

**NEW YORK STATE
DEPARTMENT OF FINANCIAL SERVICES
PROPOSED
SECOND AMENDMENT TO 11 NYCRR 154
(INSURANCE REGULATION 150)**

PRIVATE PASSENGER MOTOR VEHICLE INSURANCE MULTI-TIER PROGRAMS

I, Maria T. Vullo, Superintendent of Financial Services, pursuant to the authority granted by Sections 202 and 302 of the Financial Services Law and Sections 301, 2301, 2303, and 2349 and Article 23 of the Insurance Law, do hereby promulgate the following Second Amendment to Part 154 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Insurance Regulation 150), to take effect 90 days after publication in the State Register, to read as follows:

(ALL MATTER IS NEW)

A new Section 154.6 is added as follows:

Section 154.6 Use of Education Level Attained and/or Occupational Status in Multi-Tier Programs

(a) Background.

(1) Insurance Law section 2301 provides that the purpose of Insurance Law Article 23, in relevant part, is to “promote the public welfare by regulating insurance rates to the end that rates shall not be excessive, inadequate, unfairly discriminatory....” As a corollary, Insurance Law section 2303 requires, in relevant part, that rates not be excessive, inadequate, or unfairly discriminatory. In applying this rule, accepted actuarial standards and New York law require that a reasonable relationship 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.

(2) Pursuant to Insurance Law section 308, the superintendent initiated an investigation of the use of an insured’s education level attained and/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 and/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 and/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/or occupation in establishing initial tier placement was not unfairly discriminatory.

(3) To ensure that use of education level attained and/or occupational status in initial tier placement or tier movement shall not result in a rate that violates Article 23, the use of such variables by an insurer shall

comply with the rules in this section or shall not be used to determine initial tier placement, tier movement, or premium rate for private passenger automobile insurance in the voluntary market in the State.

(b) Use of Education Level Attained in Multi-Tier Programs. As a result of the superintendent's determination following investigation that certain insurers' use of education level attained in initial tier placement results in unfairly discriminatory rates, an insurer shall not use an individual's education level attained as a factor in either initial tier placement or tier movement at all, unless the insurer demonstrates to the satisfaction of the superintendent that its use of education level attained in initial tier placement or tier movement shall not result in a rate that violates Insurance Law Article 23.

(c) Use of Occupational Status in Multi-Tier Programs.

(1) Except as provided in paragraph (2) of this subdivision, an insurer shall not use occupational status as a factor in either initial tier placement or tier movement, unless the insurer demonstrates to the satisfaction of the superintendent that its use of occupational status in initial tier placement or tier movement shall not result in a rate that violates Insurance Law Article 23.

(2) An insurer may use occupational status as a factor in initial tier placement and tier movement provided that each of the following conditions is satisfied and the insurer demonstrates to the satisfaction of the superintendent that its use of the factor shall not result in a rate that violates Insurance Law Article 23:

(i) the insurer demonstrates to the satisfaction of the superintendent that each particular occupation grouping has a reasonable relationship to an insureds' driving ability or habits such that an insurer would predictably suffer a greater or lesser risk of loss;

(ii) an insured's income shall not be a risk characteristic, whether directly or indirectly;

(iii) an unemployed person who was previously employed, including a retired person, shall remain in the group designated for his or her previous occupation regardless of the amount of time since such person was last employed;

(iv) the insurer shall establish a group separate from its other occupational groups that contains homemakers and those insureds who have never been employed, which group shall be a neutral factor for impacting rates;

(v) where the insured's initial tier placement is influenced by occupational status, the insurer shall provide tier movement rules that address a change in the insured's occupational status at the time of renewal providing the insured with the opportunity to reduce his or her premium;

(vi) any rate differential permitted under this paragraph shall be commensurate with the related reduction of loss costs and associated premiums; and

(vii) where insufficient data exists with respect to a particular occupation and the insurer wishes to align that occupation in a group with a similar one, the insurer shall have a sufficiently reasonable explanation for placing the two occupations in the same group.

(d) Notwithstanding section 154.2 of this Part, an insurer shall not use education level attained and/or occupational status 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. An insurer that, as of the effective date of this paragraph had utilized education level attained and/or occupational status in its initial tier placement, shall amend its multi-tier rating program and tier movement rules within 90 days after the effective date of this section to comply with this section for policies issued on or after such date.

(e) Every insurer that uses education level attained and/or occupational status in accordance with this section as a factor in its multi-tier program shall 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 education level attained and/or occupational status that would result in a reduction of premium.