insurance Department guidelines;
3. requires the insurance commissioner to adopt regulations regarding underwriting and rating auto insurance policies;
4. codifies and amends the Insurance Department’s current guidelines on how insurers can use a person’s credit history when underwriting or rating a personal risk insurance policy;
5. requires an insurer that cancels an auto insurance policy in accordance with law to give written cancellation notice to any lienholder listed in the insurer’s records as having a legal interest in the motor vehicle (§5);
6. requires a person whose vehicle has been impounded for not having the required registration to present a valid registration

and current auto insurance identification card to regain possession of the vehicle (§6);

7. allows an auto insurer to use any publicly available auto industry source approved by the commissioner to determine a vehicle's retail value;
8. requires an auto insurer to give a claimant details on how it calculated a totaled vehicle's loss value, including how to dispute the settlement through the Insurance Department; and
9. increases, from 10% to 15% per year, the interest an arbitrator the Insurance Department uses to resolve a settlement dispute between an auto insurer and claimant must award when the decision favors the consumer (§8).

EFFECTIVE DATE: January 1, 2011, except for the financial history measurement program requirements, which are effective July 1, 2011, and provisions regarding impounded vehicles and notices to lienholders of auto policy cancellations, which are effective October 1, 2010.

## **§ 1 — RATING PLANS**

### ***Allocating Expenses on a Flat Dollar Basis***

The bill requires an auto insurer to allocate certain expenses on a "flat dollar basis" to a policy's base rate. It requires an insurer to add a flat dollar amount to the base rate for (1) at least 90% of general expenses, including administration and overhead costs; (2) at least 90% of acquisition costs for marketing and agent field offices, which may be allocated over the expected life of the insurer's policies; and (3) miscellaneous taxes, licenses, and fees. It requires adding the flat dollar amount after the insurer has applied any classification factors to the base rate.

It prohibits insurers from allocating as flat dollar amounts to the base rate (1) producer commissions, (2) premium taxes, (3) underwriting profits, and (4) contingencies.

By law, an insurer may group risks by classifications and modify base rates for a person's individual characteristics as described in the rating plan it files with the commissioner.

### ***Territorial Rating***

The term "territorial rating" refers to an insurer's practice of factoring in, when setting auto insurance rates, the principal place where a driver garages his or her vehicle. The Insurance Department, through administrative guidelines, currently requires a 75%/25% weighting of territory to statewide experience. This means that the base rate for an auto insurance policy must give 75% weight to the territory's loss-cost data and 25% weight to the statewide average loss-cost data.

The bill codifies these guidelines by requiring that auto insurance rating plans using territorial classifications assign a weight of 75% to individual territorial loss-cost indication and 25% to the state-wide average loss-cost indication.

### ***Regulations***

Current law permits the commissioner to adopt regulations concerning rating plans and the underwriting, classification, or rating of risks for auto insurance in Connecticut. The bill instead requires him, by January 1, 2012, to adopt by regulation the Insurance Department's "most current guidelines and bulletins" regarding the underwriting, classification, or rating of auto insurance risks in Connecticut, including those regarding territorial rating.

### **§§ 2-4 — FINANCIAL HISTORY MEASUREMENT PROGRAM AND USE OF CREDIT HISTORY**

The bill permits an insurer to use a "financial history measurement program" only when underwriting or developing rates for new personal risk insurance policies. It prohibits an insurer from using credit history when renewing a policy, unless (1) the policyholder asks or (2) using the program reduces the insured's premium under the insurer's filed rates and rules.

The bill defines “financial history measurement program” as a program that uses an insurance applicant’s credit history to measure his or her risk of loss (i.e., filing claims). It defines “credit history” as credit-related information (1) derived from or found in a credit report or credit-scoring program or (2) provided in an application for personal risk insurance.

### ***Program Filing Requirements***

The bill requires an insurer using a financial history measurement program to underwrite or rate policies to file the program with the insurance commissioner. The filing must:

1. include the program’s description, rules, and procedures;
2. identify the characteristics the program uses from which the insurer derives a measurement; and
3. explain the impact of credit information and public records on insurance rates over time.

The bill prohibits the program from (1) unfairly discriminating among applicants or (2) producing rates that are excessive for the risk assumed. This filing is considered a trade secret and thus not subject to disclosure under the Freedom of Information Act.

The bill requires an insurer using a financial history measurement program to also give the commissioner documentation demonstrating (1) the correlation between the program and the expected risk of loss and (2) how the program affects consumers (a) in urban versus nonurban territories and (b) of different ages. The bill authorizes the commissioner to request that an insurer provide a financial history measurement for a set of test examples reflecting various characteristics.

### ***Disclosure to Insurance Applicant***

When anyone applies for a policy, the bill requires an insurer to disclose to the person that the company may use his or her credit

history in the underwriting or rating process. The insurer must also disclose, at the same time, that the applicant may request, in writing, that the insurer consider an extraordinary life circumstance during this process or during a review of a rate quote requested by such applicant, if the applicant's credit history has been harmed by such a circumstance that occurred within three years before the application. The insurer must make these disclosures, in writing, by e-mail or telephone, or orally.

The insurer also must give each policy purchaser a written disclosure, by the date the policy is issued, that:

1. lists the insurer's name, address, telephone number, and toll-free telephone number, if any;
2. includes a detailed statement that explains how the insurer will use credit information to underwrite or rate the policy; and
3. summarizes consumer protections regarding the use of credit, in a form determined by the commissioner.

