

Readopt with amendment Ins 3300, effective 07-01-04 (Doc. #8052), to read as follows:

CHAPTER Ins 3300 INSURANCE SCORES

Statutory Authority: RSA 400-A:15, I.; RSA 412:15 III; RSA 412:43 I; RSA 417:4 VIII. (g)

PART Ins 3301 USE OF INSURANCE SCORES

Ins 3301.01 Purpose. The purpose of this chapter is to specify:

- (a) The conditions that are required to be met before insurers [**can**] **may** use insurance scores or information from consumer reports to determine underwriting eligibility or in rating and pricing of private passenger automobile or homeowners insurance; and
- (b) The obligations of insurers with respect to providing information and assistance to consumers.

Ins 3301.02 Scope.

- (a) This chapter shall apply to private passenger automobile and homeowners insurance. For the purposes of this chapter homeowners insurance shall include dwelling insurance for owner occupied one family to 4 family buildings.
- (b) The entire chapter shall apply to any property and casualty insurer that is:
 - (1) Licensed to write the types of insurance specified in Ins 3301.02(a);
 - (2) Required to submit rate, rule and policy form filings to the commissioner; and
 - (3) Using an insurance score or information obtained from a consumer report for underwriting purposes, including declinations, or rating purposes.

[(c) Parts Ins 3301, Ins 3302, Ins 3303, Ins 3304, Ins 3305, Ins 3309, Ins 3310 and Ins 3311 shall apply to surplus lines insurers.]

Ins 3301.03 Definitions.

- (a) "Adverse action" means:
 - (1) A denial of, refusal to renew, or cancellation of, any private passenger automobile or homeowners insurance policy;
 - (2) Charging an initial rate that is higher than the rate the [**applicant**] **consumer** would have received if the company had not taken credit information into account; or
 - (3) An increase in any premium charge for, or a reduction of, or other adverse or unfavorable change in the terms of coverage or amount of, any private passenger or homeowners insurance.
- (b) "Affiliated insurer" means an insurer that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another insurer.

(c) "Applicant" means an individual who seeks to obtain a private passenger automobile or homeowners insurance policy with an insurer.

[(c)] (d) "Consumer" means an individual who in this state seeks to obtain, obtains or has obtained private passenger automobile or homeowners insurance..

[(d)] (e) "Consumer report" means a credit report or any other communication of any information by a consumer reporting agency that:

- (1) Bears on a consumer's creditworthiness, credit standing, or credit capacity; and
- (2) Is used or collected or expected to be used or **expected to be** collected as a factor in establishing the consumer's underwriting eligibility or rating for private passenger automobiles or homeowners insurance.

[(e)] (f) "Consumer reporting agency" means any person or entity that, for monetary fees, dues or on a cooperative non-profit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information for the purpose of furnishing a consumer report to third parties.

[(f)] (g) "Control" means the direct or indirect possession of the power to direct, or cause the direction of, the management and business policies of an insurer, regardless of whether the power is exercised by:

- (1) Ownership of voting securities or of securities convertible into voting securities;
- (2) Contract, other than a commercial contract for goods or non-management services; or
- (3) Any other means.

[(g)] (h) "Insurance score" means a score that is derived by utilizing data from an individual's consumer report in an algorithm, computer program, model, or other process that reduces the data to a numeric or alphabetical, or similar rating.

[(h)] (i) "Private passenger automobile insurance" means a policy of insurance sold to eligible risks as defined in Ins 1402.02(c) covering motor vehicles as defined in Ins 1402.02(h).

[(i)] (j) "Producer" means a person or business entity licensed under RSA 402-J.

[(j)] (k) "Rating" means the establishment of base rates, classification factors, modifications to rates or factors, or tier placement, and any other factors used to determine the premium or price charged to the consumer for the insurance coverage requested.

[(k)] (l) "Tier" means a rating or underwriting category within a single insurer or group of affiliated insurers into which **[insureds] consumers** with similar risk characteristics are placed for purposes of determining a premium or rate.

PART Ins 3302 WRITTEN STANDARDS ON OBTAINING AN INSURANCE SCORE OR A CONSUMER REPORT

Ins 3302.01 Written Standards.

(a) If an insurance score or information from a consumer report is used in the determination of underwriting eligibility or in the rating of private passenger automobile or homeowners insurance, the insurer shall establish written standards for determining when to obtain an insurance score or consumer report.

