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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.

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

A. "adverse action" means a denial or cancellation
of, an increase in a charge for or a reduction or other
adverse or unfavorable change in the terms of coverage or
amount of, insurance, existing or applied for, in connection
with the underwriting, rating or renewal of personal
insurance, which adverse action occurs when an insurer offers

1 insurance at less favorable terms than it would have offered
2 a consumer if the consumer's credit information had been more
3 favorable;

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

7 C. "company placement" means the assignment of a
8 consumer to a particular insurer within a group of
9 affiliates;

10 D. "consumer" means an individual applicant or
11 insured whose credit information is relied upon or used to
12 calculate an insurance score for underwriting, rating or
13 renewing a personal insurance coverage;

14 E. "consumer reporting agency" means a person or
15 entity that, for monetary fees, dues or on a cooperative
16 nonprofit basis, regularly engages in whole or in part in the
17 practice of assembling or evaluating consumer credit
18 information or other information on consumers for the purpose
19 of furnishing consumer reports to third parties;

20 F. "credit information" means a written, oral or
21 other communication of information prepared by a consumer
22 reporting agency or provided by the consumer on an
23 application for or renewal of credit, bearing on a consumer's
24 credit worthiness, credit standing or credit capacity, that
25 is used or expected to be used or collected in whole or in

1 part for the purpose of underwriting, rating or renewing a
2 personal insurance coverage;

3 G. "insurance score" means a number or rating that
4 is derived from an algorithm, computer application, model or
5 other process that is based in whole or in part on credit
6 information and is used for underwriting, rating or renewing
7 personal insurance coverage;

8 H. "personal insurance" means private passenger
9 automobile, homeowners', motorcycle, mobile-homeowners',
10 boat, personal watercraft, snowmobile, recreational vehicle,
11 noncommercial dwelling fire, personal umbrella or any other
12 type of insurance policy that is individually underwritten
13 for personal, family or household use; and

14 I. "superintendent" means the superintendent of
15 the insurance division of the public regulation commission.

16 Section 4. USE OF CREDIT INFORMATION--LIMITS ON USE.--

17 An insurer or group of affiliated insurers authorized to do
18 business in New Mexico that uses credit information to
19 underwrite, rate or renew personal insurance coverage shall
20 not:

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

24 B. deny, cancel or fail to renew coverage, or base
25 a consumer's company placement, tier placement or rates, on

1 the basis of credit information or an insurance score without
2 consideration of other underwriting factors permitted by
3 state law;

4 C. consider an absence of credit information or an
5 inability to calculate an insurance score in underwriting,
6 rating or renewing personal insurance coverage unless the
7 insurer:

8 (1) classifies the consumer as having
9 average or better than average credit information for that
10 insurer or group of affiliated insurers; or

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

14 D. take adverse action against a consumer based
15 upon credit information, or upon an insurance score
16 calculated from credit information, submitted more than
17 ninety days before the date of notice of the adverse action;

18 E. use credit information upon renewal unless the
19 insurer obtains current credit information and recalculates
20 the insurance score at least every thirty-six months. Upon
21 the request of a consumer, an insurer that uses credit
22 information upon renewal shall obtain current credit
23 information and recalculate an insurance score. An insurer
24 shall not be required to obtain current credit information or
25 recalculate an insurance score more frequently than every

1 twelve months except for the correction of an error as
2 described in Section 6 of the Personal Insurance Credit
3 Information Act. The Personal Insurance Credit Information
4 Act does not require an insurer to obtain current credit
5 information or recalculate an insurance score if:

6 (1) an improved insurance score would not
7 cause the consumer to be placed in a more favorably priced
8 company or tier of the insurer; or

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

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

15 G. use credit inquiries as a factor in any
16 insurance scoring methodology or to underwrite, rate or renew
17 personal insurance coverage.

18 Section 5. EXCEPTION PROCEDURES.--

19 A. As used in this section, "extraordinary life
20 circumstance" means:

21 (1) an acute or chronic medical condition,
22 illness, injury or disease;

23 (2) divorce;

24 (3) death of a spouse, child or parent;

25 (4) involuntary loss of employment for more

1 than three consecutive months;

2 (5) identity theft;

3 (6) total or other loss that makes a home
4 uninhabitable; or

5 (7) other circumstances prescribed by the
6 superintendent in a rule.

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

17 C. Insurers shall file their extraordinary life
18 circumstances exception policies and procedures and
19 amendments to the policies and procedures with the
20 superintendent. Filings shall include the following:

21 (1) a list of extraordinary life
22 circumstances;

23 (2) procedures describing how a consumer may
24 apply for the extraordinary life circumstances exception;

25 (3) a description of the required

1 substantiating information;

2 (4) general guidelines for when an
3 extraordinary life circumstances exception will be granted;

4 (5) a description of how a consumer's
5 treatment in underwriting or rating would be modified by the
6 granting of an extraordinary life circumstances exception;

7 (6) time frames for considering the
8 extraordinary life circumstances exception request; and

9 (7) any other information prescribed by the
10 superintendent in a rule.

11 D. An insurer's extraordinary life circumstances
12 exception policies and procedures shall be effective for use
13 upon filing with the superintendent.

