director aiding or abetting in any contribution made in violation of this section shall be liable to the insurer for the amount so contributed.

History: En. Sec. 220, Ch. 286, L. 1959; R.C.M. 1947, 40-3518; amd. Sec. 1, Ch. 713, L. 1989.

Cross-References

Prohibited contributions from corporations, 13-35-227.
Campaign finance, Title 13, ch. 37, part 2.
Misdemeanor, 46-18-212.

Part 4
Insured's Relations With Insurer

33-18-401. False application, claim, and proof of loss — criminal penalty. (1) An insurance producer, examining physician, applicant, or other person who knowingly makes a false or fraudulent statement or representation in or with reference to an application for insurance is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $250 or more than $1,000 or by imprisonment in the county jail for not less than 3 months or more than 6 months, or both fine and imprisonment at the discretion of the court.

(2) (a) A person who, for the purpose of obtaining any money or benefit, knowingly presents or causes to be presented a false or fraudulent claim or any proof in support of a false or fraudulent claim for the payment of the loss upon a contract of insurance or prepares, makes, or subscribes a false or fraudulent account, certificate, affidavit or proof of loss, or other document or writing, with intent that the same may be presented or used in support of a false or fraudulent claim, is guilty of theft under 45-6-301. Either a county attorney or the attorney general may prosecute the person.

(b) As used in subsection (2)(a), "person" includes but is not limited to an insurance producer, examining physician, or applicant.

History: En. Sec. 224, Ch. 286, L. 1959; R.C.M. 1947, 40-3522; amd. Sec. 60, Ch. 713, L. 1989; amd. Sec. 3, Ch. 562, L. 2005.

Part 5
Miscellaneous Prohibitions

33-18-501. Lenders — restrictions on solicitation, rejection, charges, and disclosure — favoring insurance producer prohibited. (1) No person may require as a condition precedent to the lending of money or extension of credit or any renewal thereof that the person to whom such money or credit is extended or whose obligation a creditor is to acquire or finance negotiate any contract of insurance or renewal thereof through a particular insurer or group of insurers or insurance producer or group of insurance producers.

(2) No person who lends money or extends credit may:

(a) solicit insurance for the protection of real property, after a person indicates interest in securing a first-mortgage credit extension, until such person has received a commitment in writing from the lender as to a loan or credit extension;

(b) unreasonably reject a contract of insurance furnished by the borrower for the protection of the property securing the credit or lien. A rejection is not unreasonable if it is based on reasonable standards, uniformly applied, relating to the extent of coverage required and the financial soundness and the services of an insurer. Such standards may not discriminate against any particular type of insurer or call for rejection of an insurance contract because the contract contains coverage in addition to that required by the credit transaction.

(c) require that any borrower, mortgagor, purchaser, insurer, or insurance producer pay a separate charge in connection with the handling of any contract of insurance required as security for a loan on real estate or pay a separate charge to substitute the insurance policy of one insurer for that of another. This subsection (2)(c) does not include the interest which may be charged on premium loans or premium advancements in accordance with the terms of the loan or credit document.

(d) use or disclose information relative to a contract of insurance which is required by the credit transaction:

(i) for the purpose of replacing such insurance; and

(ii) without the prior written consent of the borrower;

(e) require any procedures or conditions of licensed insurance producers or insurers not customarily required of those insurance producers or insurers affiliated or in any way connected with the person who lends money or extends credit.

(3) Each person who lends money or extends credit and who solicits insurance on real and personal property subject to subsection (2) of this section must explain to the borrower in writing that the insurance related to such credit extension may be purchased from an insurer or insurance producer of the borrower's choice, subject only to the lender's right to reject a given insurer or insurance producer as provided in subsection (2)(b). Compliance with disclosures as to insurance required by truth-in-lending laws or comparable state laws shall be compliance with this subsection.

(4) The commissioner may examine and investigate those insurance-related activities of any person which may be in violation of this section. Any affected person may submit to the commissioner a complaint or material pertinent to the enforcement of this section.