(b) Such standards shall include provisions which state that the insurer shall not obtain an insurance score or consumer report based in whole or in part on:

- (1) Any attribute enumerated in RSA 417:4 VIII. (e);

(2) The following attributes not enumerated in RSA 417:4 VIII. (e):

- a. **[Marital or civil union status] Income**;
- b. Sexual orientation;
- c. Gender;
- d. Religion;
- e. Blindness; or
- f. Any other physical handicap or disability.

[(3) Any arbitrary, capricious, or unfairly discriminatory reason.]

PART Ins 3303 USE OF INSURANCE SCORES AND CONSUMER REPORT INFORMATION IN UNDERWRITING

Ins 3303.01 Use in Underwriting.

(a) If an insurer uses insurance scores or information from consumer reports for the purpose of underwriting private passenger automobile or homeowners insurance, the insurance score shall be established and used in a manner that:

- (1) Is not contrary to the provisions of RSA 417-A and RSA 417-B;
- (2) Is not contrary to the provisions of RSA 417:4 VIII. (e) or based in whole or in part

on:

- a. **[Marital or civil union status] Income**;
- b. Sexual orientation;
- c. Gender;
- d. Religion;
- e. Blindness; or
- f. Any other physical handicap or disability.

[(3) Is not arbitrary, capricious or unfairly discriminatory;]

[(4)] (3) Is in accordance with the company's filed underwriting guidelines; and

[(5)] (4) Otherwise complies with this chapter **[and]** RSA 412 and RSA 417.

PART Ins 3304 USE OF INSURANCE SCORES AND CONSUMER REPORT INFORMATION IN RATEMAKING

Ins 3304.01 Ratemaking Use.

(a) The use of an insurance score or information from consumer reports in rating private passenger automobile or homeowners insurance shall:

- (1) Not result in rates that are excessive, inadequate, or unfairly discriminatory; and
- (2) Otherwise comply with this rule and RSA 412:15, III. and RSA 417:4, VIII. (g).

(b) If an insurer uses an insurance score or information from consumer reports in rating private passenger automobile or homeowners insurance, the insurer shall update the insurance score or consumer report[,] with current credit information at least once every 36 months from the **[date the policy was issued to an insured] last time the insurer obtained current credit information for the consumer**. However, no insurer need obtain current credit related information for **[an insured] a consumer**, if one of the following applies:

- (1) The **[insured] consumer** is in the most favorably-priced tier of the insurer, or if the policy is issued from an insurer within a group of affiliated insurers, then the most favorably-priced tier within that group of affiliated insurers. However, the insurer shall have the discretion to order such report, if consistent with its underwriting guidelines;

- (2) **[Credit] Information from a consumer report** was not used for underwriting eligibility or rating such **[insured] consumer** when the policy was initially written. However, the insurer shall have the discretion to use **[credit] information from a consumer report** for underwriting eligibility or rating such **[insured] consumer** upon renewal, if consistent with its filed underwriting guidelines; and

- (3) The insurer re-evaluates the **[insured] consumer** beginning no later than 36 months after inception and thereafter based upon other underwriting eligibility or rating factors, excluding credit information; and

- (4) The insurer is otherwise treating the consumer in accordance with written standards and procedures which have been filed and approved by the commissioner, **including those which include a phase-out of the use of credit information after initial issuance of a policy.**

(c) An insured can request the policy to be re-rated using current insurance scoring or consumer report information if:

- (1) The insured has corrected information on their consumer report; or
- (2) The insurer uses insurance scores based on credit or consumer reports to establish renewal premium, the request is made prior to the renewal offer, and only once every 12 months.

PART Ins 3305 PROHIBITED USE OF CERTAIN CREDIT FACTORS IN RATING OR UNDERWRITING

Ins 3305.01 Prohibited Factors.

(a) No insurer, as part of their underwriting or rating of homeowners or private passenger automobile insurance policies, shall use any of the following as a negative factor in any insurance scoring methodology, or in reviewing the consumer report of any consumer:

- (1) Credit inquiries not initiated by the consumer, including inquiries associated with unsolicited promotional offers for credit cards or other financial instruments and services;

- (2) Inquiries requested by the consumer for his or her own credit information;**

- [(2)] (3) Credit inquiries related to insurance coverage, if so identified on the records of the consumer reporting agency;**

[(3) Absence of credit history, unless justified statistically or by actuarial review and analysis;

(4) The fact that the consumer possesses or does not possess a particular type or kind of credit, debit, or charge card;]

[(5) (4) The dollar amount of a consumer's available credit, unless this amount is being considered in the calculation of the consumer's ratio of debt to total available line of credit;

[(6) Disputed information that is currently under investigation by the consumer reporting agency, if so identified on the records of such agency;]

[(7) (5) Collection accounts with medical industry code, if so identified on the records of the consumer reporting agency;

[(8) (6) 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 30 days of one another, unless only one inquiry is considered; and

[(9) (7) 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 30 days of one another, unless only one inquiry is considered.