14 E. The superintendent may disapprove an insurer's
15 extraordinary life circumstances exception policies or
16 procedures at any time upon providing the insurer with a
17 sixty-day written notice setting forth the reasons for the
18 disapproval. Disapproval shall be based upon a determination
19 that the extraordinary life circumstances exception policies
20 and procedures as contained in the filing are inadequate
21 pursuant to this section, and the notice of disapproval shall
22 specify the respects in which they are inadequate. An
23 insurer affected by a disapproval may request a hearing
24 before the superintendent pursuant to Section 59A-4-15 NMSA
25 1978, and the request for a hearing stays the effectiveness

1 of the disapproval. No disapproval shall affect an action or
2 determination made by an insurer concerning an application or
3 policy of insurance made prior to the date of a notice of
4 final determination of the disapproval.

5 F. An insurer may require the consumer to provide
6 reasonable, independently verifiable written documentation of
7 the event and the direct effect of the event on the
8 consumer's credit before granting an exception.

9 G. An insurer that grants an extraordinary life
10 circumstances exception shall maintain that exception for an
11 amount of time that is reasonable for the particular
12 circumstance. Once that reasonable amount of time is
13 exhausted, the insurer is not required to grant another
14 exception for the same specific extraordinary life
15 circumstance.

16 H. 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
21 information is inaccurate or incomplete and the insurer is
22 notified of this determination by the consumer reporting
23 agency or the consumer, the insurer or its group of
24 affiliated insurers shall re-underwrite and rerate the
25 consumer's personal insurance coverage within thirty days of

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

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

7 A. If an insurer uses credit information to
8 calculate an insurance score to underwrite, rate or renew
9 personal insurance coverage, the insurer shall disclose to
10 the consumer at least once, either at the time of application
11 or upon the first renewal subsequent to December 31, 2005, in
12 writing or in the same medium as the application or renewal,
13 that it uses that information.

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

20 Section 8. ADVERSE ACTION NOTIFICATION.--

21 A. If an insurer takes an adverse action based
22 upon credit information, the insurer shall notify the
23 consumer in writing, or in the same medium as the application
24 or renewal, of the nature of the adverse action, the reasons
25 for the adverse action and the insurer's extraordinary life

1 circumstances exception policies and procedures as provided
2 by Section 5 of the Personal Insurance Credit Information
3 Act.

4 B. The notification shall identify, in clear and
5 simple language and in descending order of importance, the
6 four most important factors that prevented the consumer from
7 receiving a more favorable insurance score. The factors
8 shall be identified with sufficient specificity that a
9 consumer can identify the factors on a standard credit
10 report.

11 C. In addition to the information described in
12 Subsections A and B of this section, the notification shall
13 include any other language prescribed by rule issued by the
14 superintendent.

15 Section 9. INSURANCE SCORING FILINGS.--

16 A. Insurers and groups of affiliated insurers that
17 use credit information or insurance scores to underwrite,
18 rate or renew personal insurance coverage shall, prior to
19 implementation or amendment, file with the superintendent
20 their scoring models and all scoring ingredients and
21 processes, including all criteria, matrices, weightings and
22 score ranges, as well as all resulting rating factors and
23 rating elements, and all resulting guidelines for accepting
24 coverage, for company placement and for tier placement. A
25 filing shall provide examples, either through electronic

1 spreadsheets, formulas, tables or detailed written
2 documentation, of how scores and underwriting and rating
3 results can be obtained. The filing shall be provided on an
4 affiliated group basis whenever an insurer is an affiliate of
5 an insurance group.

6 B. A filing that includes credit information or
7 insurance scoring shall include loss experience justifying
8 the design and use of the model.

9 C. If an insurer files a scoring model that has
10 already been filed with the superintendent by a rate service
11 organization licensed by the superintendent pursuant to
12 Section 59A-17-19 NMSA 1978, the insurer may reference the
13 rate service organization's filing of the model. In such
14 circumstances, if the insurer deviates in any way from the
15 referenced model filed by the rate service organization, the
16 insurer must explain in detail the nature of such deviations.

17 D. Scoring models, processes and guidelines shall
18 become effective and may be used on the date of filing with
19 the superintendent.

20 E. The superintendent may issue an order to
21 disapprove a filing at any time upon providing the insurer
22 with a sixty-day written notice of the disapproval. Any such
23 disapproval shall be based upon a determination that the
24 filing under this section is either inadequate pursuant to
25 Subsection A of this section, will result in rates that do

1 not comply with the applicable requirements of the Insurance
2 Rate Regulation Law or will result in uses not compliant with
3 Section 4 of the Personal Insurance Credit Information Act.
4 The notice of disapproval shall specify the bases for the
5 disapproval and the date on which the filing shall be deemed
6 no longer effective. An insurer affected by such a
7 disapproval may request a hearing before the superintendent
8 pursuant to Section 59A-4-15 NMSA 1978, and the request for
9 hearing stays the effectiveness of the disapproval. No
10 disapproval shall affect an action or determination made by
11 an insurer concerning applications or policies of insurance
12 made prior to the date of notice of final determination of
13 the disapproval.

14 F. Filings made pursuant to this section shall be
15 considered confidential trade secrets under the Uniform Trade
16 Secrets Act.

17 Section 10. RULEMAKING AUTHORITY.--The superintendent
18 may adopt rules the superintendent deems necessary to
19 implement and ensure full compliance with the provisions of
20 the Personal Insurance Credit Information Act.

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

25 Section 12. APPLICABILITY.--The provisions of the

1 Personal Insurance Credit Information Act apply to personal
2 insurance policies written to be effective or renewed on or
3 after January 1, 2006.

4 Section 13. EFFECTIVE DATE.--The effective date of the
5 provisions of this act is January 1, 2006._____

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