(5) Nothing herein prevents a person who lends money or extends credit from placing insurance on real or personal property in the event the mortgagor, borrower, or purchaser has failed to provide required insurance in accordance with the terms of the loan or credit document.

(6) Nothing contained in this section applies to credit life or credit accident and health insurance.

History: En. 40-3516.1 by Sec. 5, Ch. 320, L. 1977; R.C.M. 1947, 40-3516.1; amd. Sec. 1, Ch. 713, L. 1989; amd. Sec. 35, Ch. 798, L. 1991.

Cross-References

Regulated lender — definition, 31-1-111.
Property insurance, Title 33, ch. 24.

33-18-502. Prohibited relations with long-term care facility. An insurance producer that owns, manages, supervises, operates, maintains, or works in a long-term care facility, as defined in 37-9-101, may not solicit, negotiate with, or sell a life or disability policy or certificate of insurance to a resident of a long-term care facility.

History: En. Sec. 5, Ch. 227, L. 2001.

Part 6
Montana Use of Credit Information in Personal Insurance

33-18-601. Short title. This part may be cited as the "Montana Use of Credit Information in Personal Insurance Act".

History: En. Sec. 1, Ch. 363, L. 2005.

33-18-602. Purpose. The purpose of this part 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.

History: En. Sec. 2, Ch. 363, L. 2005.

33-18-603. Scope. This part applies to personal insurance and not to commercial insurance. For purposes of this part, "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 this part.

History: En. Sec. 3, Ch. 363, L. 2005.

33-18-604. Definitions. For the purposes of this part, the following definitions apply:

(1) "Adverse action" means, in regard to the terms of coverage or amount of coverage of any insurance, existing or applied for, in connection with the underwriting of personal insurance, any of the following:

(a) denial, nonrenewal, or cancellation of coverage;

(b) an increase in any charge for coverage;

(c) failure to give an otherwise available credit-related discount; or

(d) a reduction or any other adverse or unfavorable change in the terms of coverage or the amount of coverage.

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(2) "Affiliate" means a company that controls, is controlled by, or is under common control with another company.

(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.

(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 creditworthiness, 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.

(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.

History: En. Sec. 4, Ch. 363, L. 2005.

33-18-605. Use of credit information. (1) An insurer authorized to do business in this state that uses credit information to underwrite or rate risks may not:

(a) 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;

(b) deny, cancel, or not renew a policy of personal insurance 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)(a);

(c) base an insured's renewal rates for personal insurance upon credit information without consideration of any other applicable factor independent of credit information;

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

(e) 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:

(i) 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;

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

(iii) excludes the use of credit information as a factor and uses only other underwriting criteria;

(f) 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;

(g) 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 (1)(g):

(i) 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.

(ii) the insurer has the discretion to obtain current credit information upon any renewal before the 36 months provided for in subsection (1)(g), if consistent with its underwriting guidelines;

(iii) an insurer may but does not have to obtain current credit information for an insured, despite the requirements of subsection (1)(g)(i), if one of the following applies:

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

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

(C) credit was not used for underwriting or rating the insured when the policy was initially written;

(D) 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.

(h) use a credit score that treats any of the following as a negative factor for the purpose of underwriting or rating a policy of personal insurance:

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

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

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

(iv) 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;

(v) 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;

(vi) the number of credit inquiries;

(vii) the consumer's use of a particular type of credit card, charge card, or debit card or the number of credit cards obtained by a consumer;

(viii) a loan if information from the credit report makes it evident that the loan is for the purchase of an automobile or a personal residence. However, an insurer may consider the bill payment history of any loan, the total number of loans, or both.

(ix) the consumer's total available line of credit or total debt. However, an insurer may consider:

(A) the consumer's bill payment history on the debt; or

(B) the total amount of outstanding debt if the outstanding debt exceeds the total line of credit.

(2) (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.

(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 considered to be out of compliance with its filed rules and rates as a result of granting an exception pursuant to this subsection (2).

