

Regulatory Impact Statement For The Proposed Second Amendment To 11 NYCRR 154 (Insurance Regulation 150).

1. Statutory authority: Financial Services Law Sections 202 and 302 and Insurance Law Sections 301, 2301, 2303, and 2349, and Insurance Law Article 23.

Financial Services Law Section 202 establishes the office of the Superintendent of Financial Services (“Superintendent”). Financial Services Law Section 302 and Insurance Law Section 301, in material part, authorize the Superintendent to effectuate any power accorded to the Superintendent by the Financial Services Law, Insurance Law, or any other law, and to prescribe regulations interpreting the Insurance Law.

Insurance Law Article 23 governs property/casualty insurance rates generally, including rating classifications and rules. Insurance Law Section 2301 states that the purpose of Article 23, in relevant part, is to promote the public welfare by regulating insurance rates to the end that they not be excessive, inadequate, or unfairly discriminatory. Insurance Law Section 2303 provides, in relevant part, that rates may not be excessive, inadequate, unfairly discriminatory, destructive of competition, or detrimental to the solvency of insurers.

Insurance Law Section 2349 permits an insurer to make available a multi-tier program, with more than one rate level in the same company, for private passenger motor vehicle insurance in the voluntary market under certain conditions, including that the program is based upon mutually exclusive underwriting rules per tier, to the extent feasible. For the purposes of Section 2349 and Insurance Regulation 150, “private passenger motor vehicle insurance policy” means a covered policy of automobile insurance as defined in Insurance Law Section 3425 providing liability or physical damage insurance, or both.

2. Legislative objectives: As stated in Insurance Law Section 2301, the purpose of Article 23, in relevant part, is to promote the public welfare by regulating insurance rates to the end that they not be excessive, inadequate, or unfairly discriminatory. Accordingly, Insurance Law Section 2303 requires that rates not be excessive, inadequate, unfairly discriminatory, destructive of competition, or detrimental to the solvency

of insurers. In applying this rule, accepted actuarial standards and New York law require that a reasonable relationship must exist between the characteristics of a class and the hazard insured against, and that the insurer bear the burden of establishing whether its rates meet these requirements.

In addition, Insurance Law Section 2349 permits an insurer to make available a multi-tier program, with more than one rate level in the same company, for private passenger motor vehicle insurance policies in the voluntary market under certain conditions, including that the program is based upon mutually exclusive underwriting rules per tier, to the extent feasible. As per Insurance Regulation 150, the insurer's multi-tier program must accord with the requirements of Article 23. Insurance Regulation 150 was promulgated in 1995 to implement the legislative purposes of Section 2349.

This rule, amending Insurance Regulation 150, addresses specific concerns that have recently come to the attention of the Department of Financial Services ("Department") regarding the use of occupational status or educational level attained in private passenger motor vehicle insurance in the voluntary market in a way that does not appear to satisfy the requirements of Article 23. Accordingly, this rule, as more fully discussed in Needs and Benefits, makes clear that an insurer may not use occupational status or educational level attained as a factor in either initial tier placement or tier movement unless the insurer demonstrates, to the Superintendent's satisfaction, that the use of occupational status or educational level attained in initial tier placement or tier movement does not result in a rate that violates Insurance Law Article 23. Thus, this rule accords with the public policy objectives that the Legislature sought to advance in Insurance Law Sections 2301, 2303, and 2349.

3. Needs and benefits: Insurance Law Section 2303 requires that rates not be excessive, inadequate, unfairly discriminatory, destructive of competition, or detrimental to the solvency of insurers. In addition, Insurance Law Section 2349 permits an insurer to make available a multi-tier program, with more than one rate level in the same company, for private passenger motor vehicle insurance in the voluntary market under certain

conditions, including that the program is based upon mutually exclusive underwriting rules per tier, to the extent feasible.

