

SB 311 used as framework for uniformity purposes

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HOUSE BILL NO. 41

INTRODUCED BY B. WILSON

SENATE BUSINESS & INDUSTRY

REPORT NO. 14

DATE 2/17/05

BILL NO. SB 311

A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING AN ACT REGARDING THE USE OF CREDIT INFORMATION IN PERSONAL INSURANCE; PROVIDING THE PURPOSE, SCOPE, AND DEFINITIONS FOR THE ACT; ESTABLISHING CRITERIA FOR THE USE OF CREDIT INFORMATION IN INSURANCE UNDERWRITING; PROVIDING FOR DISPUTE RESOLUTION AND ERROR CORRECTION; PROVIDING FOR NOTICE TO CONSUMERS OF THE USE OF CREDIT INFORMATION AND ADVERSE ACTION BASED ON THE USE OF CREDIT INFORMATION; REQUIRING INSURERS TO FILE THEIR CREDIT SCORING MODELS WITH THE COMMISSIONER OF INSURANCE; PROVIDING FOR THE INDEMNIFICATION OF INSURANCE PRODUCERS USING SCORING INFORMATION; PROHIBITING CONSUMER REPORTING AGENCIES FROM PROVIDING OR SELLING CERTAIN DATA PERTAINING TO A CONSUMER'S CREDIT; AMENDING SECTION 33-18-210, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Purpose.** The purpose of [sections 1 through 10] is to regulate the use of credit information for personal insurance so that consumers are afforded certain protections with respect to the use of credit information.

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NEW SECTION. **Section 2. Scope.** [Sections 1 through 10] apply to personal insurance and not to commercial insurance. For purposes of [sections 1 through 10], "personal insurance" means private passenger automobile, home owners, motorcycle, mobile home owners, and noncommercial dwelling fire insurance policies and boat, personal watercraft, snowmobile, and recreational vehicle policies. These policies must be individually underwritten for personal, family, or household use. Other types of insurance may not be included as personal insurance for the purpose of [sections 1 through 10].

SB 311 of HB 41 § 1(c)

NEW SECTION. **Section 3. Definitions.** For the purposes of [sections 1 through 10], the following definitions apply:

HB 41 § 1(1)(a)

(1) "Adverse action" means a denial [nonrenewal] or cancellation of, an increase in any charge for, or a reduction or other adverse or unfavorable change in the terms of coverage or amount of coverage of any

SB 311 w/ match or change noted

*FCA = Farmers Consent Agreement
cf = compare with*

insurance, existing or applied for, in connection with the underwriting of personal insurance.

(2) "Affiliate" means an insurer who, directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with another insurer.

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(3) "Applicant" means an individual who has applied to be covered by a personal insurance policy with an insurer.

(4) "Consumer" means an insured whose credit information is used or whose insurance score is calculated in the underwriting or rating of a personal insurance policy or of an applicant for a personal insurance policy.

of HB 41 § 1(3)

(5) "Consumer reporting agency" means any entity that, 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 consumer reports to third parties.

(6) "Credit information" means any credit-related information derived from a credit report, found on a credit report itself, or provided on an application for personal insurance. Information that is not credit related may not be considered credit information regardless of whether it is contained in a credit report or in an application or is used to calculate an insurance score.

(7) "Credit report" means any written, oral, or other communication of information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, or credit capacity that 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 insurance premiums, eligibility for coverage, or tier placement.

HB 41 § 1(5) (a)

(8) "Insurance score" means a number or rating that is derived from an algorithm, computer application, model, or other process that is based in whole or in part on credit information for the purposes of predicting the future insurance loss exposure of an individual applicant or insured.

HB 41 § 1(6)

NEW SECTION. Section 4. Use of credit information. An insurer authorized to do business in this

state that uses credit information to underwrite or rate risks may not:

SB 311 w/ matches or changes noted

(1) use an insurance score that is calculated using income, gender, address, zip code, ethnic group, religion, marital status, or nationality of the consumer as a factor;

SB 311 FCA § 2

(2) deny, cancel, or not renew a policy of personal insurance solely on the basis of credit information without consideration of any other applicable underwriting factor independent of credit information and not expressly prohibited by subsection (1);

of HB 41 § 2 (2), (3)

(3) base an insured's renewal rates for personal insurance solely upon credit information without

SB 311 FCA § 5

consideration of any other applicable factor independent of credit information;

(4) take an adverse action against a consumer solely because the consumer does not have a credit card account without consideration of any other applicable factor independent of credit information;

cf HB4
§ 2(4)
(e)

(5) consider the consumer's total available line of credit or total debt, except that an insurer may consider the total amount of outstanding debt in relation to the total line of credit;

