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SENATE BILL 5120

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State of Washington

62nd Legislature

2011 Regular Session

By Senators Keiser and Kline; by request of Insurance Commissioner

Read first time 01/14/11. Referred to Committee on Financial Institutions, Housing & Insurance.

1 AN ACT Relating to regulating insurance rates; amending RCW  
2 48.02.120, 48.19.035, 48.19.040, and 48.29.147; and repealing RCW  
3 48.43.0121.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 48.02.120 and 1985 c 264 s 2 are each amended to read  
6 as follows:

7 (1) The commissioner shall preserve in permanent form records of  
8 his or her proceedings, hearings, investigations, and examinations, and  
9 shall file such records in his or her office.

10 (2) The records of the commissioner and insurance filings in his or  
11 her office shall be open to public inspection, except as otherwise  
12 provided by this code.

13 ~~((3) Actuarial formulas, statistics, and assumptions submitted in  
14 support of a rate or form filing by an insurer, health care service  
15 contractor, or health maintenance organization or submitted to the  
16 commissioner upon his or her request shall be withheld from public  
17 inspection in order to preserve trade secrets or prevent unfair  
18 competition.))~~

1       **Sec. 2.** RCW 48.19.035 and 2004 c 86 s 1 are each amended to read  
2 as follows:

3       (1) For the purposes of this section:

4       (a) "Affiliate" has the same meaning as defined in RCW  
5 48.31B.005(1).

6       (b) "Consumer" means an individual policyholder or applicant for  
7 insurance.

8       (c) "Credit history" means any written, oral, or other  
9 communication of any information by a consumer reporting agency bearing  
10 on a consumer's creditworthiness, credit standing, or credit capacity  
11 that is used or expected to be used, or collected in whole or in part,  
12 for the purpose of serving as a factor in determining personal  
13 insurance premiums or eligibility for coverage.

14       (d) "Insurance score" means a number or rating that is derived from  
15 an algorithm, computer application, model, or other process that is  
16 based in whole or in part on credit history.

17       (e) "Personal insurance" means:

18       (i) Private passenger automobile coverage;

19       (ii) Homeowner's coverage, including mobile homeowners,  
20 manufactured homeowners, condominium owners, and renter's coverage;

21       (iii) Dwelling property coverage;

22       (iv) Earthquake coverage for a residence or personal property;

23       (v) Personal liability and theft coverage;

24       (vi) Personal inland marine coverage; and

25       (vii) Mechanical breakdown coverage for personal auto or home  
26 appliances.

27       (2)(a) Credit history shall not be used to determine personal  
28 insurance rates, premiums, or eligibility for coverage unless the  
29 insurance scoring models are filed with the commissioner. Insurance  
30 scoring models include all attributes and factors used in the  
31 calculation of an insurance score. RCW 48.02.120 and 48.19.040(5)  
32 (~~does~~) do not apply to any information filed under this subsection,  
33 and the information shall be withheld from public inspection and kept  
34 confidential by the commissioner. All information filed under this  
35 subsection shall be considered trade secrets (~~under—RCW~~  
36 ~~48.02.120(3)~~). Information filed under this subsection may be made  
37 public by the commissioner for the sole purpose of enforcement actions  
38 taken by the commissioner.

1 (b) Each insurer that uses credit history or an insurance score to  
2 determine personal insurance rates, premiums, or eligibility for  
3 coverage must file all rates and rating plans for that line of coverage  
4 with the commissioner. This requirement applies equally to a single  
5 insurer and two or more affiliated insurers. RCW 48.19.040(5) applies  
6 to information filed under this subsection except that any eligibility  
7 rules or guidelines shall be withheld from public inspection (~~under~~  
8 ~~RCW 48.02.120(3)~~) from the date that the information is filed and  
9 after it becomes effective.

10 (3) Insurers shall not use the following types of credit history to  
11 calculate a personal insurance score or determine personal insurance  
12 premiums or rates:

13 (a) The absence of credit history or the inability to determine the  
14 consumer's credit history, unless the insurer has filed actuarial data  
15 segmented by demographic factors in a manner prescribed by the  
16 commissioner that demonstrates compliance with RCW 48.19.020;

17 (b) The number of credit inquiries;

18 (c) Credit history or an insurance score based on collection  
19 accounts identified with a medical industry code;

20 (d) The initial purchase or finance of a vehicle or house that adds  
21 a new loan to the consumer's existing credit history, if evident from  
22 the consumer report; however, an insurer may consider the bill payment  
23 history of any loan, the total number of loans, or both;

24 (e) The consumer's use of a particular type of credit card, charge  
25 card, or debit card; or

26 (f) The consumer's total available line of credit; however, an  
27 insurer may consider the total amount of outstanding debt in relation  
28 to the total available line of credit.

29 (4) If a consumer is charged higher premiums due to disputed credit  
30 history, the insurer shall rerate the policy retroactive to the  
31 effective date of the current policy term. As rerated, the consumer  
32 shall be charged the same premiums they would have been charged if  
33 accurate credit history was used to calculate an insurance score. This  
34 subsection applies only if the consumer resolves the dispute under the  
35 process set forth in the fair credit reporting act and notifies the  
36 insurer in writing that the dispute has been resolved.

37 (5) The commissioner may adopt rules to implement this section.

1 (6) This section applies to all personal insurance policies issued  
2 or renewed on or after June 30, 2003.