Ins 3305.02 Extraordinary Life Circumstances.

(a) Notwithstanding any other law or rule, 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 classification, 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:

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

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

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

(4) Divorce or involuntary interruption of a legally-owed alimony or support payments;

(5) Identity theft;

(6) Temporary loss of employment for a period of 3 months or more, if it results from involuntary termination;

(7) Military deployment overseas; or

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

(b) If an applicant or insured submits a request for an exception as set forth in Ins 3305.02 (a), an insurer may, in its sole discretion, but is not mandated to:

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

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

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

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

(5) 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 course 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 Ins 3305.02(a), the insurer shall inform the consumer of the outcome of their request for a reasonable exception. Such communication shall be in writing or provided to an applicant in the same medium as the request.

PART Ins 3306 FILING OF UNDERWRITING MODELS

Ins 3306.01 Underwriting Filing Required.

(a) If an insurer uses insurance scores or information from consumer reports to underwrite new or renewal private passenger automobile or homeowners insurance business, its underwriting models shall be filed with the commissioner in accordance with RSA 412:15, III. and RSA 412:16.

(b) The filing shall include:

(1) The characteristics or factors of insurance scores or consumer reports used in the underwriting process; and

(2) The underwriting eligibility guidelines specifically related to the use of insurance scores or information from consumer reports by the insurer.

PART Ins 3307 FILING OF RATES

Ins 3307.01 Rate Filing Required.

(a) If an insurer uses an insurance score or information from consumer reports in rating new or renewal private passenger automobile or homeowners insurance business, its rates and related rating rules shall be filed with the commissioner in accordance with RSA 412:15, III. and RSA 412:16.

(b) The filing shall include:

(1) The insurance score or consumer report criteria or parameters used in any rate calculation; and

(2) The numerical rating factors corresponding to (1) above.

PART Ins 3308 FILINGS REQUIRED FOR INSURANCE SCORING MODELS AND USE OF CONSUMER REPORT INFORMATION

Part Ins 3308.01 Submission of Basis for Insurance Score or Use of Consumer Report Information.

(a) Every model, algorithm, computer program, or other process used to establish an insurance score which in turn is used in the underwriting or rating of an insurance policy shall be submitted to the commissioner by the insurer or any entity acting on behalf of an insurer. Such submission shall be made separately from the filing of underwriting or rating criteria.

(b) If an insurer or any other entity acting on behalf of such insurer intends to make use of information obtained from consumer reports, but not in connection with the model, algorithm, **computer** program or other process submitted under Ins 3308.01 (a), such insurer or other entity acting on behalf of such insurer, shall submit to the commissioner a detailed explanation of how it will use this information. Such submission shall be made separately from the filing of underwriting or rating criteria.

(c) In order to meet the requirements of (a) or (b) above, any filing pursuant to this chapter shall include, **in addition to the statistical validation or other explanation [supporting the use of insurance scores or information from consumer reports in the rating or underwriting process. At a minimum the following is required]:**

(1) The insurance score or consumer report criteria or parameters used in any rate calculation;

(2) The numerical rating factors corresponding to (1) above;

[(3) A multivariate analysis, if the submission is the initial filing of the insurer's insurance scoring model or program; and

(4) An updated multivariate analysis any time the insurer uses credit information from a consumer report or an insurance score to revise a risk classification plan, rating factor, rating plan, rating tier, or base rates.]

(d) No model, algorithm, computer program or other process submitted under Ins 3308.01 (a), or other use of information obtained from consumer reports shall be:

(1) Contrary to any provision of RSA 417-A or RSA 417-B;

(2) Contrary to the provisions of RSA 417:4, VIII. (e) or based in whole or in part on:

a. **[Marital or civil union status] Income**;

b. Sexual orientation;

c. Gender;

d. Religion;

e. Blindness; or

f. Any other physical handicap or disability; **or**

[(3) Arbitrary, capricious or unfairly discriminatory; or]

[(4)] (3) In violation of this chapter or RSA 417:4, VIII. (g).

(e) The submissions, and accompanying supporting information, required in accordance with (a) and (b) above shall be filed with the commissioner and approved in accordance with RSA 412:15, III. and RSA 412:16.

Ins 3308.02 Confidentiality of Submission.

