

MAINE STATE LEGISLATURE

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MS

L.D. 470

DATE: 4-30-03

(Filing No. H-220)

INSURANCE AND FINANCIAL SERVICES

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
121ST LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 362, L.D. 470, Bill, "An Act To Ensure Fairness Regarding Use of Consumer Credit Reports in Insurance Underwriting"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

Sec. 1. 24-A MRSA §2169-B is enacted to read:

§2169-B. Use of consumer reports in insurance underwriting

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Adverse action" means 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 of personal insurance.

B. "Applicant" means an individual who has applied to be covered by a personal insurance policy with an insurer.

C. "Consumer" means an individual insured whose credit information is used or whose insurance score is calculated in the underwriting or rating of a personal insurance policy or an applicant for a personal insurance policy.

F.S.

- 2 D. "Consumer report" has the same meaning as in Title 10,
3 section 1312, subsection 3.
- 4
- 5 E. "Consumer reporting agency" has the same meaning as in
6 Title 10, section 1312, subsection 4.
- 7
- 8 F. "Credit information" means any credit-related information
9 derived from a consumer report, found on a consumer report
10 itself or provided on an application for personal
11 insurance. "Credit information" does not include
12 information that is not credit-related regardless of whether
13 it is contained in a credit report or application or used to
14 calculate an insurance score.
- 15
- 16 G. "Insurance score" means a number or rating that is
17 derived from an algorithm, computer application, model or
18 other process that is based in whole or in part on credit
19 information for the purposes of predicting the future loss
20 exposure of an individual applicant or insured.
- 21
- 22 H. "Personal insurance" means private passenger automobile,
23 homeowners, motorcycle, mobile home owners and noncommercial
24 dwelling fire insurance policies and boat, personal
25 watercraft, snowmobile and recreational vehicle policies
26 that are individually underwritten for personal, family or
27 household use.
- 28
- 29 2. Use of consumer reports. Notwithstanding this
30 subsection, an insurer may use a consumer report as permitted
31 under the Fair Credit Reporting Act pursuant to Title 10, chapter
32 210 and 15 United States Code, Chapter 41. An insurer may use
33 information obtained from a consumer reporting agency to
34 calculate an insurance score for underwriting and rating
35 purposes, except that an insurer may not:
- 36 A. Use an insurance score that is calculated using income,
37 gender, address, zip code, ethnic group, religion, marital
38 status or nationality of a consumer as a factor;
- 39
- 40 B. Deny, cancel or refuse to renew a policy of personal
41 insurance solely on the basis of credit information without
42 consideration of any other applicable underwriting factor
43 independent of credit information and not expressly
44 prohibited by paragraph A;
- 45
- 46 C. Base an insured's renewal rates for personal insurance
47 solely upon credit information, without consideration of any
48 other applicable factor independent of credit information;
- 49
- 50

2 D. Take an adverse action against a consumer solely because
3 that consumer does not have a credit card account, without
4 consideration of any other applicable factor independent of
5 credit information;

6 E. Consider an absence of credit information, the number of
7 inquiries or an inability to calculate an insurance score in
8 underwriting or rating personal insurance unless the insurer
9 has demonstrated to the superintendent that an absence of
10 credit information, the number of inquiries or an inability
11 to calculate an insurance score is a relevant factor to the
12 risk underwritten or rated by the insurer and the insurer
13 applies this factor in a manner approved by the
14 superintendent; or

15 F. Take an adverse action against a consumer based on
16 credit information unless an insurer obtains and uses a
17 credit report issued or an insurance score calculated within
18 90 days before the date the policy is first written or
19 renewal is issued.

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21
22 3. Notice of use of credit information. If credit
23 information is used by an insurer, an insurer shall disclose,
24 either on the insurance application or at the time the insurance
25 application is taken, that credit information may be obtained by
26 the insurer in connection with the application. The disclosure
27 must be written or provided to an applicant in the same medium as
28 the application for insurance. The insurer is not required to
29 provide the disclosure statement required under this subsection
30 to any insured on a renewal policy if such consumer has
31 previously been provided a disclosure statement. An insurer may
32 demonstrate compliance with this subsection by using the
33 following example disclosure statement: "In connection with this
34 application for insurance, we may review your credit report or
35 obtain or use a credit-based insurance score based on the
36 information contained in that credit report. We may use a 3rd
37 party in connection with the development of your insurance score."
38

39
40 4. Notice of adverse action. If an insurer makes an
41 adverse action based on credit information, the insurer shall
42 provide the consumer with notice as required by this subsection.
43 The insurer shall provide:

44 A. Notice to the consumer that an adverse action has been
45 taken in accordance with the requirements of the Fair Credit
46 Reporting Act pursuant to Title 10, chapter 210 and 15
47 United States Code, Chapter 41; and

48
49 B. Notice to the consumer explaining the reason for the
50 adverse action. The reason or reasons must be provided in

2 sufficiently clear and specific language so that an
3 individual can identify the basis for the insurer's decision
4 to take an adverse action. The notice must include a
5 description of up to 4 factors that were the primary
6 influences of the adverse action. The use of a generalized
7 term such as "poor credit history," "poor credit rating" or
8 "poor insurance score" does not meet the explanation
9 requirements of this paragraph. Standardized credit
10 explanations provided by consumer reporting agencies or
11 other 3rd-party vendors are deemed to comply with this
12 paragraph.

13 5. Dispute resolution and error correction. If it is
14 determined through the dispute resolution process set forth in
15 Title 10, section 1317 or 15 United States Code, Section
16 1681i(a)(5) that the credit information of a current insured was
17 incorrect or incomplete and if the insurer receives notice of
18 such determination from either the consumer reporting agency or
19 from the insured, the insurer shall reunderwrite and rerate the
20 consumer within 30 days of receiving the notice. After
21 reunderwriting or rerating the insured, the insurer shall make
22 any adjustments necessary, consistent with its underwriting and
23 rating guidelines. If an insurer determines that the insured has
24 overpaid premium, the insurer shall refund to the insured the
25 amount of overpayment calculated back to the shorter of either
26 the last 12 months of coverage or the actual policy period.

27 6. Filing of insurance scoring models. An insurer that uses
28 insurance scores to underwrite and rate risks shall file the
29 scoring model or other scoring processes used by the insurer with
30 the superintendent. A 3rd party may file scoring models on
31 behalf of insurers. A filing that includes insurance scoring
32 must include loss experience justifying the use of credit
33 information if required by the superintendent. The insurance
34 scoring model contained in a filing required under this
35 subsection is confidential and not a public record within the
36 meaning of Title 1, section 402, subsection 3.

37 7. Indemnification. An insurer shall indemnify, defend and
38 hold agents harmless from and against all liability, fees and
39 costs arising out of or relating to the actions, errors or
40 omissions of a producer who obtains or uses credit information or
41 insurance scores for an insurer, provided the producer, in the
42 exercise of reasonable care, follows the instructions of or
43 procedures established by the insurer and complies with any
44 applicable law or regulation. This subsection may not be
45 construed to provide a consumer or other insured with a cause of
46 action that does not otherwise exist in the absence of this
47 subsection. This subsection may not be construed to indemnify a
48 producer for the producer's omission when a producer elects not
49 to file a claim.
50

2 to obtain a credit-related insurance score in connection with an
3 application for personal insurance coverage from an insurer that
4 the producer represents if that insurer uses credit information
5 as permitted under this section to underwrite that coverage.

6 8. Applicability. This section applies only to personal
7 insurance. This section does not apply to commercial insurance.'
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SUMMARY

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13 This amendment replaces the bill. The language in the
14 amendment is more closely based on a model act from the National
15 Conference of Insurance Legislators. Like the bill, the amendment
16 prohibits an insurance company authorized to transact personal
17 insurance in this State from making underwriting and rating
18 decisions based solely on credit information. The amendment also
19 prohibits an insurer from using an insurance score that is
20 calculated using income, gender, address, zip code, ethnic group,
21 religion, marital status or nationality as a factor. An insurer
22 may continue to use consumer credit reports in underwriting and
23 rating decisions in conjunction with other relevant underwriting
24 criteria to the extent allowed under state and federal fair
25 credit reporting laws. The amendment also requires insurers to
26 provide notice to a consumer who is adversely affected by a
27 credit report, but allows that notice to be provided in writing
28 or in the same medium as the application for insurance was made
29 to the insurer. The amendment adds a requirement that insurers
30 file their insurance scoring models with the Superintendent of
31 Insurance. The amendment also adds an indemnification provision
32 for the protection of insurance producers who obtain or use
credit information on behalf of an insurer.

FISCAL NOTE REQUIRED
(See attached)

**121st Maine Legislature
Office of Fiscal and Program Review**



LD 470

**An Act To Ensure Fairness Regarding Use of Consumer Credit Reports
in Insurance Underwriting**

LR 0042(02)

Fiscal Note for Bill as Amended by Committee Amendment " "

Committee: Insurance and Financial Services

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - Other Special Revenue Funds