HB 41
§ 2(4)
(f)

(6) consider an absence of credit information or an inability to calculate an insurance score in underwriting or rating personal insurance unless the insurer does one of the following:

SB 311
w/ sub§
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(a) excludes the use of credit information as a factor and uses only other underwriting criteria;

cf HB4
§ 2(4)
(a)

(b) treats the consumer as if the consumer had neutral credit information, as defined by the insurer; or

(c) treats the consumer as otherwise approved by the commissioner if the insurer presents information

that the absence or inability relates to the risk for the insurer;

(7) take an adverse action based on information that is the subject of a written dispute between the consumer and a consumer reporting agency, if coded in the credit report as disputed, until the dispute has reached a final determination in accordance with the Fair Credit Reporting Act, 15 U.S.C. 1681, et seq.;

HB 41
§ 2(b)

(8) take an adverse action against a consumer based on credit information unless an insurer obtains and uses a credit report issued or an insurance score calculated within 90 days from the date that the policy is first written or renewal is issued;

FCA
SB 4
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(9) use credit information unless not later than every 36 months following the last time that the insurer obtained current credit information for the insured, the insurer recalculates the insurance score or obtains an updated credit report. Regardless of the requirements of this subsection (9):

SB 311
+ FCA
§ 9

(a) at annual renewal, upon the request of a consumer or the consumer's agent, the insurer shall reunderwrite and rerate the policy based upon a current credit report or insurance score. An insurer need not recalculate the insurance score or obtain the updated credit report of a consumer more frequently than once in a 12-month period.

(b) the insurer has the discretion to obtain current credit information upon any renewal before the 36 months provided for in subsection (9), if consistent with its underwriting guidelines;

(c) an insurer does not have to obtain current credit information for an insured, despite the requirements of subsection (9)(a), if one of the following applies:

(i) the insurer is treating the consumer as otherwise approved by the commissioner;

(ii) the insured is in the most favorably priced tier of the insurer within a group of affiliated insurers.

However, the insurer has the discretion to order the report, if consistent with its underwriting guidelines.

(iii) credit was not used for underwriting or rating the insured when the policy was initially written. However, the insurer has the discretion to use credit for underwriting or rating the insured upon renewal, if consistent with its underwriting guidelines.

(iv) the insurer reevaluates the insured beginning not later than 36 months after inception and at similar succeeding times based upon other underwriting or rating factors, excluding credit information; or

(10) use the following as a negative factor in any insurance scoring methodology or in reviewing credit information for the purpose of underwriting or rating a policy of personal insurance:

(a) credit inquiries not initiated by the consumer or inquiries requested by the consumer for the consumer's own credit information;

of HB 41 § 2 (b)

(b) inquiries relating to insurance coverage, if so identified on a consumer's credit report;

no parallel in HB 41

(c) collection accounts with a medical industry code, if so identified on the consumer's credit report;

SB 311 FCA § 1 HB 41 § 2(4)(c)

(d) multiple-lender inquiries, if coded by the consumer reporting agency on the consumer's credit report as being from the home mortgage industry and made within 30 days of one another, unless only one inquiry is considered; or

SB 311 + FCA § 6(1)(a)

> HB 41 § 2 (Xd)

(e) multiple-lender inquiries, if coded by the consumer reporting agency on the consumer's credit report as being from the automobile lending industry and made within 30 days of one another, unless only one inquiry is considered

SB 311 + FCA § 6(1)(b)

(11) (a) An insurer shall on written request from an applicant or an insured, provide reasonable underwriting or rating exceptions for a consumer whose credit report has been directly affected by an extraordinary event.

HB 41 § 2 (5) w/ amdt

(b) An insurer may require reasonable written and independently verifiable documentation of the event and the effect of the event on the consumer's credit before granting an exception. An insurer is not required to consider repeated extraordinary events or extraordinary events the insurer reconsidered previously.

(c) An insurer may also consider granting an exception to a consumer for an extraordinary event not listed in this section.

(d) An insurer may not be deemed to be out of compliance with its filed rules and rates as a result of granting an exception pursuant to this subsection (11).

(e) As used in this subsection, "extraordinary event" means:

- (i) expenses related to a catastrophic injury or illness;
- (ii) extended loss of employment;
- (iii) death of a supporting family member;

(iv) theft of identity pursuant to 45-6-332.

