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SENATE BILL 560

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Carroll H. Leavell

AN ACT

RELATING TO INSURANCE; ENACTING THE PERSONAL INSURANCE CREDIT INFORMATION ACT; REGULATING THE USE OF CREDIT INFORMATION FOR PERSONAL INSURANCE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the "Personal Insurance Credit Information Act".

Section 2. PURPOSE AND APPLICATION.--The Personal Insurance Credit Information Act regulates the use of credit information in the underwriting, rating or renewal of personal insurance for the protection of consumers and applies to personal insurance written by an insurer or a group of affiliated insurers authorized to do business in this state or written pursuant to the FAIR Plan Act, but does not apply to commercial insurance or any other types of insurance.

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1 Section 3. DEFINITIONS.--As used in the Personal
2 Insurance Credit Information Act:

3 A. "adverse action" means a denial or cancellation
4 of, an increase in a charge for or a reduction or other adverse
5 or unfavorable change in the terms of coverage or amount of,
6 insurance, existing or applied for, in connection with the
7 underwriting, rating or renewal of personal insurance, which
8 adverse action occurs when an insurer offers insurance at less
9 favorable terms than it would have offered a consumer if the
10 consumer's credit information had been more favorable;

11 B. "affiliate" means a company that directly or
12 indirectly controls, is controlled by or is under the common
13 ownership or control of another company;

14 C. "company placement" means the assignment of a
15 consumer to a particular insurer within a group of affiliates;

16 D. "consumer" means an individual applicant or
17 insured whose credit information is relied upon or used to
18 calculate an insurance score for underwriting, rating or
19 renewing a personal insurance coverage;

20 E. "consumer reporting agency" means a person or
21 entity that, for monetary fees, dues or on a cooperative
22 nonprofit basis, regularly engages in whole or in part in the
23 practice of assembling or evaluating consumer credit
24 information or other information on consumers for the purpose
25 of furnishing consumer reports to third parties;

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1 F. "credit information" means a written, oral or
2 other communication of information prepared by a consumer
3 reporting agency or provided by the consumer on an application
4 for or renewal of credit, bearing on a consumer's credit
5 worthiness, credit standing or credit capacity, that is used or
6 expected to be used or collected in whole or in part for the
7 purpose of underwriting, rating or renewing a personal
8 insurance coverage;

9 G. "insurance score" means a number or rating that
10 is derived from an algorithm, computer application, model or
11 other process that is based in whole or in part on credit
12 information and is used for underwriting, rating or renewing
13 personal insurance coverage;

14 H. "personal insurance" means private passenger
15 automobile, homeowners', motorcycle, mobile-homeowners', boat,
16 personal watercraft, snowmobile, recreational vehicle,
17 noncommercial dwelling fire, personal umbrella or any other
18 type of insurance policy that is individually underwritten for
19 personal, family or household use; and

20 I. "superintendent" means the superintendent of the
21 insurance division of the public regulation commission.

22 Section 4. USE OF CREDIT INFORMATION--LIMITS ON USE.--An
23 insurer or group of affiliated insurers authorized to do
24 business in New Mexico that uses credit information to
25 underwrite, rate or renew personal insurance coverage shall

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1 not:

2 A. use an insurance score that is calculated using
3 income, gender, address, race, color, national origin, religion
4 or marital status of the consumer as a factor;

5 B. deny, cancel or fail to renew coverage, or base
6 a consumer's company placement, tier placement or rates, on the
7 basis of credit information or an insurance score without
8 consideration of other underwriting factors permitted by state
9 law;

10 C. consider an absence of credit information or an
11 inability to calculate an insurance score in underwriting,
12 rating or renewing personal insurance coverage unless the
13 insurer:

14 (1) classifies the consumer as having average
15 or better than average credit information for that insurer or
16 group of affiliated insurers; or

17 (2) excludes the use of credit information as
18 a factor in rating or underwriting personal insurance coverage;

19 D. take adverse action against a consumer based
20 upon credit information, or upon an insurance score calculated
21 from credit information, submitted more than ninety days before
22 the date of notice of the adverse action;

23 E. use credit information upon renewal unless the
24 insurer obtains current credit information and recalculates the
25 insurance score at least every thirty-six months. Upon the

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1 request of a consumer, an insurer that uses credit information
2 upon renewal shall obtain current credit information and
3 recalculate an insurance score. An insurer shall not be
4 required to obtain current credit information or recalculate an
5 insurance score more frequently than every twelve months except
6 for the correction of an error as described in Section 6 of the
7 Personal Insurance Credit Information Act. The Personal
8 Insurance Credit Information Act does not require an insurer to
9 obtain current credit information or recalculate an insurance
10 score if:

