

# HOUSE BILL No. 5735

June 8, 2016, Introduced by Reps. Moss, Cochran, Banks, Gay-Dagnogo, Robinson, Hovey-Wright, Plawecki, Dianda, Geiss, Pagan, Garrett, Callton, Wittenberg and Greig 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, 2017, 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) "PRICE OPTIMIZATION" MEANS ESTABLISHING RATES OR VARYING  
17 PREMIUMS AT ANY TIME BASED ON FACTORS THAT ARE UNRELATED TO RISK OF  
18 LOSS, INCLUDING, BUT NOT LIMITED TO, ANY OF THE FOLLOWING:

19 (i) CHARGING EACH INSURED THE HIGHEST PRICE THAT THE MARKET  
20 WILL BEAR.

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

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

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

27 (B) "ENGAGE IN ACTIVITIES THAT RESULT IN INSURANCE POLICY

1    **TURNOVER" INCLUDES, BUT IS NOT LIMITED TO, ANY OF THE FOLLOWING:**

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

3           **(ii) CANCELING A POLICY BEFORE THE EXPIRATION OF THE POLICY**  
4    **TERM.**

5           **(iii) FAILING TO RENEW A POLICY AT THE RENEWAL OF THE POLICY**  
6    **TERM.**

7           **(iv) COMPLAINING TO THE INSURER OR THE INSURER'S AGENT OR**  
8    **REPRESENTATIVE.**

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.**