SPONSOR: Rep. Paradee & Sen. Henry & Sen. Pettyjohn
Reps. Heffernan, Keeley, Lynn, Mitchell, Osienski; Sen. Ennis

HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE SUBSTITUTE NO. 1
FOR
HOUSE BILL NO. 80

AN ACT TO AMEND TITLE 18 OF THE DELAWARE CODE RELATING TO INSURANCE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 83, Title 18, of the Delaware Code by striking the Chapter in its entirety and inserting in lieu thereof the following:

CHAPTER 83. THE USE OF CREDIT INFORMATION IN PERSONAL INSURANCE

§ 8301. Purpose.

The purpose of this chapter 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.

§ 8302. Scope.

This chapter applies to all policies of automobile, motorcycle, boat and personal watercraft, recreational vehicle, homeowners, mobile-homeowners, manufactured homeowners insurance, and noncommercial dwelling fire insurance issued by an insurer for personal or family protection.

§ 8303. Definitions.

As used in this chapter:

(1) "Adverse action" means 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.

(2) "Affiliate" means any 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 an applicant for such a policy.

(5) "Consumer reporting agency" means 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.

(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 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.

(7) "Credit report" means 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.

(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.

§ 8304. Use of Credit Information.

(a) An insurer authorized to do business in Delaware that uses credit information to underwrite or rate risks, shall not do any of the following:

(1) Use an insurance score that is calculated using income, gender, sexual orientation, gender identity, education, address, zip code, race, ethnic group, religion, marital status, or nationality of the consumer as a factor.

(2) Deny, cancel or nonrenew a personal insurance policy solely on the basis of credit information, without consideration of any other applicable underwriting factor independent of credit information and not expressly prohibited by paragraph (a)(1) of this section.

(3) Base an insured's renewal rates for personal insurance solely upon credit information, without consideration of any other applicable factor independent of credit information.

(4) 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.

(5) 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:

a. Treats the consumer as otherwise approved by the Insurance Commissioner, if the insurer presents information that such an absence or inability relates to the risk for the insurer.

b. Treats the consumer as if the applicant or insured had neutral credit information, as defined by the insurer.

c. Excludes the use of credit information as a factor and uses only other underwriting criteria.

(6) Request credit information at renewal unless requested to do so by a consumer or the consumer's agent. Upon the request of the insured, the insurer shall, at the time of a policy's renewal or anniversary date, re-rate the policy based upon a current credit report and give the insured the benefit of any improvement in the insured's insurance score. No adverse underwriting decision may result from a re-rating conducted pursuant to this paragraph. An insurer need not recalculate the insurance score or obtain the updated credit report of an insured more frequently than once in a 12-month period. This paragraph shall not apply if the insurer's filed rating plan does not use any credit information for the purpose of rating renewals, including any residual effect from the use of credit information at initial underwriting. Regardless of the requirements of this paragraph, no insurer need obtain current credit information for an insured if one of the following applies:

a. The insurer is treating the consumer as otherwise approved by the Commissioner.

b. The policy 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 such insured when the policy was initially written.

(7) Use any of 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:

a. Credit inquiries not initiated by the consumer or inquiries requested by the consumer for his or her own credit information.

b. Inquiries relating to insurance coverage, if so identified on a consumer's credit report.

c. Collection accounts with a medical industry code, if so identified on the consumer's credit report.

d. 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.

e. 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.

f. Bankruptcy adjudications more than 5 years from date of the credit report.

g. Suits and judgments whose date of entry are more than 5 years from the date of the credit report or that exceed the governing statute of limitations, whichever is the longer period.

h. Accounts placed for collection or charged to profits and loss more than 7 years from the date of the credit report.

i. Records of arrest, indictment, or conviction of crime where the date of disposition, release or parole is more than 7 years from the date of the credit report.

j. Any other adverse item or information which is more than 7 years from the date of the credit report.

k. The total available line of credit; however, an insurer may consider the total amount of outstanding debt in relation to the total available line of credit.

