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THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 397 Session of 2009

INTRODUCED BY YOUNGBLOOD, CRUZ, BROWN, BISHOP, KORTZ, MOUL, SEIP, SIPTROTH, K. SMITH AND CREIGHTON, FEBRUARY 13, 2009

REFERRED TO COMMITTEE ON INSURANCE, FEBRUARY 13, 2009

AN ACT

1 Relating to the use of credit information by carriers of
2 personal lines insurance.

3 The General Assembly of the Commonwealth of Pennsylvania
4 hereby enacts as follows:

5 Section 1. Short title.

6 This act shall be known and may be cited as the Use of Credit
7 Information in Personal Lines Insurance Underwriting Act.

8 Section 2. Purpose.

9 The purpose of this act is to regulate the use of credit
10 information for personal lines insurance so that consumers are
11 afforded certain protections with respect to the use of credit
12 information.

13 Section 3. Scope.

14 This act is limited to personal lines insurance.

15 Section 4. Definitions.

16 The following words and phrases when used in this act shall
17 have the meanings given to them in this section unless the
18 context clearly indicates otherwise:

"Adverse action." A denial of, an increase in any charge for or a reduction or other adverse or unfavorable change in the terms of coverage or amount of any insurance policy applied for in connection with the underwriting of personal lines insurance, including tier placement within an insurer and an affiliate.

"Affiliate." An insurer that controls, is controlled by or is under common control with another insurer.

"Applicant." A person who has applied to be covered by a personal lines insurance policy with an insurer.

"Commissioner." The Insurance Commissioner of the Commonwealth.

"Consumer reporting agency." Any person which for monetary fees or dues or on a cooperative nonprofit basis regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing reports to third parties.

"Credit information." Any credit-related information derived from a credit report, found on a credit report or provided on an application for personal lines insurance. Information that is not credit related shall not be considered credit information, regardless of whether it is contained in a credit report or in an application.

"Credit report." Information, including that obtained from a consumer reporting agency, bearing on a consumer's creditworthiness, credit standing or credit capacity, which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor to determine personal lines insurance, eligibility for coverage and tier or affiliate placement.

"Department." The Insurance Department of the Commonwealth.

"Insurance score." A number or rating, including that which is derived from an algorithm, computer application, model or other process, that is based in whole or in part on credit information.

"Insurer." Any individual, corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd's insurer, or any other person engaged in writing personal lines insurance.

"Personal lines insurance." Homeowners, renters, dwelling, fire, personal property and personal auto insurance. The term shall not include title insurance, any commercial coverage or any other insurance not specifically set forth in this definition.

"Policy period." The term of any contract of insurance.

Section 5. Limitations on use of credit information.

An insurer shall not:

(1) use an insurance score that is calculated using any factors prohibited by the laws of this Commonwealth;

(2) after the first 60 days, cancel a policy of personal lines insurance on the basis of credit information;

(3) nonrenew a policy of personal lines insurance on the basis of credit information;

(4) change an insured's renewal rates for personal lines insurance on the basis of credit information;

(5) take an adverse action against an applicant solely because he or she does not have any credit information;

(6) take adverse action against an applicant based on credit information unless an insurer obtains and uses a credit report and resulting insurance score calculated within 60 days from the date the application for insurance is first

written; or

(7) use any inquiries into credit information or collection accounts with a medical industry code as a factor in any insurance scoring methodology or in reviewing credit information for the purpose of underwriting a policy of personal lines insurance.

Section 6. Dispute resolution and error correction.

If it is determined through the dispute resolution process set forth in section 611(a)(5) of the Fair Credit Reporting Act (Public Law 91-508, 15 U.S.C. § 1681i(a)(5)) that the credit information of a current insured was incorrect or incomplete and if the insurer receives notice of such determination from either the consumer reporting agency or from the insured, the insurer shall reunderwrite the consumer within 30 days of receiving the notice. After reunderwriting the insured, the insurer shall make any adjustments necessary that are consistent with its underwriting guidelines. If an insurer determines that the insured has overpaid premium, the insurer shall refund to the insured the amount of overpayment calculated back to the shorter of either the last 12 months of coverage or the actual policy period.

