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LD 2220
An Act to Prohibit Insurers from Using Credit Information as a Factor in Certain Insurance Practices

Testimony in Opposition by the Maine Association of Insurance Companies

February 27, 2024

Senator Bailey, Representative Perry, Honorable Members of the HCIFS Committee, my name is Charlie Soltan, a resident of Winthrop, and appear here today on behalf of the Maine Association of Insurance Companies (MAIC) in opposition to LD 2220.

The members of the MAIC are Maine based property and casualty companies writing nearly all lines of personal and commercial insurance, including personal and commercial auto. We employ hundreds of Maine residents in well-paying professional and challenging jobs. Our collective mission is to serve our customers' interests after they have purchased our products to protect their homes, families, employees, businesses, and financial interests from unexpected loss.

As I've stated many times previously, insurance is a collective sharing of risks among ALL policyholders. Otherwise, none of us would be able to insure a $40,000 car with an $800 policy covering much more than just the value of that car. And since this is a shared collective, carriers try to match the pricing for insurance to the risks you pose as a driver. Thus, if **actuarially sound factors** suggest you will be a riskier driver than others in that shared collective, you will pay more for your coverage. If those same risk factors suggest you are less risky than others, then your insurance will, and ought to be, less expensive.

The Federal Trade Commission (FTC) in its landmark 2007 report succinctly described the "bargain" between consumers and insurers:

> Consumers purchase insurance to protect themselves against the risk of suffering losses. They tend to be "risk averse," that is, consumers would prefer the certainty of paying the expected value of a

loss to the possibility of bearing the full amount of the loss. For example, assume that a driver faces a 1% risk of being in an automobile accident that would cause him or her to suffer a $10,000 loss, which means that the expected value of his or her loss is $100 (1% of $10,000). If the driver is risk averse, he or she would be willing to pay $100 or more to avoid the possible loss of $10,000.

What makes insurance markets possible is that insurance companies do not simply take on the risk of their customers, they actually reduce risk. This does not mean that they reduce the total losses from car accidents or house fires, for example, but rather that they reduce the uncertainty that individuals face without themselves facing nearly the same amount of uncertainty. <u>This is possible because the average loss on a large number of policies can be predicted much more accurately than the losses of a single driver or homeowner</u>. For instance, while it is extremely difficult to predict who among a group of 100,000 drivers will have an accident, it may be possible to predict the total number of accidents for these 100,000 drivers with a low margin of error. FN By selling many policies that cover the possible losses for many consumers, an insurance company faces much lower uncertainty as to total losses than would each consumer if they did not purchase insurance.

Insurance companies have a strong economic incentive to try to predict risk as accurately as possible. In a competitive market for insurance in which all firms have access to the same information about risk, competition for customers will force insurance companies to offer the lowest rates that cover the expected cost of each policy sold. If an insurance company is able to predict risk better than its competitors, it can identify consumers who currently are paying more than they should based on the risk they pose, and target these consumers by offering them a slightly lower price. Thus, developing and using better risk prediction methods is an important form of competition among insurance companies.

FN This risk reduction is due to the "law of large numbers." Uncertainty is reduced as long as there is a sufficient degree of independence among the risk that individual consumers face. For example, selling flood insurance to those who live in a single flood plain reduces risks less than selling the policies to those who live in a broader geographic area.[1] (Emphasis and highlight added)

As a result, risk-based pricing is a foundational concept in pricing insurance. Under this concept, price reflects risk, aligning premium charged with the risk assumed, it expands availability of coverage to more consumers and promotes a competitive marketplace, like we have here in Maine.

Risk-based pricing becomes misunderstood when actuarially sound rating factors, like the use of credit with insurance scores, collide with other factors in ways that can be perceived as unfairly discriminatory. Precisely for this reason, your predecessors passed section 2169-B concerning the use of consumer reports in insurance underwriting. Because of the strong and balanced requirements of section

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[1] Credit-Based Insurance Scores: Impacts on Consumers of Automobile Insurance, A Report to Congress by the Federal Trade Commission, July, 2007, pp. 7-8.

