

HOUSE BILL NO. 184
INTRODUCED BY B. WILSON
BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING THE USE OF CREDIT HISTORIES OR CREDIT SCORES BY INSURERS; PROVIDING DEFINITIONS; PROVIDING THE STATE AUDITOR WITH RULEMAKING AUTHORITY TO OVERSEE THE USE OF CREDIT HISTORIES AND CREDIT SCORES; PROVIDING THAT THE USE OF CREDIT HISTORIES AND CREDIT SCORES APPLIES TO PERSONAL INSURANCE; PROVIDING FOR NOTICE TO CONSUMERS WITH RESPECT TO THE USE OF CREDIT HISTORIES OR CREDIT SCORES; PROVIDING FOR CORRECTIONS TO ERRONEOUS CREDIT HISTORIES OR CREDIT SCORES; REQUIRING RECORDKEEPING BY INSURERS; PROVIDING FOR INDEMNIFICATION OF INSURANCE PRODUCERS; AND AMENDING SECTION 33-18-210, MCA."

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

NEW SECTION. Section 1. Definitions. As used in [sections 1 through 8], the following definitions apply:

(1) "Adverse action" has the meaning provided in the Fair Credit Reporting Act, 15 U.S.C. 1681, et seq. Adverse actions include but are not limited to:

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

(b) charging a higher insurance premium for personal insurance than would have been offered if the credit history or credit score would have been more favorable, whether the charge is by:

(i) application of a rating rule;

(ii) assignment to a rating tier that does not have the lowest available rates; or

(iii) placement with an affiliate insurer that does not offer the lowest rates available to the consumer within the affiliated group of insurance companies;

(c) any reduction or adverse or unfavorable change in the terms of coverage or amount of any personal insurance due to a consumer's credit history or credit score. A reduction or adverse or unfavorable change in the terms of coverage occurs when:

(i) coverage provided to the consumer is not as broad in scope as coverage requested by the consumer but available to other insureds of the insurer or any affiliate insurer; or

(ii) the consumer is not eligible for benefits, such as dividends, that are available through affiliate insurers.

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

(3) "Consumer" means an individual policyholder or applicant for personal insurance.

(4) "Consumer report" has the meaning provided in the Fair Credit Reporting Act, 15 U.S.C. 1681, et seq.

(5) "Credit history" means any written, oral, or other communication of any information bearing on a consumer's creditworthiness, credit standing, or credit capacity that is used or expected to be used or is collected in whole or in part for the purpose of serving as a factor in determining personal insurance premiums or eligibility for coverage. Public information, including but not limited to convictions, lawsuits, bankruptcies, or similar information, is not part of a credit history.

(6) "Credit 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 history.

(7) "Personal insurance" means personal lines insurance written on the personal and real property of an individual or individuals pursuant to 33-1-206, 33-1-209, 33-1-210, and 33-1-227.

NEW SECTION. Section 2. Restrictions on use of credit history or credit score. (1) Except as provided in subsection (3), an insurer may not take an adverse action against a consumer based upon the consumer's credit history or credit score.

(2) An insurer may not cancel or refuse to renew personal insurance based in whole or in part on a consumer's credit history or credit score. An offer of placement with an affiliate insurer does not constitute cancellation or nonrenewal for the purposes of this subsection.

(3) With respect to the review of an application for coverage, an insurer may not use a credit history or credit score as the sole basis to deny insurance but shall consider other substantive underwriting factors in addition to a credit history and credit score.

(4) An insurer may not take any adverse action against a consumer based upon a consideration of any of the following factors:

(a) the absence of credit history or the inability to determine the consumer's credit history;

(b) the number of credit inquiries;

(c) a credit history or credit score based on collection accounts identified with a medical industry code;

(d) the purchase of a vehicle or house, except that an insurer may consider the bill payment history of any loan, the total number of loans, or both;

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

(f) the consumer's total available line of credit or total debt, except that an insurer may consider the total amount of outstanding debt if it exceeds the total line of credit; or

(g) the use of a credit history or credit score of any person other than the named policyholder or person who has an insurable interest to be covered under the policy.

(5) An insurer shall develop reasonable underwriting or rating exceptions concerning the use of a consumer's credit history or credit score. These exceptions must be triggered when a consumer informs the insurer that the consumer's credit history or credit score is substantially influenced by:

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

(b) temporary loss of employment;

(c) death of an immediate family member; or

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

(6) An insurer using a credit history may not take an adverse action based on information that is the subject of a written dispute between the consumer and a consumer reporting agency, as noted in the consumer report, until the dispute has reached a final determination in accordance with the Fair Credit Reporting Act, 15 U.S.C. 1681, et seq.