Section 7. Notification and reunderwriting requirement.

(a) Disclosure.--Notwithstanding the limitations set forth in section 5, if an insurer writing personal lines insurance uses credit information in underwriting, the insurer or its agent shall disclose, either on the insurance application or at the time the insurance application is taken:

(1) that the insurer may obtain credit information in connection with such application; and

(2) if an applicant is issued a policy, that the insured

has a right to request, no more than one time per policy period, that the insurer reunderwrite the policy if there is a favorable change in the factors that were the primary influences of an adverse action, as those factors are set forth in the notification provided to the applicant pursuant to section 8.

(b) Method of disclosure.--The disclosures required under subsection (a) shall be either written or provided to an applicant in the same medium as the application for insurance.

(c) Form of disclosure.--The following disclosure or a substantially similar disclosure constitutes compliance with subsection (a)(1):

> In connection with this application for insurance, we may review your credit report or obtain or use a credit-based insurance score based on the information contained in that credit report or application. We may use a third party in connection with the development of your insurance score.

(d) Reunderwrite.--Upon receipt of a request received under subsection (a)(2), an insurer shall reunderwrite the policy and may consider all underwriting factors, including, but not limited to, the factors that were the primary influences of the adverse action, provided, however, if the sole factor for the adverse action was a credit report or credit information and the favorable change would result in lesser premium, the insurer shall reunderwrite the current policy and issue a new policy.

(e) Right of cancellation.--Any new policy issued under subsection (d) shall not be subject to any 60-day right of cancellation otherwise applicable to that policy.

Section 8. Adverse action notification.

If an insurer takes an adverse action based upon credit information, the insurer must meet the notice requirements of both paragraphs (1) and (2). Such insurer shall:

(1) Provide notification to the applicant that an adverse action has been taken, in accordance with the requirements of section 615(a) of the Fair Credit Reporting Act (Public Law 91-508, 15 U.S.C. § 1681m(a)) including instructions on how the applicant can obtain a copy of the complete credit report used by the insurer at the insurer's expense.

(2) Provide notification to the applicant explaining the reason for the adverse action. The reasons must be provided in sufficiently clear and specific language so that a person can identify the basis for the insurer's decision to take an adverse action. Such notification shall include a description of the factors that were the primary influences of the adverse action. The use of generalized terms such as "poor credit history," "poor credit rating" or "poor insurance score" does not meet the explanation requirements of this section. Standardized credit explanations provided by consumer reporting agencies or other third-party vendors are deemed to comply with this section.

Section 9. Violations.

(a) Investigation.--The following provisions apply to investigation:

(1) The commissioner may examine and investigate the affairs of any insurer engaged in writing personal lines insurance to determine whether such insurer has been or is engaged in any practice prohibited by this act.

(2) The department may require an insurer to provide for

examination and investigation of all documents, materials or other information relevant to the investigation, including, but not limited to, credit information, credit reports and insurance scores (and any algorithm, computer application, model or other process from which the insurance scores are derived) used by the insurer.

(3) Costs for any investigation instituted pursuant to this act shall be borne by the insurer.

(4) Any document, material or other information in the control or possession of the department which is furnished by an insurer or which is obtained by the department in an investigation pursuant to this act shall be confidential and privileged, shall not be subject to the act of February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law, shall not be subject to subpoena and shall not be subject to discovery or admissible in evidence in any private civil action. However, the department is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the department's duties.

(b) Enforcement.--The act may be enforced as follows:

(1) The department may impose a civil penalty of up to $5,000 for each violation of this act.

(2) The department may maintain an action in the name of the Commonwealth for an injunction to prohibit any activity that violates the provisions of this act.

(3) Any violation of this act shall be considered a violation of the act of July 22, 1974 (P.L.589, No.205), known as the Unfair Insurance Practices Act.

Section 10. Rules and regulations.

The department shall promulgate rules and regulations to carry out the provisions of this act.

Section 11. Effective date.

This act shall take effect in 60 days.