(a) **[Upon request of the insurer or any entity acting on behalf of the insurer, i] Information submitted pursuant to Ins 3308.01 that is not part of the public rate filing pursuant to RSA 412:15, III., and RSA 412:16 and that is identified by the insurer or any entity acting on behalf of the insurer as [is] commercial or financial information or otherwise exempt from public disclosure under RSA 91-A:5, shall be afforded the same confidentiality protections provided to information obtained during an investigation as set forth in RSA 400-A:16. [confidential by law and privileged, shall not be subject to public disclosure under RSA 91-A, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action, except as otherwise provided in this section.**

(b) **The commissioner is authorized to use any information filed pursuant to this rule in the furtherance of any regulatory or legal action brought as part of the commissioner's official duties.]**

PART Ins 3309 NOTICE TO INSURED, USE OF INFORMATION FROM CREDIT REPORTS;
ADVERSE ACTION

Ins 3309.01 [Notice Requirements.] Initial Notification.

[(a) The insurer shall issue a written notice if the insurer uses an insurance score or information from a consumer report in the rating or underwriting of any private passenger automobile or homeowners insurance policy. Such notice shall be provided to the consumer at the time of original application or to the insured at the time of the first renewal of an existing insurance policy issued after an insurer introduces the use of an insurance score or reliance on information from consumer reports.

(b) In conjunction with the issuance of an initial private passenger or homeowners policy or on subsequent renewals, the insurer shall also issue a written notice to the insured if the insurer takes any adverse action with respect to any insured under the policy that is based in whole or in part on an insurance score or information from consumer reports.

(c) The notices shall be given by the same methods as the application is submitted, the policy is issued, or the renewal offer is communicated.

(d) The notices shall be maintained by the insurer as part of the policy record file pursuant to RSA 400-B:4.

(e) If an insurer refers in its notice to insurance industry research or studies to justify the effect of an insurance score on premiums or eligibility for coverage, the insurer shall file those studies with the commissioner so that they are available for public disclosure.]

(a) If an insurer uses an insurance score or information from a consumer report in the rating or underwriting of any private passenger automobile or homeowners' insurance policy, the insurer shall:

(1) Disclose, either on the insurance application or at the time the insurance application is taken, that it may obtain an insurance score or information from a consumer report in connection with such application, where:

a. Such disclosure shall be either written or provided to the applicant in the same medium as the application for insurance;

b. The insurer need not provide the disclosure statement required under this section to any insured on a renewal policy if such insured has previously been provided a disclosure statement;

c. The disclosure statements shall be maintained by the insurer as part of the policy record file pursuant to RSA 400-B:4; and

d. Use of the following example disclosure statements constitutes compliance with this section:

"In connection with this application for information, we may review your credit report or obtain or use a credit based insurance score based on the information contained in that credit report. We may use a third party in connection with the development of your insurance score."

(2) Provide a statement notifying the consumer of the company's general timeframe in which credit is ordered in relationship to the date of application or renewal offer; and

(3) Provide an explanation of how the insurance score or consumer report information is used in the rating or underwriting of the policy. Such disclosure may be provided at either the time of application in the same medium as the application, with the policy, or at the applicant's request. Use of the following example disclosure statement constitutes compliance with this section:

"We use information contained in a consumer report to develop a credit-based insurance score. That score is just one of many factors that are used to [underwrite and/or rate] your policy."

(4) If a policy is being offered to the consumer, provide an explanation of:

a. How the insurer will make adjustments in rating or underwriting if the consumer's insurance scores or consumer report information changes; and

b. The process by which the consumer can request the policy be re-rated or re-undewritten to reflect current insurance scoring or consumer report information; and

Ins 3309.02 [Contents of Notice.] Adverse Action Notification.

(a) Any notice required pursuant to [Ins 3309.01 (a) or (b)] this section shall [including] include the following information:

(1) [The date of the most recent consumer report used for rating or underwriting the policy; and] Notification to the consumer that an adverse action has been taken in accordance with the requirement of the federal Fair Credit Reporting Act, 15 U.S.C. 1681m(a); and

[(2)] An explanation of how the insurance score or consumer report information is used in the rating or underwriting of the policy; and]

[(3)] (2) The name, address and telephone number of the consumer reporting agency, including a toll-free number established by the agency if the agency compiles and maintains files on consumers on a nationwide basis, that furnished the report to the insurer; and

[(4)] (3) A statement that the insurer, and not the credit reporting agency, used an insurance score or information from a consumer report in the rating or underwriting of the private passenger automobile or homeowners insurance policy, and the credit reporting agency is unable to provide the consumer with any explanations or reasons as to the actions taken by the insurer; and