NEW SECTION. Section 5. Dispute resolution and error correction. If it is determined through the dispute resolution process set forth in the federal Fair Credit Reporting Act, 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 that determination from either the consumer reporting agency or the insured, the insurer shall reunderwrite and re-rate the consumer within 30 days of receiving the notice. After reunderwriting or re-rating the insured, the insurer shall make any adjustments necessary consistent with its underwriting and rating guidelines. If an insurer determines that the insured has overpaid the 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.

cf
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§ 5

NEW SECTION. Section 6. Initial notification. (1) If an insurer writing personal insurance uses credit information in underwriting or rating a consumer, the insurer or its agent shall disclose, either on the insurance application or at the time that the insurance application is taken, that it may obtain credit information in connection with the application. The disclosure must be either written or provided to an applicant in the same medium as the application for insurance. The insurer does not have to provide the disclosure statement required under this section to any insured on a renewal policy if the consumer has previously been provided a disclosure statement.

no
parallels
in HB
41
Consumer
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(2) Use of the following disclosure statement constitutes compliance with this section: "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. We may use a third party in connection with the development of your insurance score."

NEW SECTION. Section 7. Adverse action notification. If an insurer takes an adverse action based upon credit information, the insurer shall:

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(1) ^{HB 41 § 4(1) cf} provide notification to the consumer that an adverse action has been taken, in accordance with the requirements of the federal Fair Credit Reporting Act, 15 U.S.C. 1681m(a); and

(2) provide notification to the consumer explaining the reason for the adverse action. ^{HB 41 § 4(2)} 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. ^{HB 41 § 4(1)} The notification must include a description of up to four factors that were the primary influences of the adverse action. ^{HB 41 § 4(2)} 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 subsection. Standardized credit explanations provided by consumer reporting agencies or other third-party vendors are considered to comply with this section.

HB 41 § 6(2)

(3) If an insurer denies a policy based in whole or in part on the use of a credit report or insurance score, the insurer shall retain records of the notice of denial or nonrenewal and the contents of the credit report and insurance score, pursuant to ~~MEGA~~, *for not less than 5 years.*

NEW SECTION. Section 8. Filing. (1) Insurers that use insurance scores to underwrite and rate risks shall file their scoring models or other scoring processes with the commissioner. A third party may file scoring models on behalf of insurers.

SB 311 w/ addns from HB 41
cf § 3 in HB 41

HB 41 § 2(7)(a)

(2) The filing must include:

- (a) information that supports the insurer's use of the insurance score as a rating or underwriting criterion;
- (b) the insurer's rates and rating plan; and
- (c) certification by an officer of the insurer that the model is in compliance with Title 33.

(3) A filing that includes insurance scoring may include loss experience justifying the use of credit information.

HB 41 § 2(7)(b)

(4) The requirements of subsection (2) are subject to the applicable provisions of Title 33, chapter 16.

(5) A filing relating to credit information is considered a trade secret under the laws of this state. — cf HB 41 § 2(7)(d)

HB 41 § 2(8)

(6) For the purposes of this section, insurance scoring models or methodologies include all attributes and factors used in the calculation of an insurance score.

NEW SECTION. Section 9. Indemnification. An insurer shall indemnify, defend, and hold insurance producers harmless from and against all liability, fees, and costs arising out of or relating to the actions, errors or omissions of an insurance producer that obtains or uses credit information or insurance scores for an insured if the insurance producer follows the instructions of or procedures established by the insurer and complies with any applicable law or regulation. This section may not be construed to provide a consumer or other insured with a cause of action that does not exist in the absence of this section.

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cf HB 41 § 7
311 has stronger protections for agents

NEW SECTION. Section 10. Sale of policy term information by consumer reporting agency. (1) A consumer reporting agency may not provide or sell data or lists that include any information that in whole or in part was submitted in conjunction with an insurance inquiry about a consumer's credit information or a request

no parallel in HB 41

for a credit report or insurance score. This information includes but is not limited to the expiration dates of an insurance policy or any other information that may identify time periods during which a consumer's insurance may expire and the terms and conditions of the consumer's insurance coverage.

(2) The restrictions provided in subsection (1) do not apply to data or lists that the consumer reporting agency supplies to the insurance producer from whom information was received, the insurer on whose behalf the insurance producer acted, or the insurer's affiliates or holding companies.

(3) Insurers that use an insurance score in the consideration of an application for personal insurance coverage shall maintain records of the use and insurance score in its regular business files ~~as required by~~ *not less than 5 years.*

*add
from
HB 41
§ 6(1)*

(4) This section may not be construed to restrict any insurer from being able to obtain a claims history report or a motor vehicle report.