(8) Take an adverse action on a homeowners insurance policy based solely on the credit information of a spouse who has no title or ownership interest in the property to be insured and is not an applicant.

(b) If, as the result of any acquisition or transfer of all or part of a book of business of an agent, insurer, or broker, a policy is transferred from one insurer to another and re-rated, the re-rating shall be considered a re-rating of the policy currently in force upon renewal subject to the restrictions and benefits set forth in paragraph (a)(6) of this section, above, provided that an insurer may offer a policyholder to rewrite the policy using credit and may, at the policyholder's option, rewrite the policy using credit if it results in a lower premium for the policyholder.

§ 8305. Extraordinary Life Circumstances.

(a) Notwithstanding any other law or regulation, an insurer that uses credit information shall, on written request from an applicant for insurance coverage or an insured, provide reasonable exceptions to the insurer's rates, rating classifications, company or tier placement, or information that has been directly influenced by any of the following events:

(1) Catastrophic event, as declared by the federal or state government.

(2) Serious illness or injury, or serious illness or injury to an immediate family member.

(3) Death of a spouse, child, or parent.

(4) Divorce or involuntary interruption of legally-owed alimony or support payments.

(5) Identity theft.

(6) Temporary loss of employment for a period of 3 months or more, if it results from involuntary termination.

(7) Military deployment overseas.

(8) Other events, as determined by the insurer.

(b) If an applicant or insured submits a request for an exception as set forth in subsection (a) of this section, an insurer may, in its sole discretion, but is not mandated to do any of the following:

(1) Require the consumer to provide reasonable written and independently verifiable documentation of the event.

(2) Require the consumer to demonstrate that the event had direct and meaningful impact on the consumer's credit information.

(3) Require such request be made no more than 60 days from the date of the application for insurance or the policy renewal.

(4) Grant an exception despite the consumer not providing the initial request for an exception in writing.

(5) Grant an exception where the consumer asks for consideration of repeated events or the insurer has considered this event previously.

(c) An insurer is not out of compliance with any law or rule relating to underwriting, rating, or rate filing as a result of granting an exception under this section. 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.

(d) The insurer shall provide notice to consumers that reasonable exceptions are available and information about how the consumer may inquire further.

(e) Within 30 days of the insurer's receipt of sufficient documentation of an event described in subsection (a) of this section, the insurer shall inform the consumer of the outcome of the request for a reasonable exception. Such communication shall be in writing or provided to an applicant in the same medium as the request.

§ 8306. 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.

§ 8307. 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. The following example disclosure statement constitutes compliance with this paragraph: "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."

(b) If an insurer writing personal insurance used 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 application is taken, that if the application is approved and the applicant becomes a policyholder, he or she has the right to request a re-underwrite or re-rate of his or her policy on an annual basis based upon current credit report. The notice shall state that the review will be conducted for the sole purpose of determining whether the use of the new credit information would lead to a reduction and will not be used for any other purpose, including an increase in premiums. The following example disclosure statement constitutes compliance with the paragraph: "If we do use a credit based score, you will have the right on an annual basis to request that we obtain a current credit report for you and determine whether use of the new credit report would result in a decrease in your insurance premiums. If the new credit report that we receive would result in a decrease in your insurance premiums, we will make that reduction. If the new credit information would not reduce your insurance premiums, the credit report will not be used to impact your premiums in any way." This paragraph does not apply if an insurer's filed rating plan does not use any credit information for the purpose of rating renewals, including any residual effect from the use of credit at initial underwriting.

