

# STATE OF NEW YORK

---

3497

2019-2020 Regular Sessions

## IN SENATE

February 8, 2019

---

Introduced by Sens. BRESLIN, SEWARD -- read twice and ordered printed,  
and when printed to be committed to the Committee on Insurance

AN ACT to amend the insurance law, in relation to providing loss  
prevention programs

The People of the State of New York, represented in Senate and Assem-  
bly, do enact as follows:

1 Section 1. Section 2324 of the insurance law, subsection (a) as  
2 amended by chapter 291 of the laws of 2012, is amended to read as  
3 follows:  
4 § 2324. Rebating and discrimination. (a) No authorized insurer, no  
5 licensed insurance agent, no licensed insurance broker, and no employee  
6 or other representative of any such insurer, agent or broker shall make,  
7 procure or negotiate any contract of insurance other than as plainly  
8 expressed in the policy or other written contract issued or to be issued  
9 as evidence thereof, or shall directly or indirectly, by giving or shar-  
10 ing a commission or in any manner whatsoever, pay or allow or offer to  
11 pay or allow to the insured or to any employee of the insured, either as  
12 an inducement to the making of insurance or after insurance has been  
13 effected, any rebate from the premium which is specified in the policy,  
14 or any special favor or advantage in the dividends or other benefit to  
15 accrue thereon, or shall give or offer to give any valuable consider-  
16 ation or inducement of any kind, directly or indirectly, which is not  
17 specified in such policy or contract, other than any valuable consider-  
18 ation, including but not limited to merchandise or periodical  
19 subscriptions, not exceeding twenty-five dollars in value, or shall  
20 give, sell or purchase, or offer to give, sell or purchase, as an  
21 inducement to the making of such insurance or in connection therewith,  
22 any stock, bond or other securities or any dividends or profits accrued  
23 thereon, nor shall the insured, his agent or representative knowingly  
24 receive directly or indirectly, any such rebate or special favor or  
25 advantage, provided, however, a licensed insurance agent or a licensed

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

LBD06629-01-9

1 insurance broker may retain the usual commission or underwriting fee on  
2 insurance placed on his own property or risks, if the aggregate of such  
3 commissions or underwriting fees will not exceed five percent of the  
4 total net commissions or underwriting fees received by such licensed  
5 insurance agent or insurance broker during the calendar year.

6 (b) Within the meaning of subsection (a) hereof, the sharing of a  
7 commission with the insured shall be deemed to include any case in which  
8 a licensed insurance agent or a licensed insurance broker which is a  
9 subsidiary corporation of, or a corporation affiliated with, any corpo-  
10 ration insured, received commissions for the negotiation or procurement  
11 of any policy or contract of insurance for the insured.

12 (c) This section shall not prohibit any insurer from offering partic-  
13 ipation in a loss prevention program that promotes and incentives safe  
14 driving behavior with points-based rewards so long as participation in  
15 such program is offered both to members of the general public and to the  
16 insurer's policyholders.

17 (d) This section shall not prohibit any insurer from equitably  
18 distributing to its policyholders dividends payable from surplus on  
19 earned premiums, nor prohibit the return at any time during the term or  
20 at the termination of the contract of insurance of dividends, savings or  
21 the unused or unabsorbed portion of premiums and premium deposits to  
22 policyholders of a mutual insurer or to subscribers of a reciprocal  
23 insurer, nor prohibit any insurer or insurance agent from paying commis-  
24 sions to a licensed insurance broker for negotiating a policy or  
25 contract of insurance, nor prohibit any licensed insurance broker from  
26 sharing or dividing a commission earned or received by him with any  
27 other licensed insurance broker or brokers who shall have aided him in  
28 respect to the insurance for the negotiation of which the commission has  
29 been earned or paid.

30 [~~(d)~~] (e) This section shall not prohibit the making of temporary  
31 contracts of insurance, either by temporary binders or other memoranda,  
32 if the premium applicable to the insurance shall be due and shall be  
33 paid for the time during which the insurance is in force by virtue of  
34 the temporary contract.

35 [~~(e)~~] (f) This section shall not apply to any policy or contract of  
36 reinsurance nor to any contract or policy of life insurance, accident  
37 insurance or health insurance which is subject to the provisions of  
38 section four thousand two hundred twenty-four of this chapter, nor to  
39 any contract or policy of marine insurance, other than contracts or  
40 policies of automobile insurance, or of marine protection and indemnity  
41 insurance, nor to any insurance contract, or rate of insurance in  
42 connection with any insurance contract either against loss or damage to,  
43 or legal liability in connection with, any property located wholly  
44 outside of this state or any activity carried on outside of this state  
45 or any motor vehicle or aircraft principally garaged and used outside of  
46 this state.

47 [~~(f)~~] (g) Any person or corporation violating the provisions of this  
48 section shall, in addition to all other penalties provided by law, pay  
49 to the people of this state as a penalty the sum of five hundred dollars  
50 for each such violation.

51 § 2. This act shall take effect immediately.