3 **Sec. 3.** RCW 48.19.040 and 1994 c 131 s 8 are each amended to read  
4 as follows:

5 (1) Every insurer or rating organization shall, before using, file  
6 with the commissioner every classifications manual, manual of rules and  
7 rates, rating plan, rating schedule, minimum rate, class rate, and  
8 rating rule, and every modification of any of the foregoing which it  
9 proposes. The insurer need not so file any rate on individually rated  
10 risks as described in (~~subdivision (1) of~~) RCW 48.19.030(1); except  
11 that any such specific rate made by a rating organization shall be  
12 filed.

13 (2) Every such filing shall indicate the type and extent of the  
14 coverage contemplated and must be accompanied by sufficient information  
15 to permit the commissioner to determine whether it meets the  
16 requirements of this chapter. An insurer or rating organization shall  
17 offer in support of any filing:

18 (a) The experience or judgment of the insurer or rating  
19 organization making the filing;

20 (b) An exhibit detailing the major elements of operating expense  
21 for the types of insurance affected by the filing;

22 (c) An explanation of how investment income has been taken into  
23 account in the proposed rates; and

24 (d) Any other information which the insurer or rating organization  
25 deems relevant.

26 (3) If an insurer has insufficient loss experience to support its  
27 proposed rates, it may submit loss experience for similar exposures of  
28 other insurers or of a rating organization.

29 (4) Every such filing shall state its proposed effective date.

30 (5) A filing made pursuant to this chapter (~~shall be exempt from~~  
31 ~~the provisions of RCW 48.02.120(3). However, the filing and all~~  
32 ~~supporting information accompanying it~~) shall be open to public  
33 inspection only after the filing becomes effective.

34 (6) Where a filing is required no insurer shall make or issue an  
35 insurance contract or policy except in accordance with its filing then  
36 in effect, except as is provided by RCW 48.19.090.

1       **Sec. 4.** RCW 48.29.147 and 2008 c 110 s 5 are each amended to read  
2 as follows:

3       (1) Every title insurer shall, before using, file with the  
4 commissioner every manual of title insurance rules and rates, rating  
5 plan, rate schedule, minimum rate, class rate, and rating rule, and  
6 every modification of any of the filings under this subsection which it  
7 proposes.

8       (2) Every filing shall be accompanied by sufficient information to  
9 permit the commissioner to determine whether the filing meets the  
10 requirements of RCW 48.29.143.

11       (3) Data used to justify title insurance rates may not include  
12 escrow income or expenses. The title insurance company shall include  
13 a detailed explanation showing how expenses are allocated between the  
14 title operations and escrow operations of the insurer or title  
15 insurance agent.

16       (4) Every such filing shall state its proposed effective date.

17       (5) The commissioner shall review a filing as soon as reasonably  
18 possible after it is received, to determine whether it meets the  
19 requirements of RCW 48.29.143.

20       (6) The filing's proposed effective date shall be no earlier than  
21 thirty days after the date on which the filing is received by the  
22 commissioner. By giving notice to the insurer within this thirty days,  
23 the commissioner may extend this waiting period for an additional  
24 period not to exceed an additional fifteen days. The commissioner may,  
25 upon application and for cause shown, waive part or all of the waiting  
26 period with respect to a filing the commissioner has not disapproved.  
27 If the commissioner does not disapprove the filing during the waiting  
28 period, the filing takes effect on its proposed effective date.

29       (7) If within the waiting period or any extension thereof as  
30 provided in subsection (6) of this section, the commissioner finds that  
31 a filing does not meet the requirements of RCW 48.29.143 or the  
32 requirements of subsections (2) through (4) of this section, the  
33 commissioner shall disapprove the filing and shall give notice to the  
34 insurer that the filing has been disapproved. This notice shall  
35 specify the respect in which the commissioner finds the filing fails to  
36 meet the requirements and shall state that the filing does not become  
37 effective as proposed.

1 (8) If a filing is not disapproved by the commissioner within the  
2 waiting period or any extension thereof, the filing becomes effective  
3 as proposed.

4 (9) A filing made under this section (~~(is exempt from RCW~~  
5 ~~48.02.120(3)). However, the filing~~) and all supporting and  
6 accompanying information (~~(accompanying it)~~) is open to public  
7 inspection (~~(only)~~) after the filing becomes effective.

8 (10) A title insurer or title insurance agent shall not make or  
9 issue a title insurance contract or policy, or use or collect any  
10 premium on or after a date set by the commissioner by rule, which date  
11 shall not be any earlier than January 1, 2010, except in accordance  
12 with rates and rules filed with the commissioner as required by this  
13 section.

14 (11) If at any time subsequent to the applicable review period  
15 provided for in subsection (6) of this section, the commissioner has  
16 reason to believe that a title insurer's rates do not meet the  
17 requirements of RCW 48.29.143 or are otherwise contrary to law, or if  
18 any person having an interest in the rates makes a written complaint to  
19 the commissioner setting forth specific and reasonable grounds for the  
20 complaint and requests a hearing, or if any insurer upon notice of the  
21 commissioner's disapproval of a filing made under this section requests  
22 a hearing, the commissioner shall hold a hearing within thirty days and  
23 shall, in advance of it, give written notice of the hearing to all  
24 parties in interest. The commissioner may, by issuing an order,  
25 confirm, modify, change, or rescind any previous action, if it is  
26 warranted by the facts shown at the hearing. The order shall not  
27 affect any contract or policy made or issued prior to a reasonable  
28 period of time, to be specified in the order, after the order is  
29 issued.

30 (12) In any hearing regarding rates filed under this chapter the  
31 burden shall be upon the title insurer to prove by a preponderance of  
32 the evidence that the rates comply with RCW 48.29.143.

33 NEW SECTION. **Sec. 5.** RCW 48.43.0121 (Commissioner's authority to  
34 review certain rates) and 2008 c 303 s 7 are each repealed.

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