(e) As used in this subsection (2), "extraordinary event" means:

(i) expenses related to a catastrophic injury or illness;

(ii) temporary loss of employment;

(iii) death of an immediate family member; or

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

History: En. Sec. 5, Ch. 363, L. 2005.

33-18-606. 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 rerate the consumer within 30 days of receiving the notice. After reunderwriting or rerating 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.

History: En. Sec. 6, Ch. 363, L. 2005.

33-18-607. 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.

(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."

History: En. Sec. 7, Ch. 363, L. 2005.

33-18-608. Adverse action notification. If an insurer takes an adverse action based upon credit information, the insurer shall:

(1) 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. 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. The notification must include a description of up to four 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 subsection. Standardized credit explanations provided by consumer reporting agencies or other third-party vendors are considered to comply with this section.

History: En. Sec. 8, Ch. 363, L. 2005.

33-18-609. 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.

(2) A filing relating to credit information is considered a trade secret under the laws of this state.

History: En. Sec. 9, Ch. 363, L. 2005.

33-18-610. 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 insurer 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.

History: En. Sec. 10, Ch. 363, L. 2005.

33-18-611. 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 for a credit report or insurance score. This

information includes but is not limited to the expiration dates of an insurance policy or any oth information that may identify time periods during which a consumer's insurance may expire ar 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 consum reporting agency supplies to the insurance producer from whom information was received, th insurer on whose behalf the insurance producer acted, or the insurer's affiliates or holdin companies.

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

History: En. Sec. 11, Ch. 363, L. 2005.

33-18-612. Refund for expunged record. An insurance company that charges a additional premium based on insurance points assessed against a policyholder as a result of charge or conviction that was expunged because of identity theft pursuant to 46-24-219 shal refund the additional premiums to the policyholder upon notification and verification of th expungement.

History: En. Sec. 5, Ch. 195, L. 2007.

Compiler's Comments

Effective Date: This section is effective October 1, 2007.

Parts 7 and 8 reserved

Part 9
Restrictions on Use of Genetic Information

33-18-901. Definitions. Unless the context indicates otherwise, the following definitions apply to this part:

(1) "Genetic information" means, unless otherwise provided by Public Law 104-191, information derived from genetic testing or medical evaluation to determine the presence or absence of variations or mutations, including carrier status, in an individual's genetic material or genes that are scientifically or medically believed to cause a disease, disorder, or syndrome or are associated with a statistically increased risk of developing a disease, disorder, or syndrome that is asymptomatic at the time of testing.

(2) "Genetic testing" or "genetic test" means a test used to diagnose a presymptomatic genetic factor, including analysis of human deoxyribonucleic acid or ribonucleic acid, chromosomes, proteins, or metabolites. The term does not include a routine physical examination or a chemical, blood, or urine analysis, unless conducted or analyzed purposefully or knowingly to obtain genetic information, or a family history.

(3) "Genetic trait" means any medically or scientifically identified genetic factor, known or presumed to be present in the individual or a biological relative but not presently associated with any manifestations of the disorder in the individual, that could cause a disorder or be statistically associated with an increased risk of development of a disorder.

(4) "Group policy" includes:

(a) the group insurance program authorized by Title 2, chapter 18, part 7;

(b) the state employee group insurance program required by Title 2, chapter 18, part 8; and

(c) a self-funded multiple employer welfare arrangement that is not regulated pursuant to the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq.

History: En. Sec. 3, Ch. 334, L. 1999.

33-18-902. Requirement for genetic testing — limitations. (1) An insurer, health service corporation, health maintenance organization, fraternal benefit society, or other issuer of an individual or group policy or certificate of insurance may not require an individual to obtain a genetic test unless the test is otherwise required by law for reasons including but not limited to the following:

(a) to establish parentage;

(b) to determine the presence of metabolic disorders in a newborn by testing conducted pursuant to newborn screening and protocols;

(c) in connection with a criminal investigation or prosecution; or