STATE OF NEW YORK

4044

2021-2022 Regular Sessions

IN SENATE

February 1, 2021

Introduced by Sen. BRESLIN -- 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 unfairly discriminatory rates based upon the practice of price optimization

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

Section 1. Section 2303 of the insurance law, as amended by chapter 20 of the laws of 1990, is amended to read as follows:

§ 2303. Standards for rates. **(a)** Rates shall not be excessive, inadequate, unfairly discriminatory, destructive of competition or detrimental to the solvency of insurers. In determining whether rates comply with the foregoing standards, the superintendent shall include all income earned by such insurer and any insurer controlling or controlled by such insurer or under common control by or with such insurer on all its investments of any kind and wherever located. The superintendent shall further determine whether any component of such rates represent an effort on the part of the insurer to recover losses incurred in another state due to any referendum, law or regulation which requires a general reduction in rates for the kinds of insurance described in section two thousand three hundred two of this article. Such a finding shall be deemed unfairly discriminatory for the purposes of this article.

(b) Discriminatory rates. (1) One rate is unfairly discriminatory in relation to another if it clearly fails to reflect equitably the differences in expected losses, expenses and the degree of risk. Rates are not unfairly discriminatory because different premiums result for policyholders with like loss exposures but different expense factors, or like expense factors but different loss exposures, so long as the rates reflect the differences with reasonable accuracy in accordance with acceptable actuarial principles and standards. Rates are not unfairly discriminatory if they attempt to spread risk broadly among persons insured under a group or blanket policy.

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

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(2) Notwithstanding any other provision of this section to the contrary, an insurer and any insurer controlling or controlled by such insurer or under common control by or with such insurer, may not make or allow a differential in pricing, rate filings, tier placement decisions, premium payments or dividends, based upon any formalized price optimization models or less formal price optimization considerations, in order to maximize such insurer's retention, profitability, written premium, market share or any combination thereof. Any such practice shall be deemed unfairly discriminatory for purposes of this article.

(3) For purposes of this subsection, "price optimization" shall mean the practice of an insurer to vary its rates or premiums based on factors other than those directly related to risk of loss, such as setting rates or factors based on an insured's likelihood to renew a policy or on an individual's or class of individuals' perceived willingness to pay a higher premium relative to other individuals or classes when faced with a rate increase, known as price elasticity of demand.

§ 2. This act shall take effect immediately.