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 Assembly, do enact as follows:

Section 1. Section 2324 of the insurance law, subsection (a) as amended by chapter 291 of the laws of 2012, is amended to read as follows:

§ 2324. Rebating and discrimination. (a) No authorized insurer, no licensed insurance agent, no licensed insurance broker, and no employee or other representative of any such insurer, agent or broker shall make, procure or negotiate any contract of insurance other than as plainly expressed in the policy or other written contract issued or to be issued as evidence thereof, or shall directly or indirectly, by giving or sharing a commission or in any manner whatsoever, pay or allow or offer to pay or allow to the insured or to any employee of the insured, either as an inducement to the making of insurance or after insurance has been effected, any rebate from the premium which is specified in the policy, or any special favor or advantage in the dividends or other benefit to accrue thereon, or shall give or offer to give any valuable consideration or inducement of any kind, directly or indirectly, which is not specified in such policy or contract, other than any valuable consideration, including but not limited to merchandise or periodical subscriptions, not exceeding twenty-five dollars in value, or shall give, sell or purchase, or offer to give, sell or purchase, as an inducement to the making of such insurance or in connection therewith, any stock, bond or other securities or any dividends or profits accrued thereon, nor shall the insured, his agent or representative knowingly receive directly or indirectly, any such rebate or special favor or 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.

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

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

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

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

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

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

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

§ 2. This act shall take effect immediately.