

## Bulletin 329

### Implementation of the Act to Ensure Fairness Regarding Use of Consumer Credit Reports in Insurance Underwriting

THIS BULLETIN SUPERCEDES AND REPLACES MAINE INSURANCE BUREAU BULLETIN 321

P.L. 2003, c. 223, which amends the Maine Insurance Code 24-A M.R.S.A. by enacting § 2169-B, created new provisions regulating the use of credit information and credit insurance scores. On September 11, 2003 the Bureau issued Bulletin 321 to provide guidance to insurers authorized to write personal lines insurance.

This bulletin outlines the Bureau of Insurance's interpretation and implementation of portions of the law and contains comments related to the Maine Insurance Information and Privacy Protection Act. The bulletin does not summarize the entire section and insurers are expected to review the statute in its entirety.

#### Use of Credit Information

Section 2169-B(2)(B) states in part that an insurer may not deny, cancel or refuse to renew a policy of personal insurance solely on the basis of credit information without consideration of any other applicable underwriting factor independent of credit information. An insurer can deny, cancel or refuse to renew as long as other factors are taken into consideration. However the Bureau interprets this provision as supplementing any other law relating to the cancellation or nonrenewal of personal lines policies, and insurers are still required to comply with all such applicable laws including the Maine Automobile Insurance Cancellation Control Act and the Maine Property Insurance Cancellation Control Act.

Section 2169-B(2)(C) states that an insurer may not base an insured's renewal rates solely on credit information, without consideration of any other applicable factor independent of credit information. It is the Bureau's position that if an insured's credit information or insurance score, as defined in sections 2169-B(1)(F) and (G) respectively is the only rating element that changes at renewal, the insured's rates cannot be changed at renewal unless the insurer has given consideration to other rating factors in calculating the renewal rate. A filing of a rating plan does not result in the application of section 2169-B(2)(C) at the time of filing but application of the rating plan to an insured at renewal requires the insurer to adhere to the requirements of this section.

If an insurer declines, nonrenews or cancels a personal insurance policy (including a cancellation prior to the initial 60 days of coverage as permitted in 24-A M.R.S.A. § 2914 for motor vehicle insurance and 24-A M.R.S.A. § 3049 for property insurance), the insurer must provide the consumer with the specific reason or reasons for the cancellation in writing or advise the consumer that upon written request the consumer may receive the specific reason or reasons in writing pursuant to 24-A M.R.S.A. § 2212.

This requirement and other applicable provisions in the Maine Insurance Information and Privacy Protection Act apply whether credit information is or is not part of the reason for cancellation or other adverse action. As specified in 24-A M.R.S.A. § 2214, an insurer may not base an adverse underwriting decision in whole or in part on any of the following:

- \* previous adverse underwriting decision
- \* consumer previously obtained coverage through a residual market, a surplus lines insurer or a carrier that specializes in substandard risks.
- \* personal information received from an insurance support organization whose primary source of information is insurance carriers unless the insurer obtains the primary source information confirming the information received from the insurance support organization.

Absence of Credit Information the Number of Inquiries and Inability to Calculate an Insurance Score

Section 2169-B(2)(E) provides that an insurer may not consider an absence of credit information, the number of inquiries or an inability to calculate an insurance score in underwriting or rating personal insurance unless the insurer has demonstrated to the superintendent that an absence of credit information, the number of inquiries or an inability to calculate an insurance score is a relevant factor to the risk underwritten or rated by the insurer and the insurer applies this factor in a manner approved by superintendent.

The new statute does not define the term "inquiries." It is the Bureau's position that an insurer must consider the type of inquiry which may appear as credit information in a consumer report. Absent a substantial demonstration to the contrary the following types of credit inquiries may not be used as a negative factor in the insurance score algorithm, computer model or as part of the insurance underwriting or rating process

- \* Inquiries requested by the insured for his or her own credit information
- \* Credit inquiries not initiated by the consumer
- \* Inquiries related to insurance coverage
- \* Promotional inquiries
- \* Multiple inquiries related to a single transaction, or possible transaction
- \* Medical collection inquiries
- \* Multiple lender inquiries within 30 days

Multiple lender inquiries may be treated as a single inquiry.

#### Error Correction

Section 2169-B(5) requires in part that if it is determined that credit information was incomplete or incorrect and if the insurer receives notice of such determination from either the consumer reporting agency or from the insured, the insurer shall reunderwrite and rerate the consumer within 30 days of receiving the notice. It is the Bureau's position that the law requires the insurer to reunderwrite or rerate even if the incomplete or incorrect credit information was not used by the insurer in making its previous decision.

#### Effective Date

The effective date of P.L. 2003, c. 223 is September 13, 2003. The law applies to the underwriting and rating of personal insurance on or after September 13, 2003. All previously approved rate and rating plan filings must comply with the new law. Adjusting filings, if necessary, should be submitted as soon as possible, and not more than 45 days after the effective date of the law. Any adjustments to premiums of policies issued or renewed prior to September 13 may be made effective at the next policy renewal date. Insurers may make amending rating plan changes based on the interpretation of section 2169-B(2)(C) contained in this revised bulletin.

October 26, 2004 \_\_\_\_\_  
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NOTE: This bulletin is intended solely for informational purposes. It is not intended to set forth legal rights, duties or privileges nor is it intended to provide legal advice. Readers are encouraged to consult applicable statutes and regulations and to contact the Bureau of Insurance if additional information is needed