



General Assembly

**Substitute Bill No. 6920**

January Session, 2015



**AN ACT CONCERNING REVISIONS TO THE PROPERTY AND CASUALTY INSURANCE STATUTES.**

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

1 Section 1. Section 38a-663 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2015*):

3 The following words and phrases, as used in sections 38a-663 to  
4 38a-696, inclusive, shall have the following meanings unless the  
5 context otherwise requires:

6 [(a)] (1) "Rating organization" means an individual, partnership,  
7 corporation, unincorporated association, other than an admitted  
8 insurer, whether located within or outside this state, who or [which]  
9 that has as a primary object or purpose the making of rates, rating  
10 plans or rating systems. Two or more admitted insurers [which] that  
11 act in concert for the purpose of making rates, rating plans or rating  
12 systems, and [which] that do not operate within the specific  
13 authorizations contained in sections 38a-667, 38a-669, 38a-670 and 38a-  
14 672 shall be deemed to be a rating organization. No single insurer shall  
15 be deemed to be a rating organization.

16 [(b)] (2) "Advisory organization" means every group, association or  
17 other organization of insurers, whether located within or outside this  
18 state, [which] that assists insurers or rating organizations in rate-

19 making by the collection and furnishing of loss or expense statistics, or  
20 by the submission of recommendations, provided the term shall not  
21 include actuarial, legal or other consultants.

22 [(c)] (3) "Member" means an insurer [who] that participates in or is  
23 entitled to participate in the management of a rating, advisory or other  
24 organization.

25 [(d)] (4) "Subscriber" means an insurer [which] that is furnished at  
26 its request [(1)] (A) with rates and rating manuals by a rating  
27 organization of which it is not a member, or [(2)] (B) with advisory  
28 services by an advisory organization of which it is not a member.

29 [(e)] (5) "Wilful" and "wilfully" in relation to an act or omission  
30 [which] that constitutes a violation of sections 38a-663 to 38a-681,  
31 inclusive, means with actual knowledge or belief that such act or  
32 omission constitutes such violation and with specific intent to commit  
33 such violation.

34 [(f)] (6) "Market" means the interaction between buyers and sellers  
35 consisting of a product market component and a geographic market  
36 component, as determined by the commissioner in accordance with the  
37 provisions of subsection (b) of section 38a-687.

38 [(g)] (7) "Noncompetitive market" means a residual market or a  
39 market for which there is a ruling in effect pursuant to section 38a-687,  
40 that a reasonable degree of competition does not exist.

41 [(h)] (8) "Competitive market" means a market [which] that has not  
42 been found to be noncompetitive pursuant to section 38a-687.

43 [(i)] (9) "Personal risk insurance" means homeowners, tenants,  
44 private passenger nonfleet automobile, mobile manufactured home  
45 and other property and casualty insurance for personal, family or  
46 household needs except workers' compensation insurance.

47 (10) "Homeowners insurance" means property and casualty

48 insurance for owner-occupied buildings with four or fewer dwelling  
49 units.

50 [(j)] (11) "Commercial risk insurance" means insurance within the  
51 scope of sections 38a-663 to 38a-696, inclusive, [which] that is not  
52 personal risk insurance.

53 [(k)] (12) "Supplementary rate information" includes any manual or  
54 plan of rates, classification, rating schedule, minimum premium, rating  
55 rule, and any other similar information needed to determine the  
56 applicable rate in effect or to be in effect.

57 [(l)] (13) "Supporting information" means [(1)] (A) the experience  
58 and judgment of the filer and the experience or data of other insurers  
59 or organizations relied upon by the filer, [(2)] (B) the interpretation of  
60 any statistical data relied upon by the filer, and [(3)] (C) descriptions of  
61 methods used in making the rates, and other similar information  
62 required to be filed by the commissioner.

63 [(m)] (14) "Residual market" means an arrangement for the  
64 provision of insurance in accordance with the provisions of section  
65 38a-328, 38a-329 or 38a-670.

66 Sec. 2. Section 38a-686 of the general statutes is repealed and the  
67 following is substituted in lieu thereof (*Effective October 1, 2015*):

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

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

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

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

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

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

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

107 (B) (i) With respect to private passenger nonfleet automobile

108 insurance, an insurer shall not allocate as flat dollar amounts to base  
109 rates: (I) Producer commissions; (II) premium taxes; (III) underwriting  
110 profits; or (IV) contingencies.

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

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

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

141 fault, or (G) any motor vehicle infraction. Subparagraph (G) of this  
142 subdivision shall not be applicable to any plan established pursuant to  
143 section 38a-329. Classification rates may be modified to produce rates  
144 for individual risks in accordance with rating plans that provide for  
145 recognition of variations in hazards or expense provisions or both.  
146 Such rating plans may include application of the judgment of the  
147 insurer and may measure any differences among risks that can be  
148 demonstrated to have a probable effect upon losses or expenses.

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

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

157 (6) With respect to personal risk insurance, an insurer shall not use  
158 an applicant's or insured's credit history as a factor in underwriting or  
159 rating except in accordance with this subdivision. For the purposes of  
160 this section, "credit history" means any credit-related information  
161 derived from or found in a credit report or credit scoring program or  
162 provided in an application for personal risk insurance, and "financial  
163 history measurement program" means a program that uses an  
164 applicant's credit history to measure such applicant's risk of loss.

