



Consumer Federation of America

CENTER for  
ECONOMIC  
JUSTICE

FAIR ACCESS  
FAIR TREATMENT

February 8, 2016

Senator Jim Scheer  
Chair, Banking, Commerce & Insurance Committee  
PO Box 94604  
Lincoln NE 68509

### LB 1041 SUPPORT WITH SUGGESTIONS

Dear Senator Scheer:

Consumer Federation of America and the Center for Economic Justice supports LB 1041, a Bill to ban price optimization in insurance pricing.

We do offer suggestions that should be added to the language to make sure the Bill's purposes are fully accomplished.

The pertinent language as drafted, with our proposed changes in BOLD reads:

- . 16 (f) The PROPOSED RATES IN THE filing discriminate, IN WHOLE OR IN PART, DIRECTLY OR INDIRECTLY, between risks based on price
- . 17 optimization. For purposes of this subdivision, price optimization means
- . 18 the use of INFORMATION OR factors NOT RELATED TO THE APPLICANT'S OR INSURED'S RISK OF LOSS to determine an APPLICANT'S OR insured's premium, including,
- . 20 but not limited to, INFORMATION ABOUT an insured's propensity to shop for insurance, PRICE ELASTICITY OF DEMAND, AND HISTORY OR PROPENSITY TO ask
- . 21 questions, or file complaints in response to a PREMIUM increase, WHETHER USED IN UNDERWRITING, TIER PLACEMENT, RATING, RISK CLASSIFICATION OR DETERMINING PAYMENT PLAN ELIGIBILITY

### SUGGESTED CHANGE TO LANGUAGE (WITH COMMENTS EXPLAINING OUR PROPOSED CHANGES):

CFA suggests adding “,in whole or in part , directly or indirectly,” in line 16. This is important because some of the application of price optimization occurs in algorithms that are not submitted as part of a rate filing (including, but not limited to, programs used to place policyholders into different tiers of rates). We also offer

the suggested additions to the definition of price optimization in order to provide further clarity about the range of pricing techniques that this bill intends to curb. Additionally, we propose that you consider incorporating the language we have added to line 21 of the current draft in order to prevent insurance companies from conducting the price optimization during other phases of determining consumer costs in order to avoid the protections offered in your bill. We believe that insurers are already looking to apply price optimization techniques in the underwriting process in order to skirt recently issued Department of Insurance bulletins prohibiting price optimization in rating. Adding the proposed language will prevent insurers from opening such a loophole in Nebraska.

#### ANOTHER NEEDED CONSUMER PROTECTION THAT SHOULD BE ADDED TO THE RATING LAW

Finally, our quick review of Nebraska's rating law seems to indicate that there is no prohibition on unfair discrimination as exists in almost all other states. It would be a useful consumer protection to add language below stating that rates may not be unfairly discriminatory (defined as treating similarly situated consumers differently). The unfair discrimination prohibition should be a separate prohibition (perhaps a new subsection of your bill). Our proposed language to accomplish this is:

Rates may not be unfairly discriminatory. The Commissioner shall not approve and shall disapprove any rates, underwriting guidelines, tier placement rules and payment plan eligibility rules which are unfairly discriminatory.

CFA appreciates the effort you are making to protect Nebraska's insurance consumers.

Sincerely,



J. Robert Hunter, FCAS, MAAA  
Director of Insurance  
Consumer Federation of America  
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(The writer is an actuary and formerly served as Texas Insurance Commissioner)