WEST VIRGINIA INSURANCE BULLETIN
No. 26-03

Insurance Bulletins are issued when the Commissioner renders formal opinions, guidance or expectations on matters or issues, explains how new statutes or rules will be implemented or applied, or advises of interpretation or application of existing statutes or rules.

► UNFAIR DISCRIMINATION IN RATING: PRICE OPTIMIZATION ◄

It has come to the attention of the Offices of the Insurance Commissioner ("OIC") that some property and casualty insurers issuing personal lines policies may be using "price optimization" to rate insurance policies in West Virginia. Price optimization refers to the practice of varying rates based on factors other than risk so that the company can charge the highest price that policyholders will tolerate before shopping for a new policy. In other words, the practice of price optimization includes considering "the elasticity of demand" to predict policyholders' behavior—for example, how sensitive a policyholder is to price changes and the likelihood that a policyholder will either accept a certain premium increase or shop for a lower premium with a competitor. This practice can result in two policyholders with the same loss history and risk profile receiving different premium increases. It can also result in a disregard of actuarily sound estimates of risk and premiums that are excessive or inadequate.

The OIC has determined that the use of price optimization results in rates that are unfairly discriminatory and in violation of West Virginia law. Insurance rates are to be based on risk of loss and not on whether a consumer is likely to accept a higher price. While insurers may employ sound actuarial judgment in setting rates, judgmental adjustments to a rate may not be based on non-risk-related policyholder characteristics.

Applicable West Virginia Law

§33-11-4. Unfair methods of competition and unfair or deceptive acts or practices defined.

The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

(7) Unfair discrimination. –

(c) As to kinds of insurance other than life and accident and sickness, no person shall make or permit any unfair discrimination in favor of particular persons, or between insureds or subjects of insurance having substantially like insuring, risk and exposure factors or expense elements, in the terms or conditions of any insurance contract, or in the rate or amount of

premium charge therefor. This paragraph shall not apply as to any premium or premium rate in effect pursuant to article twenty of this chapter.

§33-20-3. Ratemaking.

All rates shall be made in accordance with the following provisions:

(a) Due consideration shall be given to past and prospective loss experience within and outside this state, to catastrophe hazards, if any, to a reasonable margin for underwriting profit and contingencies, to dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers, to past and prospective expenses both countrywide and those specially applicable to this state and to all other relevant factors within and outside this state.

(b) Rates may not be excessive, inadequate or unfairly discriminatory.

These provisions show a clear intent that property and casualty insurers doing business in West Virginia must classify risks according to cost-based considerations of insurance losses and expenses, and that they must disclose those considerations fully in their rate filings. Failure to fully comply with the code provisions enumerated herein is a violation of West Virginia law and appropriate enforcement action will be taken. The OIC expects all property and casualty insurance companies operating in West Virginia to follow these laws and to not engage in the practice of price optimization.

Please email any questions regarding this Insurance Bulletin to OICBulletins@wv.gov.

Issued: October 9, 2026

Erin K. Hunter
Insurance Commissioner