Section 11. Section 33-18-210, MCA, is amended to read:

"33-18-210. Unfair discrimination and rebates prohibited -- property, casualty, and surety insurances. (1) A title, property, casualty, or surety insurer or an employee, representative, or insurance producer of an insurer may not, as an inducement to purchase insurance or after insurance has been effected, pay, allow, or give or offer to pay, allow, or give, directly or indirectly, a:

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in
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311*

- (a) rebate, discount, abatement, credit, or reduction of the premium named in the insurance policy;
- (b) special favor or advantage in the dividends or other benefits to accrue on the policy; or
- (c) valuable consideration or inducement not specified in the policy, except to the extent provided for in an applicable filing with the commissioner as provided by law.

(2) An insured named in a policy or an employee of the insured may not knowingly receive or accept, directly or indirectly, a:

- (a) rebate, discount, abatement, credit, or reduction of premium;
- (b) special favor or advantage; or
- (c) valuable consideration or inducement.

(3) An insurer may not make or permit unfair discrimination in the premium or rates charged for insurance, in the dividends or other benefits payable on insurance, or in any other of the terms and conditions of the insurance either between insureds or property having like insuring or risk characteristics or between insureds because of race, color, creed, religion, or national origin.

(4) This section may not be construed as prohibiting the payment of commissions or other

compensation to ~~duly~~ licensed insurance producers or as prohibiting an insurer from allowing or returning lawful dividends, savings, or unabsorbed premium deposits to its participating policyholders, members, or subscribers.

(5) An insurer may not make or permit unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the amount of insurance coverage on a property or casualty risk because of the geographic location of the risk, unless:

(a) the refusal, cancellation, or limitation is for a business purpose that is not a mere pretext for unfair discrimination; or

(b) the refusal, cancellation, or limitation is required by law or regulatory mandate.

(6) An insurer may not make or permit unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the amount of insurance coverage on a residential property risk or on the personal property contained in the residential property, because of the age of the residential property, unless:

(a) the refusal, cancellation, or limitation is for a business purpose that is not a mere pretext for unfair discrimination; or

(b) the refusal, cancellation, or limitation is required by law or regulatory mandate.

(7) An insurer may not refuse to insure, refuse to continue to insure, or limit the amount of coverage available to an individual because of the sex or marital status of the individual. However, an insurer may take marital status into account for the purpose of defining persons eligible for dependents' benefits.

(8) An insurer may not terminate or modify coverage or refuse to issue or refuse to renew a property or casualty policy or contract of insurance solely because the applicant or insured or any employee of either is mentally or physically impaired. However, this subsection does not apply to accident and health insurance sold by a casualty insurer, and this subsection may not be interpreted to modify any other provision of law relating to the termination, modification, issuance, or renewal of any insurance policy or contract.

(9) An insurer may not refuse to insure, refuse to continue to insure, charge higher rates, or limit the amount of coverage available to an individual based solely on adverse information contained in a driving record that is 3 years old or older. However, an insurer may provide discounts to an insured based on favorable aspects of an insured's claims history that is 3 years old or older.

(10) An insurer may not charge points or surcharge a private passenger motor vehicle policy because of a claim submitted under the insured's policy if the insured was not at fault.

~~(11) (a) For the purposes of this subsection (11), "credit history" means that portion of a credit report or~~

~~background report that addresses the applicant's or insured's debt payment history or lack of history but does not include public information including convictions, lawsuits, bankruptcies, or similar public information.~~

~~(b) An insurer writing automobile or homeowner insurance may not refuse to insure, refuse to continue to insure, charge higher rates, or limit the scope or amount of coverage or benefits available to an individual based solely on the insurer's knowledge of the individual's credit history unless:~~

~~(i) the insurer possesses substantial documentation that credit history is significantly correlated with the types of risks insured or to be insured;~~

~~(ii) the insurer sends written communication to the individual disclosing that the insurance coverage was declined, not renewed, or limited in scope or amount of coverage or benefits because of credit information relating to the applicant or the insured; and~~

~~(iii) upon subsequent request of the individual, mailed within 10 days of receipt of the denial, nonrenewal, or limitation, the insurer provides the individual with a copy of the credit report at issue or the name and address of a third party from whom the individual may obtain a copy of the credit report, within 10 days of receipt of the request.~~

~~(c) The provisions of this subsection (11) are not intended to conflict with any disclosure provisions of state law or the federal Truth in Lending Act applicable to lending institutions, credit bureaus, or other credit service organizations that maintain or distribute credit histories on insurance applicants or policyholders."~~

NEW SECTION. Section 12. Codification instruction. [Sections 1 through 10] are intended to be codified as an integral part of Title 33, chapter 18, and the provisions of Title 33, chapter 18, apply to [sections 1 through 10]. } 311 + 41

NEW SECTION. Section 13. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications. } 311 only

NEW SECTION. Section 14. Applicability. [This act] applies to personal insurance policies written to be effective or renewed on or after October 1, 2005. } 311 only

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