11 (1) an improved insurance score would not
12 cause the consumer to be placed in the most favorably priced
13 company or tier of the insurer; or

14 (2) the insurer does not rely upon credit
15 information or an insurance score to underwrite, rate or renew
16 the consumer's personal insurance coverage;

17 F. use an insurance score in whole or in part to
18 deny, restrict or alter the fees charged for a premium payment
19 plan; or

20 G. use credit inquiries as a factor in any
21 insurance scoring methodology or to underwrite, rate or renew
22 personal insurance coverage.

23 Section 5. EXCEPTION PROCEDURES.--

24 A. As used in this section, "extraordinary life
25 circumstance" means:

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- 1 (1) an acute or chronic medical condition,
2 illness, injury or disease;
3 (2) divorce;
4 (3) death of a spouse, child or parent;
5 (4) involuntary loss of employment for more
6 than three consecutive months;
7 (5) identity theft;
8 (6) total or other loss that makes a home
9 uninhabitable; or
10 (7) other circumstances prescribed by the
11 superintendent in a rule.

12 B. Insurers that use credit information to
13 calculate an insurance score or to underwrite, rate or renew
14 personal insurance coverage shall, upon written request from a
15 consumer, provide a reasonable exception to the insurer's
16 rates, rating classifications, company placement, tier
17 placement or underwriting policies, procedures or guidelines
18 when that consumer's credit information has been adversely
19 impacted by an extraordinary life circumstance that has
20 occurred within three years of the date of application for or
21 renewal of personal insurance coverage.

22 C. Insurers shall file their extraordinary life
23 circumstances exception policies and procedures and amendments
24 to the policies and procedures with the superintendent.
25 Filings shall include the following:

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- 1 (1) a list of extraordinary life
- 2 circumstances;
- 3 (2) procedures describing how a consumer may
- 4 apply for the extraordinary life circumstances exception;
- 5 (3) a description of the required
- 6 substantiating information;
- 7 (4) general guidelines for when an
- 8 extraordinary life circumstances exception will be granted;
- 9 (5) a description of how a consumer's
- 10 treatment in underwriting or rating would be modified by the
- 11 granting of an extraordinary life circumstances exception;
- 12 (6) time frames for considering the
- 13 extraordinary life circumstances exception request; and
- 14 (7) any other information prescribed by the
- 15 superintendent in a rule.

16 D. An insurer's extraordinary life circumstances
17 exception policies and procedures shall be effective for use
18 upon filing with the superintendent.

19 E. The superintendent may disapprove an insurer's
20 extraordinary life circumstances exception policies or
21 procedures at any time upon providing the insurer with a
22 sixty-day written notice setting forth the reasons for the
23 disapproval. Disapproval shall be based upon a determination
24 that the extraordinary life circumstances exception policies
25 and procedures as contained in the filing are inadequate

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1 pursuant to this section, and the notice of disapproval shall
2 specify the respects in which they are inadequate. An insurer
3 affected by a disapproval may request a hearing before the
4 superintendent pursuant to Section 59A-4-15 NMSA 1978, and the
5 request for a hearing stays the effectiveness of the
6 disapproval. No disapproval shall affect an action or
7 determination made by an insurer concerning an application or
8 policy of insurance made prior to the date of a notice of final
9 determination of the disapproval.

10 F. An insurer may require the consumer to provide
11 reasonable, independently verifiable written documentation of
12 the event and the direct effect of the event on the consumer's
13 credit before granting an exception. An insurer is not
14 required to consider repeated events or events the insurer
15 considered previously as an extraordinary life circumstance.

16 G. An insurer is not out of compliance with a law
17 or rule relating to underwriting, rating or rate filing as a
18 result of granting an exception under this section.

19 Section 6. ERROR CORRECTION.--If it is determined by a
20 consumer reporting agency that a consumer's credit information
21 is inaccurate or incomplete and the insurer is notified of this
22 determination by the consumer reporting agency or the consumer,
23 the insurer or its group of affiliated insurers shall
24 re-underwrite and rerate the consumer's personal insurance
25 coverage within thirty days of receiving the notice, refund any

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1 overpaid premium and, if necessary, make a related adjustment,
2 including company placement, consistent with its filed
3 underwriting and rating guidelines.

