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NATIONAL CONFERENCE OF INSURANCE LEGISLATORS

MODEL ACT REGARDING USE OF CREDIT INFORMATION IN PERSONAL INSURANCE

*Readopted by the NCOIL Property-Casualty Insurance Committee on November 17, 2005,
and Executive Committee on November 19, 2005.*

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Section 1. Short Title

This Act may be called the *Model Act Regarding Use of Credit Information in Personal Insurance*.

Section 2. Purpose

The purpose of this Act is to regulate the use of credit information for personal insurance, so that consumers are afforded certain protections with respect to the use of such information.

Section 3. Scope

This Act applies to personal insurance and not to commercial insurance. For purposes of this Act, “personal insurance” means private passenger automobile, homeowners, motorcycle, mobile-homeowners and non-commercial dwelling fire insurance policies [and boat, personal watercraft, snowmobile and recreational vehicle policies]. Such policies must be individually underwritten for personal, family or household use. No other type of insurance shall be included as personal insurance for the purpose of this Act.

Section 4. Definitions

For the purposes of this Act, these defined words have the following meaning:

- A. Adverse Action—A denial 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, any insurance, existing or applied for, in connection with the underwriting of personal insurance.
- B. Affiliate—Any company that controls, is controlled by, or is under common control with another company.
- C. Applicant—An individual who has applied to be covered by a personal insurance policy with an insurer.
- D. Consumer—An insured whose credit information is used or whose insurance score is calculated in the underwriting or rating of a personal insurance policy or an applicant for such a policy.
- E. Consumer Reporting Agency—Any person which, for monetary fees, 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.
- F. Credit Information—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 shall 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.

- G. Credit Report—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 which 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.
- H. Insurance Score—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.

Section 5. Use of Credit Information

An insurer authorized to do business in *[insert State]* that uses credit information to underwrite or rate risks, shall 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 nonrenew 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 Section 5(A).

Drafting Note: This subsection prohibits an insurer from refusing to insure an applicant, insured, or other individual seeking insurance coverage because the person’s insurance score fails to meet or exceed a minimum numeric threshold, unless one or more other applicable underwriting factors independent of credit information are considered.

- C. Base an insured’s renewal rates for personal insurance solely upon credit information, without consideration of any other applicable factor independent of credit information.
- D. Take an adverse action against a consumer solely because he or she 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:
 - 1. Treat the consumer as otherwise approved by the Insurance Commissioner/ Supervisor/Director, if the insurer presents information that such an absence or inability relates to the risk for the insurer.

2. Treat the consumer as if the applicant or insured had neutral credit information, as defined by the insurer.
 3. Exclude the use of credit information as a factor and use 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 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. At annual renewal, upon the request of a consumer or the consumer's agent, the insurer shall re-underwrite and re-rate 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 twelve-month period.
 2. The insurer shall have the discretion to obtain current credit information upon any renewal before the 36 months, if consistent with its underwriting guidelines.
 3. No insurer need obtain current credit information for an insured, despite the requirements of subsection (G)(1), 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. However, the insurer shall have the discretion to order such report, if consistent with its underwriting guidelines.
 - (c) Credit was not used for underwriting or rating such insured when the policy was initially written. However, the insurer shall have the discretion to use credit for underwriting or rating such insured upon renewal, if consistent with its underwriting guidelines.
 - (d) The insurer re-evaluates the insured beginning no later than 36 months after inception and thereafter based upon other underwriting or rating factors, excluding credit information.

H. 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:

1. Credit inquiries not initiated by the consumer or inquiries requested by the consumer for his or her own credit information.
2. Inquiries relating to insurance coverage, if so identified on a consumer's credit report.
3. Collection accounts with a medical industry code, if so identified on the consumer's credit report.
4. 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.
5. 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.

Section 6. Dispute Resolution and Error Correction

If it is determined through the dispute resolution process set forth in the federal Fair Credit Reporting Act, 15 USC 1681i(a)(5), that the credit information of a current insured was incorrect or incomplete and if the insurer receives notice of such determination from either the consumer reporting agency or from the insured, the insurer shall re-underwrite and re-rate the consumer within 30 days of receiving the notice. After re-underwriting 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 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.

Section 7. Initial Notification

- A. 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 the insurance application is taken, that it may obtain credit information in connection with such application. Such disclosure shall be either written or provided to an applicant in the same medium as the application for insurance. The insurer need not provide the disclosure statement required under this section to any insured on a renewal policy, if such consumer has previously been provided a disclosure statement.

- B. Use of the following example 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.”

Section 8. Adverse Action Notification

If an insurer takes an adverse action based upon credit information, the insurer must meet the notice requirements of both (A) and (B) of this subsection. Such insurer shall:

- A. 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 USC 1681m(a).
- B. 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. Such notification shall 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 deemed to comply with this section.

Section 9. Filing

- A. Insurers that use insurance scores to underwrite and rate risks must file their scoring models (or other scoring processes) with the Department of Insurance. A third party may file scoring models on behalf of insurers. A filing that includes insurance scoring may include loss experience justifying the use of credit information.
- B. Any filing relating to credit information is considered trade secret under *[cite to the appropriate state law]*.

Section 10. Indemnification

An insurer shall indemnify, defend, and hold agents harmless from and against all liability, fees, and costs arising out of or relating to the actions, errors, or omissions of [an agent / a producer] who obtains or uses credit information and/or insurance scores for an insurer, provided the [agent / producer] follows the instructions of or procedures established by the insurer and complies with any applicable law or regulation. Nothing in

this section shall be construed to provide a consumer or other insured with a cause of action that does not exist in the absence of this section.

Section 11. Sale of Policy Term Information by Consumer Reporting Agency

- A. No consumer reporting agency shall 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. Such 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.
- B. The restrictions provided in subsection (A) of this section do not apply to data or lists the consumer reporting agency supplies to the insurance [agent / producer] from whom information was received, the insurer on who's behalf such [agent / producer] acted, or such insurer's affiliates or holding companies.
- C. Nothing in this section shall be construed to restrict any insurer from being able to obtain a claims history report or a motor vehicle report.

Section 12. Severability

If any section, paragraph, sentence, clause, phrase, or any part of this Act passed is declared invalid due to an interpretation of or a future change in the federal Fair Credit Reporting Act, the remaining sections, paragraphs, sentences, clauses, phrases, or parts thereof shall be in no manner affected thereby but shall remain in full force and effect.

Section 13. Effective Date

This Act shall take effect on *[insert date]*, applying to personal insurance policies either written to be effective or renewed on or after 9 months from the effective date of the bill.