

SENATE BILL NO. 498

September 10, 2019, Introduced by Senators MOSS, BRINKS and ALEXANDER and referred to the Committee on Insurance and Banking.

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
by amending sections 2109 and 2119 (MCL 500.2109 and 500.2119),
section 2119 as amended by 2012 PA 441.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 2109. (1) All rates for automobile insurance and home
2 insurance ~~shall~~**must** be made in accordance with the following:
3 ~~provisions:~~
4 (a) ~~Rates shall~~**A rate must** not be excessive, inadequate, or

1 unfairly discriminatory. A rate ~~shall~~**must** not be held to be
 2 excessive unless the rate is unreasonably high for the insurance
 3 coverage provided and a reasonable degree of competition does not
 4 exist for the insurance to which the rate is applicable.

5 (b) A rate ~~shall~~**must** not be held to be inadequate unless the
 6 rate is unreasonably low for the insurance coverage provided and
 7 the continued use of the rate endangers the solvency of the
 8 insurer; or unless the rate is unreasonably low for the insurance
 9 provided and the use of the rate has or will have the effect of
 10 destroying competition among insurers, creating a monopoly, or
 11 causing a kind of insurance to be unavailable to a significant
 12 number of applicants who are in good faith entitled to procure that
 13 insurance through ordinary methods.

14 (c) A rate for a coverage is unfairly discriminatory in
 15 relation to another rate for the same coverage if the differential
 16 between the rates is not reasonably justified by differences in
 17 losses, expenses, or both, or by differences in the uncertainty of
 18 loss, for the individuals or risks to which the rates apply. ~~A To~~
 19 **be held** reasonable **under this subdivision**, a justification ~~shall~~
 20 **must** be supported by a reasonable classification system; by sound
 21 actuarial principles ~~when if~~ applicable; and by actual and credible
 22 loss and expense statistics or, ~~in the case of~~ **for** new coverages
 23 and classifications, by reasonably anticipated loss and expense
 24 experience. ~~A Subject to this subdivision~~, a rate is not unfairly
 25 discriminatory **under this subdivision** because it reflects
 26 differences in expenses for individuals or risks with similar
 27 anticipated losses, or because it reflects differences in losses
 28 for individuals or risks with similar expenses. **A rate is unfairly**
 29 **discriminatory as to the premium charged to the risk if the rate is**

1 **established through or impacted by price optimization.**

2 (2) A determination concerning the existence of a reasonable
 3 degree of competition ~~with respect to~~ **under** subsection (1)(a) ~~shall~~
 4 **must** take into account a reasonable spectrum of relevant economic
 5 tests, including the number of insurers actively engaged in writing
 6 the insurance in question, the present availability of ~~such the~~
 7 insurance compared to its availability in comparable past periods,
 8 the underwriting return of ~~that the~~ insurance over a period of time
 9 sufficient to assure reliability in relation to the risk associated
 10 with ~~that the~~ insurance, and the difficulty encountered by new
 11 insurers in entering the market ~~in order to~~ compete for the writing
 12 of ~~that the~~ insurance.

13 (3) By April 1, 2020, the director shall report to the
 14 standing committees of the senate and house of representatives with
 15 primary jurisdiction over insurance matters on the prevalence of
 16 the use of price optimization in the establishment of rates to
 17 which this chapter applies. The report must also include the steps
 18 the director has taken to enforce this section.

19 (4) As used in this section:

20 (a) "Engage in activities that result in insurance policy
 21 turnover" includes, but is not limited to, any of the following:

22 (i) Shopping with other insurers for a lower premium.

23 (ii) Canceling a policy before the expiration of the policy
 24 term.

25 (iii) Failing to renew a policy at the renewal of the policy
 26 term.

27 (iv) Complaining to the insurer or the insurer's agent or
 28 representative.

29 (b) "Price optimization" means establishing rates or varying

1 premiums at any time based on factors that are unrelated to risk of
2 loss, including, but not limited to, any of the following:

3 (i) Charging each insured the highest price that the market
4 will bear.

5 (ii) Considering the likelihood that the insured will engage in
6 activities that result in insurance policy turnover.

7 (iii) Estimating the willingness of the insured to pay a higher
8 premium compared to other insureds.

9 (iv) Using any measure of a consumer's or group of consumers'
10 price elasticity of demand.

11 Sec. 2119. (1) ~~Each~~ An insurer subject to this chapter shall
12 put in writing all underwriting rules used by the insurer. An
13 insurer shall not transact automobile or home insurance
14 inconsistently with its underwriting rules.

15 (2) An insurer shall apply its underwriting rules uniformly
16 and without exception throughout this state, so that every
17 applicant or insured conforming with the underwriting rules will be
18 insured or renewed, and so that every applicant or insured not
19 conforming with the underwriting rules will be refused insurance or
20 nonrenewed, when the information becomes available to the insurer.

21 (3) An insurer with more than 1 rating plan for automobile
22 insurance contracts providing identical coverages shall not adopt
23 underwriting rules that would permit a person to be insured, for
24 automobile insurance, under more than 1 of the rating plans.

25 (4) An insurer may establish underwriting rules for new
26 applicants that are different than rules for renewals of existing
27 insureds only if the applicants or existing insureds are not
28 eligible persons. Underwriting rules pertaining to renewals of
29 existing insureds who are not eligible persons may be based on a

1 contractual obligation of the insurer not to cancel or nonrenew.

2 (5) For informational purposes, an insurer shall file with the
3 ~~commissioner~~**director** its underwriting rules before their use in
4 this state. All ~~The director shall make all~~ filed underwriting
5 rules ~~shall be~~ available for public inspection. If the ~~commissioner~~
6 **director** finds that an underwriting rule is inconsistent with this
7 chapter, the ~~commissioner~~**director**, after a hearing held under the
8 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
9 24.328, shall by order prohibit further use of the underwriting
10 rule.

11 (6) This section does not prohibit an insurer from insuring
12 persons who are not eligible persons under underwriting rules
13 established under this section and sections 2117, 2118, and 2120.

14 (7) **An insurer shall not establish its underwriting rules**
15 **through price optimization as that term is defined in section 2109.**