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Senate Bill 300 (as introduced 3-24-11)
Sponsor: Senator John J. Gleason
Committee: Insurance

Date Completed: 3-6-12

CONTENT

The bill would add Chapter 21A (Credit Information and Credit Scores) to the Insurance Code to do the following:

- Prohibit an insurer from using credit information or an insurance score as part of a decision to deny, cancel, or not renew a personal insurance policy.**
- Allow an insurer to use credit information or an insurance score only if certain criteria were met.**
- Require an insurer to notify an insured or applicant against whom the insurer took an adverse action based on credit information.**
- Require an insurer to reevaluate an insured if a dispute resolution process determined that the initial evaluation was based on incorrect or incomplete credit information, and make any necessary adjustments.**
- Require an insurer to indemnify a producer against liability related to the producer's use of credit information or insurance scores for the insurer.**

Use of Credit Information/Insurance Score

The bill would prohibit an insurer from using credit information or an insurance score as any part of a decision to deny, cancel, or not renew a personal insurance policy under Chapter 24 (Casualty Insurance Rates) or 26 (Fire and Inland Marine Rates).

("Credit information" would mean any credit-related information derived from a credit report, found on a credit report itself, or provided on an application for personal insurance. Information that was not credit-related could not be considered credit information, regardless of whether it was contained in a credit report or in an application, or was used to calculate an insurance score.

"Insurance score" would mean a number or rating derived from an algorithm, computer application, model, or other process based on credit information for the purposes of predicting the future insurance loss exposure of an individual applicant or insured.

"Personal insurance" would mean 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.)

An insurer could not apply credit information or an insurance score in the rating or underwriting of personal insurance that was otherwise permitted under the Code unless all of the following conditions were met:

- The insurer or its producer disclosed, either on the insurance application or when the application was taken, that it could obtain credit information in connection with the application.**

- The insurer or a third party on the insurer's behalf did not use the insured's or applicant's income, gender, address, zip code, ethnic group, religion, marital status, or nationality in calculating an insurance score.
- The insurer did not take an adverse action against a consumer because he or she did not have a credit card account, without consideration of any other applicable factor independent of credit information.
- The insurer or a third party on its behalf did not consider an absence of credit information or an inability to calculate an insurance score in the rating of personal insurance unless any resulting rate differential were reasonably justified by differences in losses and/or expenses, or the insured or applicant were treated as having the most favorable insurance score available.
- The insurer or a third party on its behalf used a credit report issued within 90 days before an insurance score based on that report was first applied to the insured.
- The insurer or a third party on its behalf did not calculate an insurance score by differentiating on whether an insured's or applicant's accounts were maintained at a State or nationally chartered bank or a State or federally chartered savings and loan institution, savings bank, or credit union.

Also, upon request of the insured or his or her producer at annual renewal, an insurer or a third party on the insurer's behalf would have to reexamine a current credit report or insurance score. An insurer or third party would not have to recalculate the insurance score or obtain a new credit report more frequently than once in a 12-month period. An insurer or third party could order a credit report upon any renewal if the insurer did so consistently with all of its insureds.

In addition, an insurer could not apply credit information or an insurance score that was otherwise permitted unless, for scores calculated or recalculated on or after January 1, 2012, the insurer or a third party on its behalf did 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 his or her own credit information.
- Credit inquiries relating to insurance coverage, if so identified on an insured's or insurance 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 or automobile lending industry and made within 45 days of one another, unless only one inquiry were considered.
- If less than three, the number of credit or charge card accounts opened by a consumer in the immediately preceding 12 months.
- An action commenced by or against the consumer under the Bankruptcy Code (11 USC 101 to 1330) if the date of the order for relief or the date of adjudication, if applicable, were more than 10 years before the date of the credit report.
- Collection accounts with a medical industry code, if so identified on the consumer's credit report.

("Consumer reporting agency" would mean any person who, for monetary fees or dues or on a cooperative nonprofit basis, engages regularly in the practice of assembling or evaluating consumer credit information or other consumer information for the purpose of furnishing consumer reports to third parties.)

Adverse Action

If an insurer took an adverse action based upon credit information, the insurer would have to notify the insured or applicant in accordance with 15 USC 1681m(a). The insurer would have to give clear and specific notice of the reasons for the adverse action, including a description of all factors that were the primary influences for it. The insurer, however, would not have to give more than four factors for the adverse action. The use of

generalized terms such as "poor credit history", "poor credit rating", or "poor insurance score" would not meet the bill's description requirements. Standardized credit explanations provided by consumer reporting agencies or other third party vendors would meet those requirements.

(Under 15 USC 1681m(a), a person who takes any adverse action against a consumer based on information contained in a consumer report must notify the consumer orally, electronically, or in writing. In addition, the person must give the consumer the name and contact information of the consumer reporting agency that furnished the report, as well as a statement that the agency did not make the decision to take the adverse action and is unable to provide the reasons for it. The person also must give the consumer a notice of the consumer's right to obtain a free copy of his or her consumer report and to dispute with the consumer reporting agency the accuracy or completeness of information in the report.)

Reevaluation

If it were determined through the dispute resolution process set forth in 15 USC 1681i(a) that the credit information of a current insured was incorrect or incomplete, and if the insurer received notice of this determination from the consumer reporting agency or the insured, the insurer would have to reevaluate the insured within 30 days.

After reevaluating, the insurer would have to make any necessary adjustments, consistent with the Code and the insurer's underwriting, rating guidelines, and premium discount plan. If an insurer determined that the insured had overpaid premium, the insurer would have to refund the amount of overpayment calculated back to the shorter of either the last 12 months of coverage or the actual policy period.

(Under 15 USC 1681i(a), if a consumer notifies a consumer reporting agency that he or she disputes the completeness or accuracy of any item of information contained in his or her file at the agency, within 30 days the agency must conduct a reasonable reinvestigation to determine whether the disputed information is inaccurate. If the information is found to be inaccurate or incomplete, or cannot be verified, the agency promptly must delete it from the consumer's file or modify that item as appropriate.)

Cause of Action & Liability

The bill provides that nothing in proposed Chapter 21A could be construed to provide an insured or applicant for insurance with a cause of action that did not exist in the absence of the chapter.

An insurer would have to indemnify and defend producers and hold them harmless 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, if the producer followed the procedures and instructions established by the insurer and complied with all applicable laws and regulations.

Proposed MCL 500.2151

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Josh Sefton

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.