The disclosure must be printed in reasonably conspicuous type and be provided electronically, by mail, or by hand delivery.

### ***Prohibited Practices***

The bill prohibits insurers from using the following characteristics of an applicant or an insured in its financial history measurement program:

1. the number of credit inquiries in a credit report or credit history;
2. the use of a particular type of credit, debit, or charge card;
3. the total available line of credit;
4. any disputed credit information being reviewed by a credit reporting company, so long as the information is identified as being disputed in the report or history;

5. debt the applicant incurred from financing hospital or medical expenses; and
6. the lack of credit history, unless the insurer treats the applicant or insured as if he or she had neutral credit information as defined by the insurer.

A financial history measurement program must 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.

***Extraordinary Life Circumstances.*** The bill requires an insurer to consider during its underwriting or rating process or during a review requested by an applicant, an applicant's extraordinary life circumstance. The insurer must do this on an applicant's written request if a circumstance occurred within three years before the application date. If the insurer determines that the applicant's credit history has been adversely impacted by an extraordinary life circumstance, it must grant a reasonable exception to its rates, rating classifications, or underwriting rules for the applicant.

The bill defines an "extraordinary life circumstance" as:

1. a catastrophic illness or injury;
2. a divorce;
3. the death of a spouse, child, or parent;
4. the involuntary loss of employment for more than three consecutive months;
5. identity theft;
6. total or other loss that makes a home uninhabitable;
7. other circumstances the commissioner identifies in regulations adopted in accordance with law; or

8. any other circumstance the insurer chooses to recognize.

The bill permits an insurer to require the applicant to provide reasonable, independently verifiable documentation of the extraordinary circumstance and its effect on the applicant's credit report or credit history. It requires an insurer to keep confidential any documentation or information it obtains.

If the insurer grants an exception, it must (1) consider only credit information not affected by the extraordinary circumstance or (2) treat the applicant as if he or she had neutral or better than neutral credit information, as defined by the insurer.

An insurer may not be deemed to be out of compliance with any provision of the statutes or regulations concerning underwriting, rating, or rate filing solely based on granting an exception.

#### ***Adverse Actions Due to Credit History***

The bill requires an insurer that takes an adverse action due in part to an insured's or applicant's credit report to disclose this to the person and tell him or her about (1) the right to obtain a free credit report, and how to do so; (2) the types of extraordinary life circumstances described above; and (3) how an applicant may inform the insurer of an extraordinary life circumstance and submit any required documentation in order to seek an exception.

Under the bill, an "adverse action" includes:

1. denying coverage or offering restricted coverage,
2. offering a higher rate,
3. assigning a person to a higher rate tier or higher-priced company within an insurer group, or
4. any other action that adversely impacts an insured or applicant due to the insurer's financial history measurement program.

#### ***Cannot Deny Insurance Solely Due to Credit History***

The bill prohibits an insurer from denying, cancelling, or not renewing a personal risk insurance policy based solely on a person's (1) credit history or rating or (2) lack of credit history. The bill specifies that it does not deem an insurer to have declined, cancelled, or not renewed a policy if coverage is available to the person through an affiliated insurer.

### **Report to Commissioner**

The bill allows the commissioner to require an insurer to report to him, once the insurer's financial history measurement program has been in effect for two years. The report must include information demonstrating that the program results in rates that are (1) supported by the data and (2) not unfairly discriminatory. It must also include an analysis of consumer complaints the insurer received because it used a financial history measurement program. The analysis must identify the basis for the complaints and any action the insurer took as a result.

### **§ 7 — SETTLEMENT AMOUNT ON TOTALED VEHICLE**

Currently, when an insurer declares a covered, damaged vehicle a "constructive total loss," the insurer must calculate the vehicle's value for determining the settlement amount by using at least the average of the retail values given by (1) the National Automobile Dealers Association (NADA) used car guide and (2) one other automobile industry source that the insurance commissioner has approved for such use. The bill allows the insurer to use any other publicly available automobile industry source the commissioner approves for such use rather than the NADA guide as one of the two sources for determining the vehicle's average retail value.

The bill also requires the insurer to give the claimant, by the time it pays the settlement amount:

1. a detailed copy of its calculation of the 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 the settlement by contacting the Insurance Department.

The insurer's written notice must include in its final paragraph in at least 12-point type the following statement: "If you do not agree with this valuation, you may contact the Consumer Affairs Division within the Insurance Department." The notice must give the division's address and toll-free phone number and the department's Internet address.

By law, a vehicle is a "constructive total loss" if the cost to repair or salvage it, or both, equals or exceeds the vehicle's total value at the time of loss.

## **BACKGROUND**

### ***Personal Insurance Rating Plans***

The law (1) prohibits insurance rates from being excessive, inadequate, or unfairly discriminatory; (2) requires an insurer to file with the commissioner its underwriting rules, rates, supplementary rate information, and any supporting information used for the rates; and (3) requires certain premium discounts under certain conditions (e.g., completing driver training, senior citizen accident prevention, and motorcycle training courses). The law also permits insurers to group risks by classification, measuring differences in risks that can be demonstrated to have a probable effect upon losses or expenses.

## **COMMITTEE ACTION**

Insurance and Real Estate Committee

Joint Favorable

Yea 13    Nay 4    (02/11/2010)