2169-B, Maine has already, and strongly, addressed the use of credit experience in insurance scores. It is important to fully understand how section 2169-B works, and how it protects **all** insurance consumers in Maine.

Section 2169-B[2] of our insurance code was enacted 21 years ago almost to this day. It was based on a model act from the National Conference of Insurance Legislators. Shortly afterwards, in that same year, Congress enacted the FACT Act (Fair and Accurate Credit Transaction Act). Among many other provisions, it permanently reauthorized the Fair Credit Reporting Act, FCRA. As a result, in Maine, the use of consumer reports in personal lines insurance underwriting is governed by both state and federal law.[3]

We can only surmise why this bill is before you. Perhaps it is based on misunderstanding of the use of consumer reports in insurance underwriting, and the strong consumer protections state and federal law incorporate around their use. As §2169-B(2) states:

> . . . 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;
>
> 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;
>
> 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;
>
> 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;

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[2] 24-A MRSA §2169-B is appended to this testimony.

[3] We do not understand the LDs attempt to include commercial auto. Credit scores as used in law only apply to people, not commercial enterprises.

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

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.

As you can see, the broad anti-discriminatory provisions of 2169-B prevent the very discrimination the proponents likely assert. In fact, the FTC concluded that "Credit-based insurance scores appear to have little effect as a "proxy" for membership in racial and ethnic groups in decisions related to insurance. 2007 FTC Report at 4.

What the FTC research did find was that

"credit-based insurance scores are effective predictors of risk under automobile policies. They are predictive of the number of claims consumers file and the total cost of those claims. The use of scores is therefore likely to make the price of insurance better match the risk of loss posed by the consumer. Thus, on average, higher risk consumers will pay higher premiums and lower-risk consumers will pay lower premiums."

2007 FTC Report at 3.

Thus, the only so-called discrimination insurance credit scores might make is to drivers more likely to cause accidents and injuries. These are the ones driving the costs of insurance. Why do the proponents want to reward them?

We strongly believe that the proponents of this legislation cannot demonstrate that the use of credit-based insurance scores has a negative impact on anyone other than riskier drivers. The NAIC has found that average claim payouts tend to decline as insurance credit scores rise. Drivers with the worst 10% of scores have TWICE as many collision claims as the best 10%. We hope you believe that riskier drivers ought to pay more than safer, less-risky drivers. If you were to pass this legislation, you will reward riskier driving behavior and disproportionately impact older drivers as they have as a group behaved financially to build and protect their financial security.

It is also important to understand that negative ratings from insurance credit scores impact a relatively few drivers. For the large majority of us, a positive or neutral score has only positive effects on our insurance costs. We believe it is around 15% or less of drivers earn a rating that might negatively impact their cost of insurance or placement in a lower tiered plan. And yet we know through study, research and hard evidence, that these drivers also lead to the highest incidents of claims.

One of our members looked at its book of business and found that EVERY driver age group had average credit-based insurance scores (CBIS) significantly higher than the benchmark for considering a negative rating. Importantly, it found the age groups with the strongest CBISs were those over the age of 60, and those with the highest for those over 70. Therefore, were this LD to pass, it will have the most detrimental impact on those age groups. Since we are the oldest state in the union, it will be poor public policy to hit those age groups, many of whom are on a fixed income, with a needless increase in auto insurance costs. Another member has determined that 62% of their auto insureds will see a price increase if this bill passes. This bill promotes poor public policy.

Please vote ought not to pass. Thank you for your consideration.

APPENDIX

24-A MRSA §2169-B

§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.

B. "Applicant" means an individual who has applied to be covered by a personal insurance policy with an insurer.

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.

D. "Consumer report" has the same meaning as in 15 United States Code, Section 1681a(d).

E. "Consumer reporting agency" has the same meaning as in Title 10, section 1308, subsection 3.

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.

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.

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.

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;

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;

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;

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;

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

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.

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."

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

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.

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.

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.

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.

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.

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