

HOUSE BILL No. 5271

November 28, 2017, Introduced by Reps. Moss, Rabhi, Faris, Sowerby, Chang, Hoadley, Lasinski, Cochran, Greig, Chirkun, Zemke, Wittenberg and Pagan and referred to the Committee on Insurance.

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 be made in accordance with the following:

3 ~~provisions:~~

4 (a) ~~Rates shall~~ **A RATE MUST** not be excessive, inadequate, or
5 unfairly discriminatory. A rate shall not be held to be excessive
6 unless the rate is unreasonably high for the insurance coverage
7 provided and a reasonable degree of competition does not exist for
8 the insurance to which the rate is applicable.

9 (b) A rate shall not be held to be inadequate unless the rate
10 is unreasonably low for the insurance coverage provided and the

1 continued use of the rate endangers the solvency of the insurer; or
2 unless the rate is unreasonably low for the insurance provided and
3 the use of the rate has or will have the effect of destroying
4 competition among insurers, creating a monopoly, or causing a kind
5 of insurance to be unavailable to a significant number of
6 applicants who are in good faith entitled to procure that insurance
7 through ordinary methods.

8 (c) A rate for a coverage is unfairly discriminatory in
9 relation to another rate for the same coverage if the differential
10 between the rates is not reasonably justified by differences in
11 losses, expenses, or both, or by differences in the uncertainty of
12 loss, for the individuals or risks to which the rates apply. ~~A-TO~~
13 **BE HELD** reasonable **UNDER THIS SUBDIVISION, A** justification ~~shall~~
14 **MUST** be supported by a reasonable classification system; by sound
15 actuarial principles ~~when-IF~~ applicable; and by actual and credible
16 loss and expense statistics or, ~~in the case of- FOR~~ new coverages
17 and classifications, by reasonably anticipated loss and expense
18 experience. ~~A-SUBJECT TO THIS SUBDIVISION, A~~ rate is not unfairly
19 discriminatory **UNDER THIS SUBDIVISION** because it reflects
20 differences in expenses for individuals or risks with similar
21 anticipated losses, or because it reflects differences in losses
22 for individuals or risks with similar expenses. **A RATE IS UNFAIRLY**
23 **DISCRIMINATORY AS TO THE PREMIUM CHARGED TO THE RISK IF THE RATE IS**
24 **ESTABLISHED THROUGH OR IMPACTED BY PRICE OPTIMIZATION.**

25 (2) A determination concerning the existence of a reasonable
26 degree of competition ~~with respect to-UNDER~~ subsection (1)(a) ~~shall~~
27 **MUST** take into account a reasonable spectrum of relevant economic

1 tests, including the number of insurers actively engaged in writing
2 the insurance in question, the present availability of ~~such~~**THE**
3 insurance compared to its availability in comparable past periods,
4 the underwriting return of ~~that~~**THE** insurance over a period of time
5 sufficient to assure reliability in relation to the risk associated
6 with ~~that~~**THE** insurance, and the difficulty encountered by new
7 insurers in entering the market ~~in order to~~ compete for the writing
8 of ~~that~~**THE** insurance.

9 (3) BY APRIL 1, 2018, THE DIRECTOR SHALL REPORT TO THE
10 STANDING COMMITTEES OF THE SENATE AND HOUSE OF REPRESENTATIVES WITH
11 PRIMARY JURISDICTION OVER INSURANCE MATTERS ON THE PREVALENCE OF
12 THE USE OF PRICE OPTIMIZATION IN THE ESTABLISHMENT OF RATES TO
13 WHICH THIS CHAPTER APPLIES. THE REPORT MUST ALSO INCLUDE THE STEPS
14 THE DIRECTOR HAS TAKEN TO ENFORCE THIS SECTION.

15 (4) AS USED IN THIS SECTION:

16 (A) "ENGAGE IN ACTIVITIES THAT RESULT IN INSURANCE POLICY
17 TURNOVER" INCLUDES, BUT IS NOT LIMITED TO, ANY OF THE FOLLOWING:

18 (i) SHOPPING WITH OTHER INSURERS FOR A LOWER PREMIUM.

19 (ii) CANCELING A POLICY BEFORE THE EXPIRATION OF THE POLICY
20 TERM.

21 (iii) FAILING TO RENEW A POLICY AT THE RENEWAL OF THE POLICY
22 TERM.

23 (iv) COMPLAINING TO THE INSURER OR THE INSURER'S AGENT OR
24 REPRESENTATIVE.

25 (B) "PRICE OPTIMIZATION" MEANS ESTABLISHING RATES OR VARYING
26 PREMIUMS AT ANY TIME BASED ON FACTORS THAT ARE UNRELATED TO RISK OF
27 LOSS, INCLUDING, BUT NOT LIMITED TO, ANY OF THE FOLLOWING:

1 (i) CHARGING EACH INSURED THE HIGHEST PRICE THAT THE MARKET
2 WILL BEAR.

3 (ii) CONSIDERING THE LIKELIHOOD THAT THE INSURED WILL ENGAGE
4 IN ACTIVITIES THAT RESULT IN INSURANCE POLICY TURNOVER.

5 (iii) ESTIMATING THE WILLINGNESS OF THE INSURED TO PAY A
6 HIGHER PREMIUM COMPARED TO OTHER INSUREDS.

7 (iv) USING ANY MEASURE OF A CONSUMER'S OR GROUP OF CONSUMERS'
8 PRICE ELASTICITY OF DEMAND.

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

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

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

23 (4) An insurer may establish underwriting rules for new
24 applicants that are different than rules for renewals of existing
25 insureds only if the applicants or existing insureds are not
26 eligible persons. Underwriting rules pertaining to renewals of
27 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.**