(c) On an annual basis, the insurer shall inform its policyholders of their right to have their credit information reviewed to determine whether the use of the current credit report would result in a lower premium, in accordance with the procedures set forth in this Chapter. This notification shall be in at least 18 point type and included with the renewal notice. The notification shall be accompanied by a form that the policyholder must complete and send to the insurer to request that the credit information be obtained and reviewed. The notification shall advise the policyholder that the request form must be mailed within two weeks of the date of mailing of the renewal notification by the insurer for a premium adjustment to be made for the upcoming policy period. The notification shall also advise the policyholder that they must comply with the renewal notice requirements regarding the payment amount and due date regardless of whether they choose to request a review of their credit report and that any decrease of premium as a result of the new credit report be effective on the upcoming renewal date provided in the renewal notice. This paragraph does not apply to any renewal for which the insurer's filed rating plan does not use any credit information, including residual effect from the use of credit information at initial underwriting. An insurer that is exempt from this paragraph shall advise its policyholder of the exemption and the reason for the exemption with the policyholder's renewal notice.

§ 8308. Adverse Action.

If an insurer takes an adverse action based upon credit information, the insurer must meet all of the following notice requirements:

(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 USC 1681m(a).

(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. 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 paragraph. Standardized credit explanations provided by consumer reporting agencies or other third party vendors are deemed to comply with this section.

(3) If the adverse action is a denial of personal insurance, provide notification that the applicant may inquire further about the credit information on which the denial is based and obtain a free copy of the credit report, the applicant may do so by mailing a written request to the insurer, or other such party as the insurer may identify in the notice, no more than 30 days after the date the notice of refusal was mailed to the applicant.

(4) Provide a statement that the consumer reporting agency that provided the credit information upon which the denial was based did not make the denial decision and is unable to provide the applicant the specific reasons for the denial.

(5) If the adverse action is a denial of personal insurance, the notice of denial shall be retained by the insurer and a record of the insurance score, related notice and correspondence with the applicant shall be maintained by the insurer or their vendor for a minimum of three years from the date of the denial notification to the applicant.

§ 8309. Filing.

(a) Insurers that use insurance scores to underwrite and rate risks must file their scoring models with the Commissioner. 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 proprietary or trade secret under section 321(g) of this title or upon the request of the insurer or owner of the document and subject to the confidentiality provisions of section 10002(l)(2) of Title 29.

§ 8310. Indemnification; causes of action and defenses.

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 insurer who obtains or uses credit information and/or insurance scores from an independent source, provided the producer follows the instructions of or procedures established by the

insurer and complies with any applicable law or regulation. Nothing in this chapter 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. This Chapter shall not create a cause of action for any person or entity, other than the Commissioner, against an insurer or its representative based upon a violation of § 2304(15)c. of this title. In the same manner, nothing in this chapter shall establish a defense for any party to any cause of action based upon a violation of § 2304(15)c. of this title.

§ 8311. 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 producer from whom information was received, the insurer on whose behalf such 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.

§ 8312. Severability.

If any section, paragraph, sentence, clause, phrase, or any part of this chapter 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 2. Amend Chapter 25, Title 18, of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2503. Making of rates.

(a) Rates shall be made in accordance with the following provisions:

(9) Rate filings concerning automobile collision insurance shall provide for a credit of 5 percent of annual premiums for such coverage for any individually owned vehicle classified as a private passenger vehicle owned by employees participating in an approved Travelink Traffic Mitigation Act program created pursuant to subchapter IV of Chapter 20 of Title 30~~.~~;

(10) An insurer authorized to do business in Delaware cannot increase a renewal rate for a personal automobile insurance policy based solely on an insured having attained the age of 75 or older;

(11) With respect to personal automobile insurance for an existing insured, an insurer authorized to do business in Delaware may not charge the insured a higher rate solely based upon a change in his or her marital status due to the death of a spouse.

Section 3. This Act shall take effect 9 months after enactment and be applicable to policies issued or renewed on or after the effective date.

SYNOPSIS

This Act replaces existing Chapter 83 of the Delaware Insurance Code and sets forth the permissible uses of credit information in rating personal insurance. This Act also prohibits insurance companies from increasing rates on current customers solely for having reached the age of 75 or above or for having a change in marital status due to the death of a spouse.

This Act is substituted for House Bill No. 80 and differs from House Bill No. 80 by removing the required and optional rating-factors lists and the required offering of a good driver discount plan in lieu of provisions which more clearly define how insurance companies may use credit information and insurance scores in calculating their rates.