165 (A) An insurer shall file with the commissioner any financial history  
166 measurement program it uses to underwrite or rate risks for personal  
167 risk insurance. Such filing shall (i) include a description of the  
168 program, (ii) identify the characteristics used in such program from  
169 which a measurement is derived, (iii) include the rules and procedures  
170 of such program, and (iv) include an explanation of the impact of  
171 credit information and items of public record on insurance rates over  
172 time. Such program shall not unfairly discriminate among applicants

173 or produce rates that are excessive for the risk assumed. Any filing  
174 made pursuant to this subparagraph shall be considered a trade secret  
175 for the purposes of section 1-210.

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

184 (ii) An insurer that uses a financial history measurement program  
185 shall disclose to each applicant for personal risk insurance, in writing,  
186 by telephone, by electronic mail or orally, at the time of application  
187 that the applicant's credit history may be used in the underwriting or  
188 rating of such applicant's policy, and that the applicant has the right to  
189 request, in writing, that the insurer consider, during its underwriting  
190 or rating process or during a review requested by such applicant of a  
191 rate quote, an extraordinary life circumstance, as set forth in  
192 subparagraph (D) of this subdivision, if such applicant's credit history  
193 has been adversely impacted by such extraordinary life circumstance  
194 and such extraordinary life circumstance occurred within three years  
195 before the date of the application. In addition, such insurer shall  
196 provide to each purchaser of such policy, not later than the date of  
197 issuance of such policy, a written disclosure that includes: (I) The  
198 name, address, telephone number and toll-free telephone number, if  
199 applicable, of the insurer; (II) detailed information about how the  
200 insurer uses credit information to underwrite or rate such policies; and  
201 (III) a summary of consumer protections regarding the use of credit, in  
202 a form determined by the commissioner. Such written disclosure shall  
203 be printed in reasonably conspicuous type and be provided by the  
204 insurer electronically, by mail or by hand delivery.

205 (C) (i) An insurer may use a financial history measurement program

206 to underwrite or rate risks only (I) for new personal risk insurance  
207 policies, or (II) upon renewal, either at the request of an insured or if  
208 such use reduces the premium for the insured in accordance with the  
209 insurer's filed rates and rules.

210 (ii) An insurer shall not use the following characteristics in a  
211 financial history measurement program: (I) The number of credit  
212 inquiries in an applicant's or insured's credit report or credit history;  
213 (II) the applicant's or insured's use of a particular type of credit card,  
214 debit card or charge card; (III) the applicant's or insured's total  
215 available line of credit; (IV) any disputed credit information while such  
216 dispute is under review by a credit reporting company, provided such  
217 information is identified in an applicant's or insured's credit report or  
218 credit history as being in dispute; (V) collection accounts identified  
219 with a medical industry code in the applicant's or insured's credit  
220 report or credit history; and (VI) the applicant's or insured's lack of  
221 credit history, unless the insurer treats the applicant or insured as if  
222 such applicant or insured had neutral credit information, as defined by  
223 the insurer.

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

227 (D) (i) Upon written request by an applicant, an insurer shall  
228 consider, during its underwriting or rating process or during a review  
229 requested by such applicant of a rate quote, an extraordinary life  
230 circumstance of such applicant if such extraordinary life circumstance  
231 occurred within three years before the date of application. If such  
232 insurer determines that such applicant's credit history has been  
233 adversely impacted by such extraordinary life circumstance, such  
234 insurer shall grant a reasonable exception to such insurer's rates, rating  
235 classifications or underwriting rules for such applicant. As used in this  
236 subparagraph, "extraordinary life circumstance" means (I) a  
237 catastrophic illness or injury, (II) divorce, (III) the death of a spouse,  
238 child or parent, (IV) the involuntary loss of employment for more than

239 three consecutive months, (V) identity theft, (VI) total or other loss that  
240 makes a home uninhabitable, (VII) other circumstances as may be  
241 adopted in regulations by the commissioner, in accordance with  
242 chapter 54, or (VIII) any other circumstance an insurer may choose to  
243 recognize.

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

249 (iii) If the insurer grants an exception pursuant to subparagraph  
250 (D)(i) of this subdivision, the insurer shall (I) consider only credit  
251 information that is not affected by the extraordinary life circumstance,  
252 or (II) treat the applicant as if such applicant had neutral or better than  
253 neutral credit information, as defined by the insurer.

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

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

269 (ii) For the purposes of this subdivision, an "adverse action" means

270 (I) the denial of coverage to an applicant or insured or the offering of  
 271 restricted coverage, (II) the offering of a higher rate, (III) the  
 272 assignment of an applicant or insured to a higher rate tier or to a  
 273 higher-priced company within an insurer group, or (IV) any other  
 274 action that adversely impacts an applicant or insured due to the  
 275 financial history measurement program.

276 (F) After an insurer's financial history measurement program has  
 277 been in effect for two years, the commissioner may require such  
 278 insurer to submit a report to the commissioner on the use of such  
 279 program in the state. Such report shall include information that  
 280 demonstrates that such program results in rates that are supported by  
 281 the data and that are not unfairly discriminatory, and an analysis of  
 282 consumer complaints submitted in writing or by electronic mail to the  
 283 insurer resulting from such insurer's use of a financial history  
 284 measurement program, such that is sufficient to identify the basis for  
 285 the complaints and any subsequent insurer action.

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

289 (d) No rating plan for homeowners insurance shall use the  
 290 property's proximity to another occupied residential dwelling as a  
 291 factor.

292 [(d)] (e) Not later than January 1, 2012, the commissioner shall adopt  
 293 regulations, in accordance with the provisions of chapter 54, to  
 294 implement the provisions of this section and the most current  
 295 guidelines and bulletins issued by the Insurance Department and in  
 296 effect that pertain to territorial classifications.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2015	38a-663
Sec. 2	October 1, 2015	38a-686

**INS**      *Joint Favorable Subst.*