

Legislative Analysis



REGULATE USE OF CREDIT INFO & SCORES BY INSURERS FOR PROPERTY/CASUALTY LINES

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House Bill 4593 (Substitute H-1)
Sponsor: Rep. Ben Glardon

House Bill 4595 without amendment
Sponsor: Rep. Deb Shaughnessy

House Bill 4594 (Substitute H-1)
Sponsor: Rep. Paul Opsommer

House Bill 4596 without amendment
Sponsor: Rep. Lisa Howze

Committee: Insurance
Complete to 9-15-11

A SUMMARY OF HOUSE BILLS 4593-4596 AS REPORTED FROM COMMITTEE

The bills 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. They are all tie-barred to one another, meaning none can take effect unless all are enacted.

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 fire, 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. **Credit information** is defined as any credit-related information derived from a credit report, found on a credit report itself, or provided on an application for personal insurance. (Definitions for the package are found in House Bill 4593.)

The major provisions of the bills are as follows.

Prohibited Uses of Credit Information or Scores (HB 4594)

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 21, (auto and home insurance), 24 (casualty insurance) or 26 (fire and inland marine insurance). However, credit information and an insurance score could be used to determine premium installment payment options and availability.

Conditions Applying to the Use of Credit Information or Scores (HB 4594)

A company could not apply credit information or a credit-based insurance score that is otherwise permitted (such as 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 the consumer does not have a credit card account. However, a company could take an adverse action against the customer based on any other applicable factor that is independent of the fact that the consumer does not have a credit card account.

(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 any rate differential is filed with and not disapproved by the Office of Financial and Insurance Regulation. OFI could not disapprove a filing if it (1) is reasonably justified by differences in losses, expenses, or both; or (2) provides the insured with a discount that is not less, on average, than the average credit-based discount received by the company's customers in the state.

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

(6) An insurer (or a third party on the insurer's behalf) must obtain a new credit report or insurance score and rerate the insured upon request of the insured during the course of a policy or, with the insured's permission, upon the request of an insurance producer at annual renewal. The insurer or third party is not required to obtain a new credit report or recalculate the insurance score more often than once in a 12-month period. An insurer or third party could order a credit report upon any renewal if the insurer does so consistently with all its insureds.

(7) For insurance scores calculated or recalculated on or after January 1, 2012, the insurer or a third party does not use the following as a negative factor in any insurance score or in reviewing credit information:

- Credit inquiries not initiated by the consumer or requested by the consumer for the consumer's own credit information.

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

- Multiple lender inquiries, if coded by the consumer reporting agency on the credit report as being from the home mortgage industry and made within 30 days of one another, unless only one inquiry is considered.

- Multiple lender inquiries, if coded by the consumer reporting agency on the credit report as being from the automobile lending industry and made within 30 days of one another, unless only one inquiry is considered.

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

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

Notification and Explanation of Adverse Actions (HB 4594)

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. The insurer would have to provide notice in clear and specific language of the reasons for the adverse action, including a description of all the factors that were the primary or most significant influences for the adverse action and the insured's or the applicant's insurance score if not otherwise provided. (No more than four factors need to be given.) The use of generalized terms such as "poor credit history," "poor credit rating," or "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 an increase in any charge for, or a reduction or other adverse or unfavorable change in the terms of coverage or amount of, any personal insurance, existing or applied for. The definition is in House Bill 4593.]

Adjustments by Insurer Based on Incorrect or Incomplete Information (HB 4596)

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 reevaluate the customer within 30 days of receiving the notice. After reevaluating the insured, the company 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 Causes of Action from Chapter 21A (HB 4593)

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.

Protection for Agents and Producers (HB 4593)

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.

Requests for Exceptions from Use of Credit Scoring (HB 4595)

An insurance company would have to provide reasonable exceptions to the application of credit information on the customer's rates, rating classifications, or company or tier placement if that customer's credit information has been directly influenced by any of the following events: (1) a 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 owned alimony or support payments; (5) identity theft; (6) temporary loss of employment for a period of three months or more, if it results from involuntary termination; (7) military deployment overseas; (8) other events, as determined by the insurance company.

If a customer submitted a request for an exception, the insurer could, but is not required to, do any of the following: (1) require a reasonable written and independently verifiable documentation of the event; (2) require the customer to demonstrate that the event had a direct and meaningful impact on his or her credit information; (3) require a request to be made no more than 60 days from the date of application for insurance or the policy renewal; (4) grant an exception even if the customer did not provide an initial request in writing; (5) grant an exception where the customer asks for consideration of repeated events or the company has considered the event previously.

Granting such an exception would not be considered a violation of a law, rule, or regulation relating to underwriting, rating, or rate filing. A company would have to notify customers that reasonable exceptions are available.

MCL 500.2151

FISCAL IMPACT:

The bills will add to the regulatory oversight responsibilities of the Office of Financial and Insurance Regulation (OFIR). At present, there is no estimate available from OFIR as to the impact on workload and staffing requirements. Chapter 2 (The Insurance Commissioner) of the Insurance Code, MCL 500.224, imposes an assessment fee on insurance companies with the total amount of the assessment based on the appropriation made to the Office of Financial and Insurance Regulation related to its regulation of the insurance industry. As such, any additional activities required of OFIR would be reflected in the annual appropriation to the office and would be supported by assessment fee revenue (i.e., the Insurance Bureau Fund, established in MCL 500.225). There is no GF/GP impact. Additionally, there is no fiscal impact on local units of government.

POSITIONS:

The following indicated support for the bill at the Insurance Committee on 9-15-11: The Office of Financial and Insurance Regulation (OFIR); the Insurance Institute of Michigan; the National Association of Insurance and Financial Advisors; the Michigan Association of Insurance Agents; the Property Casualty Insurance Association of America; Allstate; the Michigan Chamber of Commerce.

Legislative Analyst: Chris Couch
Fiscal Analyst: Mark Wolf

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.