Pursuant to Insurance Law Section 308, the Superintendent initiated an investigation of the use of an insured's education level attained or occupational status within the voluntary market by certain private passenger motor vehicle insurers in their underwriting rules governing initial tier placement. During this investigation, the Superintendent learned that some, but not all, insurers in the state use an individual's education level attained or occupational status in establishing initial tier placement. The insurers' consideration of these factors has resulted in cases where classes of insureds have been placed in less favorably rated tiers, which may lead to higher premiums, without adequate substantiation that an individual's level of education attained or occupational status relates to his or her driving ability or habits such that the insurer would suffer a greater risk of loss. The insurers failed to provide sufficient support for the existence of the necessary relationship for the use of occupational status or any convincing evidence to support the necessary relationship for the use of an insured's level of education attained, whether alone or in combination with occupational status. As a result, the insurers failed to establish that their use of education and occupation in establishing initial tier placement was not unfairly discriminatory.

The amended rule makes clear that an insurer may not use occupational status or educational level attained as a factor in either initial tier placement or tier movement unless the insurer demonstrates, to the Superintendent's satisfaction, that the use of occupational status or educational level attained in initial tier placement or tier movement does not result in a rate that violates Insurance Law Article 23.

While an insurer generally does not file initial tier placement rules with the Department under the regulation currently, the rule also prohibits an insurer from using occupational status or education level attained as a factor in initial tier placement unless the insurer files with the Superintendent its underwriting rules governing tier placement and the Superintendent approves the rules in accordance with Insurance Law Article

23 as part of the insurer's multi-tier program. In addition, the rule requires an insurer that, as of the effective date of this rule, had utilized education level attained or occupational status in its initial tier placement, to amend its multi-tier rating program and tier movement rules within 90 days after the effective date of the rule to comply with the rule for new policies. It further requires every such insurer to provide a written notice acceptable to the Superintendent, at least annually, to the first-named insured that conspicuously explains how an insured may notify the insurer or its agent of any update in the insured's educational level attained or occupational status that would result in a reduction of premium.

4. Costs: This rule will impose compliance costs on an insurer that: (a) seeks to utilize education level attained or occupational status in its initial tier placement because it now must file with the Superintendent its underwriting rules regarding initial tier placement; or (b) had utilized education level attained or occupational status in its initial tier placement because it now must amend its multi-tier rating program and tier movement rules within 90 days after the rule's effective date. In addition, an insurer that uses education level attained or occupational status as a factor in its multi-tier rating program must provide a written notice acceptable to the Superintendent, at least annually, to the first-named insured that conspicuously explains how an insured may notify the insurer or its agent of any update in the insured's educational level attained or occupational status that would result in a reduction of premium.

The costs are difficult to estimate because of several factors, such as the number of tier placement and movement rules and the number of first-named insureds to whom the insurer must send an annual written notice. The amount or expense incurred by each insurer will vary dependent upon whether the insurer utilizes such factors in its multi-tier rating program and by the size of the insurer.

The Department also may incur costs for the implementation and continuation of this rule, because the Department will need to review and approve the underwriting rules regarding initial tier placement and the

written notice that insurers must send to first-named insureds annually. However, any additional costs incurred should be minimal and the Department should be able to absorb the costs in its ordinary budget.

This rule does not impose compliance costs on any local government.

5. Local government mandates: This rule does not impose any program, service, duty, or responsibility upon a county, city, town, village, school district, fire district, or other special district.

6. Paperwork: Insurers that intend to use, or have used, education level attained or occupational status will incur additional paperwork because this rule requires every insurer that: (a) seeks to utilize education level attained or occupational status in its initial tier placement to file with the Superintendent its underwriting rules regarding initial tier placement; (b) had utilized education level attained or occupational status in its initial tier placement to amend its multi-tier rating program and tier movement rules within 90 days after the rule's effective date; and (c) uses education level attained or occupational status as a factor in its multi-tier rating program to provide a written notice acceptable to the Superintendent, at least annually, to the first-named insured that conspicuously explains how an insured may notify the insurer or its agent of any update in the insured's educational level attained or occupational status that would result in a reduction of premium.

7. Duplication: This rule does not duplicate, overlap, or conflict with any existing state or federal rules or other legal requirements.

8. Alternatives: The Department considered requiring an insurer that had utilized education level attained or occupational status in its initial tier placement to amend its multi-tier rating program and tier movement rules within 90 days after the rule's effective date. The Department also considered applying an immediate effective date to the final regulation. To allow insurers additional time to comply with the regulation, the proposed rule (1) provides an insurer 180 days to amend its multi-tier rating program and tier movement rules if the insurer has been utilizing education level attained or occupation status in its rating

program and (2) has a proposed effective date of 90 days after publication of the final regulation in the State Register.

