



General Assembly

January Session, 2015

**Committee Bill No. 238**

LCO No. 3555



Referred to Committee on INSURANCE AND REAL ESTATE

Introduced by:  
(INS)

**AN ACT CONCERNING PRIVATE PASSENGER NONFLEET  
AUTOMOBILE INSURANCE FOR INSUREDS WHO USE MONITORING  
DEVICES OFFERED BY INSURERS.**

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 Section 38a-686 of the general statutes is repealed and the  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 October 1, 2015*):

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] Except as otherwise provided in subparagraph (B) of  
58 subdivision (4) of this subsection, risks may be grouped by  
59 classifications for the establishment of rates and minimum premiums,  
60 provided that with respect to private passenger nonfleet automobile  
61 insurance, any change in territorial classifications shall be subject to  
62 prior approval by the Insurance Commissioner, and provided no  
63 surcharge on any motor vehicle liability or physical damage insurance  
64 premium shall be assigned for (A) any accident involving only  
65 property damage of one thousand dollars or less, (B) the first accident  
66 involving only property damage of more than one thousand dollars  
67 which would otherwise result in a surcharge to the policy of the  
68 insured, within the experience period set forth in the insurer's safe  
69 driver classification plan, (C) any violation of section 14-219 unless  
70 such violation results in the suspension or revocation of the operator's  
71 license under section 14-111b, (D) less than three violations of section  
72 14-218a within any one-year period, (E) any accident caused by an  
73 operator other than the named insured, a relative residing in the  
74 named insured's household, or a person who customarily operates the  
75 insured vehicle, (F) the first or second accident within the current  
76 experience period in relation to which the insured was not convicted of  
77 a moving traffic violation and was not at fault, or (G) any motor  
78 vehicle infraction. Subparagraph (G) of this subdivision shall not be

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

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

90 (B) With respect to private passenger nonfleet automobile insurance,  
91 if an insurer offers a monitoring device that monitors an insured's  
92 driving information and an insured uses such device, the insurer shall  
93 issue or renew a policy using only the insured's driving information as  
94 an underwriting or rating factor.

95 (5) [Each] Except as otherwise provided in subparagraph (B) of  
96 subdivision (4) of this subsection, each rating plan shall establish  
97 appropriate eligibility criteria for determining significant risks that are  
98 to qualify under the plan. Rating plans that comply with the provisions  
99 of this subdivision shall be deemed to produce rates that are not  
100 unfairly discriminatory.

101 (6) With respect to personal risk insurance other than a private  
102 passenger nonfleet automobile insurance policy specified in  
103 subparagraph (B) of subdivision (4) of this subsection, an insurer shall  
104 not use an applicant's or insured's credit history as a factor in  
105 underwriting or rating except in accordance with this subdivision. For  
106 the purposes of this section, "credit history" means any credit-related  
107 information derived from or found in a credit report or credit scoring  
108 program or provided in an application for personal risk insurance, and  
109 "financial history measurement program" means a program that uses  
110 an applicant's credit history to measure such applicant's risk of loss.

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

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

130 (ii) An insurer that uses a financial history measurement program  
131 shall disclose to each applicant for personal risk insurance, in writing,  
132 by telephone, by electronic mail or orally, at the time of application  
133 that the applicant's credit history may be used in the underwriting or  
134 rating of such applicant's policy, and that the applicant has the right to  
135 request, in writing, that the insurer consider, during its underwriting  
136 or rating process or during a review requested by such applicant of a  
137 rate quote, an extraordinary life circumstance, as set forth in  
138 subparagraph (D) of this subdivision, if such applicant's credit history  
139 has been adversely impacted by such extraordinary life circumstance  
140 and such extraordinary life circumstance occurred within three years  
141 before the date of the application. In addition, such insurer shall  
142 provide to each purchaser of such policy, not later than the date of  
143 issuance of such policy, a written disclosure that includes: (I) The

144 name, address, telephone number and toll-free telephone number, if  
145 applicable, of the insurer; (II) detailed information about how the  
146 insurer uses credit information to underwrite or rate such policies; and  
147 (III) a summary of consumer protections regarding the use of credit, in  
148 a form determined by the commissioner. Such written disclosure shall  
149 be printed in reasonably conspicuous type and be provided by the  
150 insurer electronically, by mail or by hand delivery.

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

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

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

173 (D) (i) Upon written request by an applicant, an insurer shall  
174 consider, during its underwriting or rating process or during a review  
175 requested by such applicant of a rate quote, an extraordinary life

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

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

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

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

204 (E) (i) If an insurer takes an adverse action that is due at least in part  
205 to the information contained in an applicant's or insured's credit  
206 report, such insurer shall disclose to such applicant or insured: (I) That  
207 such adverse action was based on the credit report of such insured or

208 applicant; (II) that such applicant or insured is entitled to a free copy of  
209 such credit report and where such report can be obtained; (III) the  
210 types of extraordinary life circumstances set forth in subparagraph (D)  
211 of this subdivision; and (IV) the procedures for an applicant to inform  
212 the insurer of an extraordinary life circumstance and to submit any  
213 required documentation pursuant to subparagraph (D) of this  
214 subdivision.

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

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

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

235 (d) Not later than January 1, 2012, the commissioner shall adopt  
236 regulations, in accordance with the provisions of chapter 54, to  
237 implement the provisions of this section and the most current  
238 guidelines and bulletins issued by the Insurance Department and in  
239 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-686

**Statement of Purpose:**

To limit, if an insurer offers and an insured uses a monitoring device that captures the insured's driving information, the underwriting or rating of such insured's private passenger nonfleet automobile insurance policy to such insured's driving information.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*

Co-Sponsors: SEN. FONFARA, 1st Dist.

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