

3901-1-55

Use of credit history and credit scores.**(A) Authority**

This rule is issued pursuant to section 3901.041 of the Revised Code which provides that the superintendent of insurance shall adopt, amend, and rescind rules and make adjudications, necessary to discharge the superintendent's duties and exercise the superintendent's powers, including, but not limited to, the superintendent's duties and powers under Chapters 1751. and 1753. and Title XXXIX of the Revised Code, subject to Chapter 119. of the Revised Code.

Sections 3901.20 and 3901.21 of the Revised Code prohibit unfair or deceptive practices in the business of insurance and define certain acts or practices as unfair or deceptive. Section 3901.21 also provides that the enumeration of specific unfair or deceptive acts or practices in the business of insurance is not exclusive or restrictive, or intended to limit the powers of the superintendent of insurance to adopt rules to implement section 3901.21 or to take action under other sections of the Revised Code.

(B) Purpose

The purpose of this rule is to clearly define certain unfair practices and to set forth standards with respect to insurers' and agents' use of credit history and credit scores in connection with underwriting and rating personal lines coverage.

(C) Scope

This rule applies only to personal lines coverage as defined in paragraph (D)(6) of this rule.

(D) Definitions

As used in this rule:

- (1) "Adverse action" has the same meaning as defined in the Fair Credit Reporting Act, 15 U.S.C. 1681 et seq. (1998), and includes 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 or rating of insurance. Issuance of a policy at a rate higher than that which the consumer would have received if the consumer's credit history had not been taken into account is an adverse action.
- (2) "Consumer" means any insured or applicant for personal lines coverage.
- (3) "Credit history" means any written, oral, or other communication of any information 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 rates, placement within a tier or with an affiliated company, or eligibility for coverage.

- (4) "Credit 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.
- (5) "Insurance score" and "credit based insurance score" have the same meaning: a number or rating that is derived from an algorithm, computer application, a model or other process that is based in whole or in part on a credit score or credit history, for the purpose of predicting the future insurance loss exposure of a consumer (that is, any insured or applicant).
- (6) "Personal lines" means a policy of property and casualty insurance issued to a natural person primarily for personal or family protection for personal automobile, homeowner's, tenant's, mobile-homeowner's, non-commercial dwelling fire or personal umbrella coverage.
- (7) "Consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for purposes of furnishing such information to third parties.

(E) Credit cannot be the sole underwriting or rating factor

Credit history or a credit score or any aspect thereof, either individually or collectively, may not be used without consideration of any other applicable underwriting or rating factor as the sole basis for:

- (1) Any underwriting decision;
- (2) Any total premium determination; or
- (3) Any adverse action.

This paragraph does not prohibit an insurer from raising a premium rate at renewal based on a change in credit history, in a credit score, or in the actuarial indications for a particular credit history or credit score if other non-credit related factors are also considered in the total premium determination.

(F) Prohibited underwriting, rating and credit scoring factors

No insurer underwriting or rating a policy of personal lines insurance shall use any of the following as a negative factor in any credit scoring methodology or in reviewing the credit history of any consumer:

- (1) Credit inquiries not initiated by the consumer;
- (2) Credit inquiries relating to insurance coverage;
- (3) Disputed information that is currently under investigation by the consumer reporting agency, if so identified on the records of such agency;
- (4) Collection accounts with a medical industry code, if so identified on the records of the consumer reporting agency;
- (5) Multiple lender inquiries, if coded by the consumer reporting agency on the consumer's credit report as being from the home mortgage industry and made within thirty days of one another, unless only one inquiry is considered; or
- (6) Multiple lender inquiries, if coded by the consumer reporting agency on the consumer's credit report as being from the automobile lending industry and made within thirty days of one another, unless only one inquiry is considered.

(G) Disclosure requirements

- (1) The consumer must be provided notice either prior to or at the time the insurance application is taken that credit history or a credit score may be obtained and used in connection with underwriting or rating a policy. Such notice shall either be written or provided to the consumer in the same medium as the application for insurance. The insurer need not provide such notice to any insured on a renewal policy, if such notice has previously been provided.
- (2) If an adverse action is taken as a result of credit history or a credit score the following disclosures must be made to the consumer in writing within thirty days of the date the adverse action is taken:
 - (a) The insurer must identify and describe the nature of the adverse action;
 - (b) The insurer must describe the significant factors of the credit history or credit score that resulted in the adverse action, which may include the descriptive credit explanations provided by credit scoring vendors; and
 - (c) The insurer must provide the consumer with all disclosures required by the Fair Credit Reporting Act, 15, U.S.C. 1681 et seq. (1998). Such disclosures shall include:

- (i) The name, address, and telephone number of the consumer reporting agency (including a toll-free telephone number established by the agency if the agency compiles and maintains files on consumers on a nationwide basis) that furnished the consumer information;
- (ii) A statement that the consumer reporting agency did not make the decision to take the adverse action and is unable to provide the consumer with the specific reasons why the adverse action was taken;
- (iii) Notice to the consumer of the consumer's right to obtain a free copy of the consumer's credit report from the consumer reporting agency; and
- (iv) Notice to the consumer of the consumer's right to dispute with the consumer reporting agency the accuracy or completeness of any information in a credit report furnished by the agency.

(H) Updating credit history and credit scores

- (1) If credit history or a credit score, or any aspect thereof, is considered in underwriting or rating a consumer and a consumer reporting agency determines that the credit information is inaccurate or incomplete and the insurer receives notice of this determination from a consumer or a consumer reporting agency, the insurer shall, within thirty days after receiving the notice:
 - (a) Re-underwrite the consumer;
 - (b) Re-rate the consumer; and
 - (c) Adjust the premium as indicated in paragraph (H)(2) of this rule.
- (2) If it is determined by the re-underwriting or re-rating in accordance with paragraph (H)(1) of this rule that the consumer has overpaid the premium, the insurer shall refund to the consumer the amount of the overpayment of premium. Such payment shall be calculated back to the shorter of:
 - (a) The last twelve months of coverage; or
 - (b) The current policy term.
- (3) After any policy of insurance has been issued and in the absence of a determination of the consumer reporting agency that the consumer's information is inaccurate or incomplete as described in paragraph (H)(1) of this rule, the insurer must

recheck the insured's credit history or credit score at the written request of the insured, but no more than once every twelve months. The insurer may wait to recheck the credit information until the next renewal. The insurer shall adjust the premium or coverage of any insured whose credit history or credit score was rechecked under this section that reflects any change in the insured's credit history or credit score. Any such premium or coverage adjustment shall be applied prospectively to the next policy term.

(I) Compliance with rule

- (1) Section 3901.20 of the Revised Code prohibits insurers from engaging in unfair or deceptive acts. Section 3901.21 of the Revised Code defines as an unfair and deceptive act the following unfair discriminatory conduct:

Making or permitting any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of insurance, other than life insurance, or in the benefits payable thereunder, or in underwriting standards and practices or eligibility requirements, or in any of the terms or conditions of such contract, or in any other manner whatever.

- (2) Division (A) of section 3937.02 and division (C) of section 3935.03 of the Revised Code set forth the factors an insurer or rating organization may consider in establishing rates for property and casualty insurance. Division (C) of section 3937.02 of the Revised Code provides that risks may be grouped by classification for the establishment of rates and minimum premiums, and states:

Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses.

- (3) Division (D) of section 3937.02 of the Revised Code further provides: "Rates shall not be excessive, inadequate, or unfairly discriminatory."

In order to comply with the foregoing paragraphs, insurers shall abide by the following guidelines:

- (a) Insurers shall establish that credit history and credit scores used in underwriting or rating determinations are valid risk characteristics and are used in accordance with actuarial principles and standards of practice.

- (b) If a consumer has no available credit history (known as a "no hit"), has insufficient credit history to develop a credit score (known as "no score"), or the available credit history is not used for rating, the consumer must be underwritten and rated in accordance with actuarial principles and standards of practice.
- (c) Insurers shall not use credit history or credit scores for arbitrary, capricious or unfairly discriminatory purposes. Credit history and credit scores shall not be based on race, color, religion, national origin, sex, marital status, handicap, or age.
- (d) Insurers must maintain, implement and make available standards concerning how credit history and credit scores affect underwriting and rating decisions. Insurers shall file with the superintendent all risk classification criteria and rating manuals that relate to credit history and credit scores.
- (e) If a credit scoring model is modified or if its use in determining rates or rating plans is modified, the insurer shall re-file risk classification criteria and rating manuals with the superintendent, and shall re-establish that the credit scores are valid risk characteristics and are used in accordance with actuarial principles and standards of practice.

(J) Severability

If any provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the remaining provisions to such persons or circumstances shall not be affected thereby.

Five Year Review (FYR) Dates: 8/31/2017 and 08/31/2022

CERTIFIED ELECTRONICALLY

Certification

08/31/2017

Date

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