9. Federal standards: The rule does not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule: An insurer must comply with this rule within 90 days after the rule is published in the State Register, except that an insurer that had utilized education level attained or occupational status in its initial tier placement must amend its multi-tier rating program and tier movement rules within 90 days after the rule's effective date.

Regulatory Flexibility Analysis For Small Businesses And Local Governments For The Proposed Second Amendment To 11 NYCRR 154 (Insurance Regulation 150).

1. Effect of rule: As stated in Insurance Law § 2301, the purpose of Article 23, in relevant part, is to promote the public welfare by regulating insurance rates to the end that they not be excessive, inadequate, or unfairly discriminatory. Accordingly, Insurance Law § 2303 requires that rates not be excessive, inadequate, unfairly discriminatory, destructive of competition, or detrimental to the solvency of insurers. In applying this rule, accepted actuarial standards and New York law require that a reasonable relationship must exist between the characteristics of a class and the hazard insured against, and that the insurer bear the burden of establishing whether these requirements have been met.

In addition, Insurance Law § 2349 permits an insurer to make available a multi-tier program, with more than one rate level in the same company, for private passenger motor vehicle insurance in the voluntary market under certain conditions, including that the program is based upon mutually exclusive underwriting rules per tier, to the extent feasible.

This rule makes clear that in order for an insurer to use occupational status or educational level attained as a factor in either initial tier placement or tier movement, with regard to private passenger motor vehicle insurance in the voluntary market, the insurer must demonstrate, to the satisfaction of the Superintendent of Financial Services (“Superintendent”), that its use of occupational status or educational level attained in initial tier placement or tier movement does not result in a rate that violates Insurance Law Article 23. As such, it should not affect local governments.

Industry asserts that certain insurers, in particular mutual insurers, subject to the rule fall within the definition of a “small business” as defined by State Administrative Procedure Act § 102(8) because in general they are independently owned and have fewer than 100 employees.

2. Compliance requirements: No local government will have to undertake any reporting, recordkeeping, or other affirmative acts to comply with the rule because the rule does not apply to any local government. An insurer that is a small business affected by this rule, if any, will be subject to reporting, recordkeeping, or other compliance requirements because an insurer that: (a) seeks to utilize education level attained or occupational status in its initial tier placement must file with the Superintendent its underwriting rules regarding initial tier placement; (b) had utilized education level attained or occupational status in its initial tier placement must amend its multi-tier rating program and tier movement rules within 90 days after the rule's effective date; and (c) uses education level attained or occupational status as a factor in its multi-tier rating program must provide a written notice acceptable to the Superintendent, at least annually, to the first-named insured that conspicuously explains how an insured may notify the insurer or its agent of any update in the insured's educational level attained or occupational status that would result in a reduction of premium.

3. Professional services: No local government will need professional services to comply with this rule because the rule does not apply to any local government. No insurer that is a small business affected by the rule, if any, should need to retain professional services, such as lawyers or auditors, to comply with this rule.

4. Compliance costs: No local government will incur any costs to comply with this rule because the rule does not apply to any local government. An insurer that is a small business affected by this rule, if any, will incur additional compliance costs because the insurer that: (a) seeks to utilize education level attained or occupational status in its initial tier placement must file with the Superintendent its underwriting rules regarding initial tier placement; (b) had utilized education level attained or occupational status in its initial tier placement must amend its multi-tier rating program and tier movement rules within 90 days after the rule's effective date; and (c) uses education level attained or occupational status as a factor in its multi-tier rating program must provide a written notice acceptable to the Superintendent, at least annually, to the first-named insured that



conspicuously explains how an insured may notify the insurer or its agent of any update in the insured's educational level attained or occupational status that would result in a reduction of premium.

5. Economic and technological feasibility: This rule does not apply to any local government; therefore, no local government should experience any economic or technological impact as a result of the rule. No insurer that is a small business affected by this rule, if any, should experience any economic or technological impact as a result of the rule.

