

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS (NCOIL)

BILL SUMMARY OF AN NCOIL MODEL ACT REGARDING USE OF CREDIT INFORMATION IN PERSONAL INSURANCE

Note: The following 26 states have adopted legislation and/or regulation based on the NCOIL model law—Alabama, Arkansas, Colorado, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Mississippi, Montana, Nebraska, Nevada, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Rhode Island, Tennessee, Texas, Virginia, and West Virginia.

The NCOIL model act would provide, section-by-section, as follows:

Section 1 would identify the Act as the *Model Act Regarding Use of Credit Information in Personal Insurance*.

Section 2 would provide that the purpose of the Act is to regulate the use of credit information for personal insurance, so consumers are afforded certain protections with respect to the use of such information.

Section 3 would provide that the Act applies only to personal insurance, including private passenger automobile and homeowners, among others. Covered lines must be individually underwritten for personal, family, or household use.

Section 4 would provide definitions for the following: “adverse action,” “affiliate,” “applicant,” “consumer,” “consumer reporting agency,” “credit information,” “credit report,” and “insurance score.”

Section 5 would prohibit an insurer from doing the following:

- 1) calculating an insurance score using income, gender, address, zip code, ethnic group, religion, marital status, or nationality
- 2) denying, canceling, or non-renewing a policy based solely on credit information, without considering any other applicable underwriting factor (*Note: This provision would prohibit an insurer from refusing to insure an applicant or insured because the person’s insurance score fails to meet or exceed a minimum numeric threshold, unless at least one other applicable underwriting factor is considered.*)
- 3) basing renewal rates solely on credit information, without considering another applicable factor
- 4) taking an adverse action solely because a consumer has no credit card account
- 5) considering, at all, an absence of credit information or an inability to calculate an insurance score, unless the insurer either:

- a) treats the consumer as otherwise approved by the insurance department
 - b) treats the consumer as if the applicant or insured had neutral credit information, as defined by the insurer
 - c) excludes the use of credit information as a factor in underwriting
- 6) taking an adverse action based on credit history, unless an insurer uses a credit report issued or an insurance score calculated within 90 days from the date the policy is first written or renewal is issued
- 7) using credit information unless the insurer obtains a new credit report or recalculates an insurance score at least every 36 months. Regardless, an insurer:
- a) must re-underwrite and re-rate based on a current credit info if the consumer or agent requests such an action at annual renewal
 - b) need not use current credit information if:
 - i) the insurer is acting as otherwise approved by the Commissioner
 - ii) the insured is in the most favorably priced tier
 - iii) credit was not used when the policy was initially written
 - iv) the insurer re-evaluates the insured at least every 36 months after inception based on other factors, excluding credit information
- 8) counting certain inquiries—such as those related to auto and home loans—as negative factors

A drafting note would authorize an insurer to consider extraordinary life circumstances (e.g., death of a spouse, extended illness, and divorce, among others) when underwriting and/or rating a policy.

Section 6 would provide that an insurer shall re-underwrite and re-rate a consumer whose credit report was disputed and corrected, providing that the insurer shall make any adjustments necessary and refund to the insured any amount of overpayment.

Section 7 would provide that an insurer using credit information must initially disclose to a consumer that credit information may be obtained when underwriting or rating the applied-for policy. Such information must be disclosed in the same medium as the application for insurance and need not apply on a renewal policy, if the insured has previously received such notification.

Section 8 would provide that if an insurer takes an adverse action based on credit information, the insurer must notify the consumer, as per the federal *Fair Credit Reporting Act*, and include up to four specific, credit-related factors that were primary influences.

Section 9 would require insurers to file their scoring models with the Department of Insurance, which would consider them trade secret.

Section 10 would indemnify an insurance agent from any wrongdoing associated with use of credit information if that agent followed the instructions established by the insurer and complied with applicable law or regulation.

Section 11 would prohibit a consumer reporting agency from providing or selling information related to a consumer credit report or insurance score. The provision would not apply to information shared with an insurance agent, an insurer, or an insurer's affiliates, and would not restrict an insurer from accessing a claims history or motor vehicle report.

Section 12 would provide severability.

Section 13 would provide an effective date.