

§2169-B. Use of consumer reports in insurance underwriting

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "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. [PL 2003, c. 223, §1 (NEW).]

B. "Applicant" means an individual who has applied to be covered by a personal insurance policy with an insurer. [PL 2003, c. 223, §1 (NEW).]

C. "Consumer" means an individual 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 a personal insurance policy. [PL 2003, c. 223, §1 (NEW).]

D. "Consumer report" has the same meaning as in 15 United States Code, Section 1681a(d). [PL 2013, c. 588, Pt. C, §7 (AMD).]

E. "Consumer reporting agency" has the same meaning as in Title 10, section 1308, subsection 3. [PL 2013, c. 588, Pt. C, §7 (AMD).]

F. "Credit information" means any credit-related information derived from a consumer report, found on a consumer report itself or provided on an application for personal insurance. "Credit information" does not include information that is not credit-related regardless of whether it is contained in a credit report or application or used to calculate an insurance score. [PL 2003, c. 223, §1 (NEW).]

G. "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 loss exposure of an individual applicant or insured. [PL 2003, c. 223, §1 (NEW).]

H. "Personal insurance" means private passenger automobile, homeowners, motorcycle, mobile home owners and noncommercial dwelling fire insurance policies and boat, personal watercraft, snowmobile and recreational vehicle policies that are individually underwritten for personal, family or household use. [PL 2003, c. 223, §1 (NEW).]

[PL 2013, c. 588, Pt. C, §7 (AMD).]

2. Use of consumer reports. Notwithstanding this subsection, an insurer may use a consumer report as permitted under the Fair Credit Reporting Act pursuant to Title 10, chapter 209-B and 15 United States Code, Chapter 41. An insurer may use information obtained from a consumer reporting agency to calculate an insurance score for underwriting and rating purposes, except that an insurer may not:

A. Use an insurance score that is calculated using race, sex, sexual orientation, gender identity, religion, ancestry or national origin, income, address, zip code or marital status of a consumer as a factor; [PL 2021, c. 553, §15 (AMD).]

B. Deny, cancel or refuse to renew 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 paragraph A; [PL 2003, c. 223, §1 (NEW).]

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; [PL 2003, c. 223, §1 (NEW).]

D. Take an adverse action against a consumer solely because that consumer does not have a credit card account, without consideration of any other applicable factor independent of credit information; [PL 2003, c. 223, §1 (NEW).]

E. Consider an absence of credit information, the number of inquiries or an inability to calculate an insurance score in underwriting or rating personal insurance unless the insurer has demonstrated to the superintendent that an absence of credit information, the number of inquiries or an inability to calculate an insurance score is a relevant factor to the risk underwritten or rated by the insurer and the insurer applies this factor in a manner approved by the superintendent; or [PL 2003, c. 223, §1 (NEW).]

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 before the date the policy is first written or renewal is issued. [PL 2003, c. 223, §1 (NEW).]

[PL 2021, c. 553, §15 (AMD).]

3. Notice of use of credit information. If credit information is used by an insurer, an insurer shall disclose, either on the insurance application or at the time the insurance application is taken, that credit information may be obtained by the insurer in connection with the application. The disclosure must be written or provided to an applicant in the same medium as the application for insurance. The insurer is not required to provide the disclosure statement required under this subsection to any insured on a renewal policy if such consumer has previously been provided a disclosure statement. An insurer may demonstrate compliance with this subsection by using the following example disclosure statement: "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 3rd party in connection with the development of your insurance score."

[PL 2003, c. 223, §1 (NEW).]

4. Notice of adverse action. If an insurer makes an adverse action based on credit information, the insurer shall provide the consumer with notice as required by this subsection. The insurer shall provide:

A. Notice to the consumer that an adverse action has been taken in accordance with the requirements of the Fair Credit Reporting Act pursuant to Title 10, chapter 209-B and 15 United States Code, Chapter 41; and [PL 2013, c. 588, Pt. C, §9 (AMD).]

B. Notice to the consumer explaining the reason for the adverse action. The reason or reasons must be provided in sufficiently clear and specific language so that an individual can identify the basis for the insurer's decision to take an adverse action. The notice must include a description of up to 4 factors that were the primary influences of the adverse action. The use of a generalized term 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 3rd-party vendors are deemed to comply with this paragraph.

[PL 2003, c. 223, §1 (NEW).]

[PL 2013, c. 588, Pt. C, §9 (AMD).]

5. Dispute resolution and error correction. If it is determined through the dispute resolution process set forth in 15 United States Code, Section 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 reunderwrite and rerate the consumer within 30 days of receiving the notice. After reunderwriting or rerating 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.

[PL 2013, c. 588, Pt. C, §10 (AMD).]

5-A. Rescoring. An insurer that uses insurance scores to underwrite or rate risks, upon request of the insured but no more often than once every 12 months, shall obtain an updated credit report and recalculate the insurance score and shall reunderwrite and rerate the consumer within 30 days of receiving the request. After reunderwriting or rerating the insured, the insurer shall make any adjustments necessary, consistent with its underwriting and rating guidelines, on the anniversary date or the effective date of the renewal of the policy.

[PL 2007, c. 74, §1 (NEW).]

6. Filing of insurance scoring models. An insurer that uses insurance scores to underwrite and rate risks shall file the scoring model or other scoring processes used by the insurer with the superintendent. A 3rd party may file scoring models on behalf of insurers. A filing that includes insurance scoring must include loss experience justifying the use of credit information if required by the superintendent. The insurance scoring model contained in a filing required under this subsection is confidential and not a public record within the meaning of Title 1, section 402, subsection 3.

[PL 2003, c. 223, §1 (NEW).]

7. 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 a producer who obtains or uses credit information or insurance scores for an insurer, provided the producer, in the exercise of reasonable care, follows the instructions of or procedures established by the insurer and complies with any applicable law or regulation. This subsection may not be construed to provide a consumer or other insured with a cause of action that does not otherwise exist in the absence of this subsection. This subsection may not be construed to indemnify a producer for the producer's omission when a producer elects not to obtain a credit-related insurance score in connection with an application for personal insurance coverage from an insurer that the producer represents if that insurer uses credit information as permitted under this section to underwrite that coverage.

[PL 2003, c. 223, §1 (NEW).]

8. Applicability. This section applies only to personal insurance. This section does not apply to commercial insurance.

[PL 2003, c. 223, §1 (NEW).]

SECTION HISTORY

PL 2003, c. 223, §1 (NEW). PL 2007, c. 74, §1 (AMD). PL 2013, c. 588, Pt. C, §§7-10 (AMD). PL 2021, c. 553, §15 (AMD).

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