[(5)] (4) **If a policy is being offered to the insured, an explanation of how the insurer will make adjustments in rating or underwriting if the insured's insurance scores or consumer report information changes, and the process by which the insured can request the policy be re-rated or re-underwritten to reflect current insurance scoring or consumer report information; and] A telephone contact number the consumer may call to discuss aspects of the adverse action notice with a representative of the insurer who can:**

[(6) The name, address and telephone number of a representative of the insurer who can:]

a. Review the notice;

b. **[Explain how any change in any factor in the insurance score or any information used from a consumer report will impact the rate or premium;] Be available to address questions related to:**

1. The insurer's use of credit; and

2. The insurer's adverse action notice and factors reflected therein.

[c. Recalculate the premium quote to reflect updated credit information;

d. On behalf of the consumer, intervene with the credit agency that the insurer relied upon, in order to make corrections in the consumer's credit history.]

(5) Provide a statement advising of the consumer's rights to obtain a free copy of credit history from the consumer reporting agency and the right to file a dispute with the consumer reporting agency over the accuracy or completeness of any information in a credit history furnished by the agency.

(b) In addition[al] to the information set forth in Ins 3309.02 (a) above, [if a policy is being offered and premium is impacted by the use of an insurance score or information from a consumer report, the following information shall be provided in] any notice required [by Ins 3309.01 (a) or (b)] pursuant to this section shall also include the following information:

[(1) The premium that would be available to that consumer if credit information had not been considered in the underwriting or rating of that consumer's policy;

(2) The premium that would be available to that consumer if the consumer's credit report or insurance score resulted in the lowest premium available to that consumer; and

(c) In addition to the information set forth in Ins 3309.02 (a) and (b) above, any notice required pursuant to Ins 3309.01 (b) shall also include the following information:]

(1) A statement advising of the consumer's rights to obtain a free copy of credit history from the consumer reporting agency and the right to file a dispute with the consumer reporting agency over the accuracy or completeness of any information in a credit history furnished by the agency.

(2) An explanation of the reasons for the adverse action, that shall include:

a. Up to 4 credit factors that were the primary factors influencing the adverse action;

b. An explanation of each of the factors in [(c)] (b)(2)a. above that meets the standards provided under paragraph [(d)] (c).

[(d)] (c) Any explanation required in [(a), (b) or (c) of this section] **Ins 3309.02** shall:

(1) Be provided in clear and simple language so that a person can identify the basis for the insurer's decision to take an adverse action; and

(2) Not use general terms or terminologies that do not provide specific information relevant to the consumer. Examples of such general terminology include, but are not limited to:

[a. Unfavorable length of credit history;

b. Absence of revolving credit account;

c. Age of oldest account;

d. Age that consumer first opened a credit account;

e. Unfavorable number of bank or revolving accounts;

f. Unfavorable number of accounts opened in the last year;]

[g.] **a. Poor credit history[,];**

b. [p]Poor credit rating[,];

c. [p]Poor insurance score; and

[h.]d. Other descriptors such as "unfavorable" or "[poor]unsatisfactory" [that if they do not provide clear standards for the consumer to evaluate the actions of the insurer.

[(3) Include a description of any actions that the consumer can take to improve any unfavorable attribute of the consumer's credit report or insurance score;]

[(4)] (3) Rely, at the option of the insurer, upon standardized credit explanations provided by consumer reporting agencies or other third party vendors as long as such explanations comply with all provisions enumerated in this chapter.

PART Ins 3310 ADDITIONAL CONSUMER PROTECTIONS

Ins 3310.01 Review of Action.

(a) If **[an insured] a consumer** believes that any adverse action taken by an insurer violates this chapter or the provisions of RSA 417:4 VIII (g); RSA 417-A or RSA 417-B, the **[insured] consumer** may request in writing, within 10 days of receipt of the insurer's or producer's notice, that the commissioner review the action of the insurer.

(b) If an insurer shall receive confirmation of an inaccuracy in a credit history from **[a consumer or]** a consumer reporting agency, the insurer shall, within 30 days after receipt of the notice and retroactive to the effective date:

- (1) Re-underwrite the consumer, if applicable;
- (2) Re-rate the consumer's insurance policy; and
- (3) Adjust the premium accordingly.

PART Ins 3311 PENALTY PROVISION

Ins 3311.01 Penalty Provision. Any insurer who violates any requirement of this chapter shall be subject to **[license revocation or suspension or fine as] the penalties** set forth in RSA **[400-A:15 III] 412:40**.

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