6. Minimizing adverse impact: There will not be an adverse impact on any local government because the rule does not apply to any local government. This rule should not have an adverse impact on an insurer that is a small business affected by the rule, if any, because the rule uniformly affects all insurers that are subject to the rule.

7. Small business and local government participation. Small businesses and local governments will have an opportunity to participate in the rule-making process when the proposed rule is published in the State Register and posted on the Department of Financial Services' website.

Rural Area Flexibility Analysis For The Proposed Second Amendment To 11 NYCRR 154 (Insurance Regulation 150).

1. Types and estimated numbers of rural areas: Insurers affected by this rule operate in every county in this state, including rural areas as defined by State Administrative Procedure Act § 102(10).

2. Reporting, recordkeeping and other compliance requirements; and professional services: The rule imposes additional reporting, recordkeeping, and other compliance requirements by requiring an insurer that: (a) seeks to utilize education level attained or occupational status in its initial tier placement to file with the Superintendent of Financial Services (“Superintendent”) its underwriting rules regarding initial tier placement; (b) had utilized education level attained or occupational status in its initial tier placement to amend its multi-tier rating program and tier movement rules within 90 days after the rule’s effective date; and (c) uses education level attained or occupational status as a factor in its multi-tier rating program to provide a written notice acceptable to the Superintendent, at least annually, to the first-named insured that conspicuously explains how an insured may notify the insurer or its agent of any update in the insured’s educational level attained or occupational status that would result in a reduction of premium.

An insurer in a rural area should not need to retain professional services, such as lawyers or auditors, to comply with this rule.

3. Costs: This rule will impose compliance costs on an insurer that: (a) seeks to utilize education level attained or occupational status in its initial tier placement because it must now file with the Superintendent its underwriting rules regarding initial tier placement; (b) had utilized education level attained or occupational status in its initial tier placement because it must amend its multi-tier rating program and tier movement rules within 90 days after the rule’s effective date; and (c) uses education level attained or occupational status as a factor in its multi-tier rating program because it must provide a written notice acceptable to the Superintendent, at least annually, to the first-named insured that conspicuously explains how an insured may notify the insurer

or its agent of any update in the insured's educational level attained or occupational status that would result in a reduction of premium.

The costs are difficult to estimate because of several factors, such as the number of tier placement and movement rules and the number of first-named insureds to whom the insurer must send an annual written notice. The amount or expense incurred by each insurer will vary depending upon whether the insurer utilizes such factors in its multi-tier rating program and by the size of the insurer. Any additional costs to insurers in rural areas should be commensurate with costs for insurers in non-rural areas.

4. Minimizing adverse impact: This rule uniformly affects insurers that are located in both rural and non-rural areas of New York State. The rule should not have an adverse impact on rural areas.

5. Rural area participation: Insurers in rural areas will have an opportunity to participate in the rule-making process when the proposed rule is published in the State Register and posted on the Department of Financial Services' website.

Statement Setting Forth The Basis For The Finding That The Proposed Second Amendment To 11 NYCRR 154 (Insurance Regulation 150) Will Not Have A Substantial Adverse Impact On Jobs And Employment Opportunities.

The Department does not expect that the rule will adversely impact jobs or employment opportunities in New York State. With respect to insurers, the rule makes clear that an insurer may not use occupational status or educational level attained as a factor in either initial tier placement or tier movement, with respect to private passenger motor vehicle insurance in the voluntary market, unless the insurer demonstrates, to the satisfaction of the Superintendent of Financial Services (“Superintendent”), that its use of occupational status or educational level attained in initial tier placement or tier movement does not result in a rate that violates Insurance Law Article 23.

The rule also requires an insurer that uses occupational status or education level attained as a factor in initial tier placement to file with the Superintendent for approval its underwriting rules governing tier placement in accordance with Insurance Law Article 23 as part of the insurer’s multi-tier program. In addition, the rule requires an insurer that, as of the effective date of this rule, had utilized education level attained or occupational status in its initial tier placement, to amend its multi-tier rating program and tier movement rules within 90 days after the effective date of the rule to comply with the rule for new policies. The rule further requires every such insurer to provide a written notice acceptable to the Superintendent, at least annually, to the first-named insured that conspicuously explains how an insured may notify the insurer or its agent of any update in the insured’s educational level attained or occupational status that would result in a reduction of premium.