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**SENATE BILL 5409**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** Senators Dozier and Braun

AN ACT Relating to requiring insurers who use credit information to provide reasonable exceptions to insurance rates for consumers experiencing extraordinary life circumstances; and amending RCW 48.18.545 and 48.19.035.

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

**Sec.**  RCW 48.18.545 and 2002 c 360 s 1 are each amended to read as follows:

(1) For the purposes of this section:

(a) "Adverse action" has the same meaning as defined in the fair credit reporting act, 15 U.S.C. Sec. 1681 et seq. Adverse actions include, but are not limited to:

(i) Cancellation, denial, or nonrenewal of personal insurance coverage;

(ii) Charging a higher insurance premium for personal insurance than would have been offered if the credit history or insurance score had been more favorable, whether the charge is by:

(A) Application of a rating rule;

(B) Assignment to a rating tier that does not have the lowest available rates; or

(C) Placement with an affiliate company that does not offer the lowest rates available to the consumer within the affiliate group of insurance companies; or

(iii) Any reduction, adverse, or unfavorable change in the terms of coverage or amount of any personal insurance due to a consumer's credit history or insurance score. A reduction, adverse, or unfavorable change in the terms of coverage occurs when:

(A) Coverage provided to the consumer is not as broad in scope as coverage requested by the consumer but available to other insureds of the insurer or any affiliate; or

(B) The consumer is not eligible for benefits such as dividends that are available through affiliate insurers.

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

(c) "Consumer" means an individual policyholder or applicant for insurance.

(d) "Consumer report" has the same meaning as defined in the fair credit reporting act, 15 U.S.C. Sec. 1681 et seq.

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

(f) "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 history.

(g) "Personal insurance" means:

(i) Private passenger automobile coverage;

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

(iii) Dwelling property coverage;

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

(v) Personal liability and theft coverage;

(vi) Personal inland marine coverage; and

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

(h) "Tier" means a category within a single insurer into which insureds with substantially like insuring, risk or exposure factors, and expense elements are placed for purposes of determining rate or premium.

(2) An insurer that takes adverse action against a consumer based in whole or in part on credit history or insurance score shall provide written notice to the applicant or named insured. The notice must state the significant factors of the credit history or insurance score that resulted in the adverse action. The insurer shall also inform the consumer that the consumer is entitled to a free copy of their consumer report under the fair credit reporting act.

(3) An insurer shall not cancel or nonrenew personal insurance based in whole or in part on a consumer's credit history or insurance score. An offer of placement with an affiliate insurer does not constitute cancellation or nonrenewal under this section.

(4) An insurer may use credit history to deny personal insurance only in combination with other substantive underwriting factors. For the purposes of this subsection:

(a) "Deny" means an insurer refuses to offer insurance coverage to a consumer;

(b) An offer of placement with an affiliate insurer does not constitute denial of coverage; and

(c) An insurer may reject an application when coverage is not bound or cancel an insurance contract within the first sixty days after the effective date of the contract.

(5) Insurers shall not deny personal insurance coverage based on:

(a) The absence of credit history or the inability to determine the consumer's credit history, if the insurer has received accurate and complete information from the consumer;

(b) The number of credit inquiries;

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

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

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

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

(6)(a) If disputed credit history is used to determine eligibility for coverage and a consumer is placed with an affiliate that charges higher premiums or offers less favorable policy terms:

(i) The insurer shall reissue or rerate the policy retroactive to the effective date of the current policy term; and

(ii) The policy, as reissued or rerated, shall provide premiums and policy terms the consumer would have been eligible for if accurate credit history had been used to determine eligibility.

(b) This subsection only applies if the consumer resolves the dispute under the process set forth in the fair credit reporting act and notifies the insurer in writing that the dispute has been resolved.

