



SPONSOR: Sen. Henry & Sen. McDowell & Sen. Still
Rep. Stone & Rep. Keeley & Rep. Valihura
Sens. Blevins Reps. Gilligan
Bonini Hudson
Cook Kowalko
Marshall Lavelle
McBride Maier
Peterson McWilliams
Miro
Plant
Schooley
Schwartzkopf
D. Short
Spence
Williams

DELAWARE STATE SENATE
144th GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 1
FOR
SENATE BILL NO. 31

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

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

1 Section 1. Amend Title 18 of the Delaware Code by adding a new Chapter 83 which shall read as follows:

2 "CHAPTER 83: RESTRICTIONS UPON THE USE OF CREDIT INFORMATION

3 §8301. Definitions

4 (a) 'Adverse underwriting decision' means any underwriting decision that would qualify as an adverse action
5 under the Fair Credit Reporting Act, 15 U.S.C. §1681 et seq. Adverse underwriting decision shall include, but not be
6 limited to, any of the following actions: (i) a cancellation or nonrenewal of insurance coverage; (ii) placement of a risk by
7 an insurance carrier or producer with a residual market mechanism, an unauthorized insurer or an insurance institution that
8 specializes in substandard risks; (iii) charging of a higher rate or premium; (iv) changing a risk from a preferred rate
9 program to a standard rate program or from a standard rate program to a nonstandard rate program within the same
10 company or between two companies in the same group; (v) assignment to a new or different rating category or tier within a
11 single insurer; (vi) reduction or an adverse or unfavorable change in the terms of coverage or amount of insurance.

12 (b) 'Consumer report' means any written, oral, or other communication of any information by a consumer
13 reporting agency bearing on a consumer's creditworthiness, credit standing, credit capacity, character, general reputation,
14 personal characteristics, or mode of living, which is used or expected to be used or collected in whole or in part for the
15 purpose of serving as a factor in establishing the consumer's eligibility for credit, insurance, employment, or any other

purpose authorized under section 16 U.S.C. §1681b or its successor. A consumer report shall not include motor vehicle reports or claims history reports or any other report that is not credit related.

(c) ‘Consumer reporting agency’ means any person that, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.

(d) ‘Credit information’ means any information bearing on a person’s creditworthiness, credit standing, or credit capacity. Information that is not credit-related shall not be considered “credit information,” regardless of whether it is contained in a consumer report or in an application, or is used to calculate an insurance score.

(e) ‘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.

§8302. Applicability

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

§8303. Restrictions on the Use of Credit Information

(a) An insurer shall not:

(1) Refuse to underwrite a new risk or establish a premium for an applicant based solely on a consumer report or on credit information relating to an applicant, without consideration of other applicable underwriting factors independent of the consumer report or credit information;

(2) With respect to any policy currently in force, make any adverse underwriting decision with respect to the current policyholder based in any way upon changes in credit information or changes in a consumer report; or

(3) With respect to any policy currently in force, request from the policyholder or any third party any credit information or consumer report relating to the current policyholder, except as permitted in subsection (c) of this Section.

This paragraph does not prohibit an insurer from requesting a consumer report or credit information for the purpose of:

(a) with the insured’s consent, claims and fraud investigation;

(b) prescreening, as permitted under Section 604(b) of the Fair Credit Reporting Act; or

(c) other uses as approved by the Commissioner.

(b) Nothing in this section prevents an increase in premium based upon a general adjustment of pricing factors filed with and not disapproved by the Commissioner, provided that such increase is not based upon any underwriting criteria expressly forbidden by this section.

47 (c) Upon request of an insured, the insurer shall, at the time of a policy's renewal or anniversary date, re-rate the
48 insured's policy based upon a current consumer report and give the insured the benefit of any improvement in the insured's
49 insurance score. No adverse underwriting decision may result from a re-rating conducted pursuant to this subsection. An
50 insurer need not recalculate the insurance score or obtain the updated credit report of an insured more frequently than once
51 in a twelve-month period. This subsection shall not apply if the insurer's filed rating plan does not use any credit
52 information for the purpose of rating renewals, including any residual effect from the use of credit information at initial
53 underwriting.

54 (d) If, as the result of any acquisition or transfer of all or part of a book of business of an agent, insurer, or
55 broker, a policy is transferred from one insurer to another and re-rated, the re-rating shall be considered a re-rating of the
56 policy currently in force upon renewal subject to the restrictions and benefits set forth in Sections 8303(a)(2), 8303(a)(3),
57 above, provided that an insurer may offer a policyholder to rewrite the policy using credit and may, at the policyholder's
58 option, rewrite the policy using credit if it results in a lower premium for the policyholder.

59 §8304. Causes of Action and Defenses

60 This Chapter shall not create a cause of action for any person or entity, other than the Commissioner, against an
61 insurer or its representative based upon a violation of 18 Del.C. §2304(15) c. In the same manner, nothing in this Chapter
62 shall establish a defense for any party to any cause of action based upon a violation of 18 Del.C. §2304(15) c."

63 Section 2. Amend Title 18, Chapter 23 of the Delaware Code by adding a new Section 2304(27) to read as
64 follows:

65 "(27) Use of Credit Scoring. No person may use consumer reports or credit scores in any manner
66 prohibited by Chapter 83 or this Title."

67 Section 3. This Act shall take effect on January 1, 2008 and shall apply to all applicable policies issued or
68 renewed on or after that date.

69 Section 4. This Act shall not be interpreted to permit any practices that are currently prohibited by Department of
70 Insurance regulations. Within three months of enactment of this Act into law, the Department of Insurance shall
71 promulgate regulations to implement the provisions of this Act.

SYNOPSIS

This Act is intended to create restrictions upon the use of credit information in the provision of insurance for automobiles, motorcycles, boats and personal watercraft, recreational vehicles, homeowners, and certain other types of insurance. The Department of Insurance is charged with promulgating regulations to implement the Act.

Author: Senator Henry