Legislative Analysis

**REGULATE USE OF CREDIT SCORING
IN INSURANCE RATING AND UNDERWRITING**

House Bill 4070
Sponsor: Rep. Paul Opsommer
Committee: Insurance

Complete to 3-28-07

A SUMMARY OF HOUSE BILL 4070 AS INTRODUCED 1-22-07

The bill would create a new Chapter 21A of the Insurance Code addressing the use of credit information and credit scores in the transaction of personal insurance. The bill would take effect on July 1, 2007.

The term "personal insurance" would be defined to refer to property/casualty insurance written for personal, family, or household use, including automobile, home, motorcycle, mobile home, noncommercial dwelling, boat, personal watercraft, snowmobile, and recreational vehicle, whether written on an individual, group, franchise, blanket policy, or similar basis.

The term "insurance score" would refer to 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 purpose of predicting future insurance loss exposure of an individual applicant or insured.

The major provisions of the bill are as follows.

Prohibited Uses of Credit Information/Scoring. An insurance company would be prohibited from using credit information or an insurance score as any part of a decision to deny, cancel, or nonrenew a personal insurance policy under Chapters 24 (casualty insurance) or 26 (fire and inland marine insurance).

Restrictions on the Use of Credit Information/Scoring. A company could not apply credit information or a credit-based insurance score in the rating or underwriting of personal insurance unless the following conditions were met.

1) The insurer or its producer discloses, either on the application or at the time the application is taken, that it may obtain credit information in connection with the transaction. (The bill contains the required disclosure statement.)

2) The insurer or a third party on behalf of an insurer does not use income, gender, address, zip code, ethnic group, religion, marital status, or nationality of the insured or applicant in calculating an insurance score.

3) The insurer does not 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.

4) The insurer or third party on behalf of the insurer does not consider an absence of credit information or an inability to calculate an insurance score in the rating of personal insurance unless the any rate differential is reasonably justified by difference in losses, expenses, or both, or the insured or applicant is treated as having the most favorable insurance score available.

5) The insurer or a third party uses a credit report issued within 90 days before the date an insurance score based on that credit report is first applied to the insured.

6) An insurer, upon request, reexamines a current credit report or insurance score. The insurer is not required to recalculate the insurance score or obtain a new credit report more often than once in a 12-month period. An insurer could order a credit report upon any renewal if the insurer does no consistently with all its insureds.

7) For insurance scores calculated or recalculated on or after July 1, 2007, the insurer does not use the following as a negative factor in any insurance score or in reviewing credit information:

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

o Credit inquiries relating to insurance coverage, if so identified on an insured's or applicant's credit report

o Multiple lender inquiries, if coded by the consumer reporting agency on the credit report as being from the home mortgage industry and made within 45 days of one another, unless only one inquiry is considered.

o Multiple lender inquiries, if coded by the consumer reporting agency on the credit report as being from the automobile lending industry and made within 45 days of one another, unless only one inquiry is considered.

o The number, if under three, of credit or charge card accounts opened by the consumer in the immediately preceding 12 months.

o An action commenced by or against the consumer under the federal bankruptcy code, if the date of the order for relief or the date of adjudication, as applicable, in that action is more than 10 years before the date of the credit report.

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

8) the insurer, or third party, does not calculate an insurance score by differentiating based on whether an insured's or an applicant's accounts are maintained at a state or nationally chartered bank or a state or federally chartered savings and loan association, savings bank, or credit union.

Notification and Explanation of Adverse Actions. If an insurer took an adverse action based upon credit information, the insurer would have to notify the insured or applicant that an adverse action had been taken and provide notice in clear and specific language of the reasons for the adverse action, including a description of all the factors that were primary influences for the adverse action. (No more than four factors need to be given.) The use of generalized terms such as "poor credit history," "poor credit rating," poor insurance score," would not meet the description requirements. Standardized credit explanations provided by consumer reporting agencies and other third party vendors would meet the description requirements.

[The term "adverse action" would mean a denial or cancellation of personal insurance coverage or an increase in any charge for any personal insurance, or a reduction or any other adverse or unfavorable change in the terms or amount of coverage.]

Adjustments by Insurer Based on Incorrect or Incomplete Information. If it was determined through a dispute resolution process that the credit information of a current insured was incorrect or incomplete and if the insurer received notice of the determination from either the consumer reporting agency or the insured, then the insurer would have to make any adjustments necessary, consistent with the bill's provisions and the insurer's underwriting, rating guidelines, and premium discount plan. If the insurer determined that the insured had overpaid premiums, the insurer would have to 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.

No New Cause of Action. The bill would specify that nothing in the new chapter could be construed to provide an insured or applicant with a cause of action that would not otherwise exist.

Indemnification and Defense of a Company's Producers. An insurance company would be required to indemnify, defend, and hold harmless producers from and against all liability, fees, and costs arising out of or relating to the actions, errors, or omissions of a producer resulting from the use of credit information or insurance scores for the insurer, as long as the producer followed the procedures and instructions established by the insurer and complied with all applicable laws and regulations.

MCL 500.2151

FISCAL IMPACT:

There may be increased regulatory needs resulting in additional investigative functions, monitoring, and follow-up on complaints. Without additional staff there may be an

increase in the time it takes to conduct insurance examinations. Costs of insurance regulation in Michigan are paid for by regulatory assessment fees on insurers. The increased costs of operation to the State are indeterminate and there is no fiscal impact to local units of government.

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