(7)(a) Notwithstanding any other law or regulation, an insurer that uses credit information shall, on written request from an applicant for insurance coverage or an insured, provide reasonable exceptions to the insurer's rates, rating classifications, company or tier placement, or underwriting rules or guidelines for a consumer who has experienced and whose credit information has been directly influenced by any of the following events:

(i) Catastrophic event, as declared by the federal or state government;

(ii) Serious illness or injury, or serious illness or injury to an immediate family member;

(iii) Death of a spouse, child, or parent;

(iv) Divorce or involuntary interruption of legally owed alimony or support payments;

(v) Identity theft;

(vi) Temporary loss of employment for a period of three months or more, if it results from involuntary termination;

(vii) Military deployment overseas; or

(viii) Other events, as determined by the insurer.

(b) If an applicant or insured submits a request for an exception as set forth in (a) of this subsection, an insurer may, in its sole discretion, but is not mandated to:

(i) Require the consumer to provide reasonable written and independently verifiable documentation of the event;

(ii) Require the consumer to demonstrate that the event had direct and meaningful impact on the consumer's credit information;

(iii) Require such request be made no more than 60 days from the date of the application for insurance or the policy renewal;

(iv) Grant an exception despite the consumer not providing the initial request for an exception in writing; and

(v) Grant an exception where the consumer asks for consideration of repeated events or the insurer has considered this event previously.

(c) An insurer is not out of compliance with any law or rule relating to underwriting, rating, or rate filing as a result of granting an exception under this section. Nothing in this section shall be construed to provide a consumer or other insured with a cause of action that does not exist in the absence of this section.

(d) The insurer shall provide notice to consumers that reasonable exceptions are available and information about how the consumer may inquire further.

(e) Within 30 days of the insurer's receipt of sufficient documentation of an event described in (a) of this subsection, the insurer shall inform the consumer of the outcome of the request for a reasonable exception. Such communication shall be in writing or provided to an applicant in the same medium as the request.

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

((~~(8) This section applies to all personal insurance policies issued or renewed after January 1, 2003.~~))

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

(1) For the purposes of this section:

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

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

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

(d) "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 history.

(e) "Personal insurance" means:

(i) Private passenger automobile coverage;

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

(iii) Dwelling property coverage;

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

(v) Personal liability and theft coverage;

(vi) Personal inland marine coverage; and

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

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

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

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

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

(b) The number of credit inquiries;

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

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

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

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

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

(5)(a) Notwithstanding any other law or regulation, an insurer that uses credit information shall, on written request from an applicant for insurance coverage or an insured, provide reasonable exceptions to the insurer's rates, rating classifications, company or tier placement, or underwriting rules or guidelines for a consumer who has experienced and whose credit information has been directly influenced by any of the following events:

(i) Catastrophic event, as declared by the federal or state government;

(ii) Serious illness or injury, or serious illness or injury to an immediate family member;

(iii) Death of a spouse, child, or parent;

(iv) Divorce or involuntary interruption of legally owed alimony or support payments;

(v) Identity theft;

(vi) Temporary loss of employment for a period of three months or more, if it results from involuntary termination;

(vii) Military deployment overseas; or

(viii) Other events, as determined by the insurer.

(b) If an applicant or insured submits a request for an exception as set forth in (a) of this subsection, an insurer may, in its sole discretion, but is not mandated to:

(i) Require the consumer to provide reasonable written and independently verifiable documentation of the event;

(ii) Require the consumer to demonstrate that the event had direct and meaningful impact on the consumer's credit information;

(iii) Require such request be made no more than 60 days from the date of the application for insurance or the policy renewal;

(iv) Grant an exception despite the consumer not providing the initial request for an exception in writing; and

(v) Grant an exception where the consumer asks for consideration of repeated events or the insurer has considered this event previously.

(c) An insurer is not out of compliance with any law or rule relating to underwriting, rating, or rate filing as a result of granting an exception under this section. Nothing in this section shall be construed to provide a consumer or other insured with a cause of action that does not exist in the absence of this section.

(d) The insurer shall provide notice to consumers that reasonable exceptions are available and information about how the consumer may inquire further.

(e) Within 30 days of the insurer's receipt of sufficient documentation of an event described in (a) of this subsection, the insurer shall inform the consumer of the outcome of the request for a reasonable exception. Such communication shall be in writing or provided to an applicant in the same medium as the request.

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

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

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