(7) (a) An insurer that employs a credit scoring model in determining personal insurance underwriting, rates, or premiums shall file with the commissioner prior to use:

(i) the insurer's credit scoring model and methodology;

(ii) information that supports the insurer's use of a credit score as a rating or underwriting criterion;

(iii) the insurer's rates and rating plan; and

(iv) certification by an officer of the insurer that the model is in compliance with the Montana Insurance Code.

(b) The insurer shall submit revisions to a credit scoring model, the rates, or rating plan prior to use.

(c) Credit scoring models or methodologies provided to the commissioner by or on behalf of an insurer under this section are trade secret information pursuant to Title 30, chapter 14, part 4, but may be made public by the commissioner for the purpose of enforcement actions by the commissioner.

(8) For the purposes of this section, credit history or credit scoring models or methodologies include all attributes and factors used in the calculation of a credit score.

NEW SECTION. Section 3. Third-party credit reports or credit scores. An insurer may not use the services of a third party to develop a credit score unless the third party, without qualification, consents to provide to the commissioner any documents, algorithms, computer applications, actuarial and statistical bases or models, or other similar information required by the commissioner.

NEW SECTION. Section 4. Notice to consumers. (1) An insurer that takes an adverse action against a consumer based in whole or in part on a credit history or credit score shall provide to the consumer in writing within 21 days of taking the adverse action the specific negative factors in the credit history that contributed to the adverse action. An insurer is not required to list more than five negative factors. When an insurer lists negative factors, they must be listed in order of decreasing importance.

(2) The specific negative factors must be stated in a manner that is sufficiently clear so that a reasonable person can identify the basis for the insurer's decision without making further inquiry. The use of generalized terms or unclear terms, including but not limited to "poor credit history", "poor credit rating", or "poor credit score", do not meet the requirement of being sufficiently clear.

(3) The insurer shall inform the consumer that the consumer is entitled to a free copy of the consumer's consumer report under the Fair Credit Reporting Act, 15 U.S.C. 1681, et seq. The insurer shall provide the consumer with the name and telephone number of the credit reporting agency that the insurer used to determine the credit score. This information must be prominently displayed as part of the information provided to the consumer pursuant to subsection (1).

NEW SECTION. Section 5. Corrections to erroneous credit history or credit score. (1) If the insurer receives notice of erroneous information affecting the credit history or credit score of a consumer, the insurer shall correct the consumer's credit score or obtain a corrected credit history or credit score, as appropriate, based on the corrected information.

(2) If an insurer has taken an adverse action against a consumer on the basis of the erroneous information, the insurer shall determine the difference between the premium paid by the consumer based on the erroneous information and the premium based on the corrected information affecting the credit history or credit score. If the difference is in favor of the consumer, the insurer shall credit or refund the difference to the consumer for the period of time that the insurer used the erroneous information. If the difference is in favor of the insurer, the insurer may not charge the difference to the consumer or collect the difference from the consumer.

NEW SECTION. Section 6. Recordkeeping and availability of records. (1) Any insurer that requests or uses credit history or credit scoring in the consideration of an application for personal insurance coverage shall maintain evidence of compliance with [sections 1 through 8] in its regular business files. The evidence does not need to be in any particular form if it reasonably demonstrates compliance. An insurer shall make evidence of compliance available for review and examination by the commissioner.

(2) If an insurer denies or fails to renew a policy based on the use of a credit history or credit score, the insurer shall retain evidence of the notice of denial or nonrenewal and maintain a record of the contents of the credit history or credit score. The insurer shall maintain the evidence for 5 years.

NEW SECTION. Section 7. Indemnification of insurance producer. An insurer shall indemnify, defend, and hold harmless an insurance producer from and against all liability, fees, and costs arising out of or relating to the actions, errors, or omissions of an insurance producer who obtains or uses a credit history or credit score for an insurer if the insurance producer follows the procedures established by the insurer and complies with the Montana Insurance Code and rules adopted to implement the code.

NEW SECTION. Section 8. Rulemaking authority. The commissioner may adopt rules to enforce provisions of [sections 1 through 8], including but not limited to the use of credit histories and credit scores, forms, recordkeeping, notification to consumers of the use of a credit history and credit scores, and evaluation of the methods or models used in calculating credit scores.

Section 9. 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:

(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 10. Codification instruction. [Sections 1 through 8] 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 8].

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