4 Section 7. INITIAL NOTIFICATION OF USE OF CREDIT
5 INFORMATION.--

6 A. If an insurer uses credit information to
7 calculate an insurance score to underwrite, rate or renew
8 personal insurance coverage, the insurer shall disclose to the
9 consumer at the time of application, in writing or in the same
10 medium as the application, that it uses that information.

11 B. An insurer may use the following disclosure
12 language to comply with the requirements of this section: "In
13 connection with your application for insurance coverage, we may
14 review and use information contained in your credit report to
15 help determine your premium or your eligibility for coverage."

16 Section 8. ADVERSE ACTION NOTIFICATION.--

17 A. If an insurer takes an adverse action based upon
18 credit information, the insurer shall notify the consumer in
19 writing, or in the same medium as the application or renewal,
20 of the nature of the adverse action, the reasons for the
21 adverse action and the insurer's extraordinary life
22 circumstances exception policies and procedures as provided by
23 Section 5 of the Personal Insurance Credit Information Act.

24 B. The notification shall identify, in clear and
25 simple language and in descending order of importance, the four

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1 most important factors that prevented the consumer from
2 receiving a more favorable insurance score. The factors shall
3 be identified with sufficient specificity that a consumer can
4 identify the factors on a standard credit report.

5 Section 9. INSURANCE SCORING FILINGS.--

6 A. Insurers and groups of affiliated insurers that
7 use credit information or insurance scores to underwrite, rate
8 or renew personal insurance coverage shall, prior to
9 implementation or amendment, file with the superintendent their
10 scoring models and all scoring ingredients and processes,
11 including all criteria, matrices, weightings and score ranges,
12 as well as all resulting rating factors and rating elements,
13 and all resulting guidelines for accepting coverage, for
14 company placement and for tier placement. A filing shall
15 provide examples, either through electronic spreadsheets,
16 formulas, tables or detailed written documentation, of how
17 scores and underwriting and rating results can be obtained.
18 The filing shall be provided on an affiliated group basis
19 whenever an insurer is an affiliate of an insurance group.

20 B. A filing that includes credit information or
21 insurance scoring shall include loss experience justifying the
22 design and use of the model.

23 C. If an insurer files a scoring model that has
24 already been filed with the superintendent by a rate service
25 organization licensed by the superintendent pursuant to Section

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1 59A-17-19 NMSA 1978, the insurer may reference the rate service
2 organization's filing of the model. In such circumstances, if
3 the insurer deviates in any way from the referenced model filed
4 by the rate service organization, the insurer must explain in
5 detail the nature of such deviations.

6 D. Scoring models, processes and guidelines shall
7 become effective and may be used on the date of filing with the
8 superintendent.

9 E. The superintendent may issue an order to
10 disapprove a filing at any time upon providing the insurer with
11 a sixty-day written notice of the disapproval. Any such
12 disapproval shall be based upon a determination that the filing
13 under this section is either inadequate pursuant to Subsection
14 A of this section, will result in rates that do not comply with
15 the applicable requirements of the Insurance Rate Regulation
16 Law or will result in uses not compliant with Section 4 of the
17 Personal Insurance Credit Information Act. The notice of
18 disapproval shall specify the bases for the disapproval and the
19 date on which the filing shall be deemed no longer effective.
20 An insurer affected by such a disapproval may request a hearing
21 before the superintendent pursuant to Section 59A-4-15 NMSA
22 1978, and the request for hearing stays the effectiveness of
23 the disapproval. No disapproval shall affect an action or
24 determination made by an insurer concerning applications or
25 policies of insurance made prior to the date of notice of final

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1 determination of the disapproval.

2 F. Filings made pursuant to this section shall be
3 considered confidential trade secrets under the Uniform Trade
4 Secrets Act.

5 Section 10. RULEMAKING AUTHORITY.--The superintendent may
6 adopt rules the superintendent deems necessary to implement and
7 ensure full compliance with the provisions of the Personal
8 Insurance Credit Information Act.

9 Section 11. SEVERABILITY.--If any part or application of
10 the Personal Insurance Credit Information Act is held invalid,
11 the remainder or its application to other situations or persons
12 shall not be affected.

13 Section 12. APPLICABILITY.--The provisions of the
14 Personal Insurance Credit Information Act apply to personal
15 insurance policies written to be effective or renewed on or
16 after January 1, 2006.

17 Section 13. EFFECTIVE DATE.--The effective date of the
18 provisions of this act is January 1, 2006.