

28 Section 1. Section **31A-19a-212** is amended to read:

29 **31A-19a-212. Premium increases prohibited for certain claims or inquiries.**

30 (1) Each rate, rating schedule, and rating manual filed with the commissioner for
31 ~~[insurance covering a vehicle or the operation of a vehicle]~~ personal lines insurance may not
32 permit a premium increase due to:

33 (a) a telephone call or other inquiry that does not result in the insured § ~~[demanding]~~
33a **REQUESTING** § the

34 payment of a claim; or

35 (b) a claim § **UNDER A POLICY OF INSURANCE COVERING A MOTOR VEHICLE OR THE**
35a **OPERATION OF A MOTOR VEHICLE** § resulting from any incident, including acts of vandalism, in
35b which the

36 person named in the policy or any other person using § ~~[f] the [f] [an]~~ § insured motor vehicle with
36a the

37 express or implied permission of the named insured is not at fault.

38 (2) Subsection (1) prohibits a premium increase when:

39 (a) a policy is issued; or

40 (b) a policy is renewed.

41 (3) This section is an exception to Section 31A-19a-201.

42 Section 2. Section **31A-21-303** is amended to read:

43 **31A-21-303. Termination of insurance policies by insurers.**

44 (1) (a) Except as otherwise provided in this section, in other statutes, or by rule under
45 Subsection (1)(c), this section applies to all policies of insurance other than life ~~[and]~~, accident
46 and health insurance, and annuities, if the policies of insurance are issued on forms that are
47 subject to filing and approval under Subsection 31A-21-201(1).

48 (b) A policy may provide terms more favorable to insureds than this section requires.

49 (c) The commissioner may by rule totally or partially exempt from this section classes
50 of insurance policies in which the insureds do not need protection against arbitrary or
51 unannounced termination.

52 (d) The rights provided by this section are in addition to and do not prejudice any other
53 rights the insureds may have at common law or under other statutes.

54 (2) (a) As used in this Subsection (2), "grounds" means:

55 (i) material misrepresentation;

56 (ii) substantial change in the risk assumed, unless the insurer should reasonably have
57 foreseen the change or contemplated the risk when entering into the contract;

58 (iii) substantial breaches of contractual duties, conditions, or warranties;

59 (iv) attainment of the age specified as the terminal age for coverage, in which case the
60 insurer may cancel by notice under Subsection (2)(c), accompanied by a tender of proportional
61 return of premium; or

62 (v) in the case of automobile insurance, revocation or suspension of the driver's license
63 of:

64 (A) the named insured; or

65 (B) any other person who customarily drives the car.

66 (b) (i) Except as provided in Subsection (2)(e) or unless the conditions of Subsection
67 (2)(b)(ii) are met, an insurance policy may not be canceled by the insurer before the earlier of:

68 (A) the expiration of the agreed term; or

69 (B) one year from the effective date of the policy or renewal.

70 (ii) Notwithstanding Subsection (2)(b)(i), an insurance policy may be canceled by the
71 insurer for:

72 (A) nonpayment of a premium when due; or

73 (B) on grounds defined in Subsection (2)(a).

74 (c) (i) The cancellation provided by Subsection (2)(b), except cancellation for
75 nonpayment of premium, is effective no sooner than 30 days after the delivery or first-class
76 mailing of a written notice to the policyholder.

77 (ii) Cancellation for nonpayment of premium is effective no sooner than ten days after
78 delivery or first class mailing of a written notice to the policyholder.

79 (d) (i) Notice of cancellation for nonpayment of premium shall include a statement of
80 the reason for cancellation.

81 (ii) Subsection (6) applies to the notice required for grounds of cancellation other than
82 nonpayment of premium.

83 (e) (i) Subsections (2)(a) through (d) do not apply to any insurance contract that has not
84 been previously renewed if the contract has been in effect less than 60 days when the written
85 notice of cancellation is mailed or delivered.

86 (ii) A cancellation under this Subsection (2)(e) may not be effective until at least ten
87 days after the delivery to the insured of a written notice of cancellation.

88 (iii) If the notice required by this Subsection (2)(e) is sent by first-class mail, postage
89 prepaid, to the insured at the insured's last-known address, delivery is considered accomplished

90 after the passing, since the mailing date, of the mailing time specified in the Utah Rules of
91 Civil Procedure.

92 (iv) A policy cancellation subject to this Subsection (2)(e) is not subject to the
93 procedures described in Subsection (6).

94 (3) A policy may be issued for a term longer than one year or for an indefinite term if
95 the policy includes a clause providing for cancellation by the insurer by giving notice as
96 provided in Subsection (4)(b)(i) 30 days prior to any anniversary date.

97 (4) (a) Subject to Subsections (2), (3), and (4)(b), a policyholder has a right to have the
98 policy renewed:

99 (i) on the terms then being applied by the insurer to similar risks; and

100 (ii) (A) for an additional period of time equivalent to the expiring term if the agreed
101 term is one year or less; or

102 (B) for one year if the agreed term is longer than one year.

103 (b) Except as provided in Subsection (4)(c), the right to renewal under Subsection (4)(a)
104 is extinguished if:

105 (i) at least 30 days prior to the policy expiration or anniversary date a notice of
106 intention not to renew the policy beyond the agreed expiration or anniversary date is delivered
107 or sent by first-class mail by the insurer to the policyholder at the policyholder's last-known
108 address;

109 (ii) not more than 45 nor less than 14 days prior to the due date of the renewal
110 premium, the insurer delivers or sends by first-class mail a notice to the policyholder at the
111 policyholder's last-known address, clearly stating:

112 (A) the renewal premium;

113 (B) how [it] the renewal premium may be paid; and

114 (C) that failure to pay the renewal premium by the due date extinguishes the
115 policyholder's right to renewal;

116 (iii) the policyholder has:

117 (A) accepted replacement coverage; or

118 (B) requested or agreed to nonrenewal; or

119 (iv) the policy is expressly designated as nonrenewable.

120 (c) Unless the conditions of Subsection (4)(b)(iii) or (iv) apply, an insurer may not fail

121 to renew an insurance policy as a result of a telephone call or other inquiry that:

122 (i) references a policy coverage; and

123 (ii) does not result in the insured ~~§ [demanding]~~ **REQUESTING** § payment of a claim [~~being~~
123a ~~filed or paid~~].

124 (5) (a) (i) Subject to Subsection (5)(b), if the insurer offers or purports to renew the
125 policy, but on less favorable terms or at higher rates, the new terms or rates take effect on the
126 renewal date if the insurer delivered or sent by first-class mail to the policyholder notice of the
127 new terms or rates at least 30 days prior to the expiration date of the prior policy.

128 (ii) If the insurer did not give the prior notification described in Subsection (5)(a)(i) to
129 the policyholder, the new terms or rates do not take effect until 30 days after the notice is
130 delivered or sent by first-class mail, in which case the policyholder may elect to cancel the
131 renewal policy at any time during the 30-day period.

132 (iii) Return premiums or additional premium charges shall be calculated
133 proportionately on the basis that the old rates apply.

134 (b) Subsection (5)(a) does not apply if the only change in terms that is adverse to the
135 policyholder is:

136 (i) a rate increase generally applicable to the class of business to which the policy
137 belongs;

138 (ii) a rate increase resulting from a classification change based on the altered nature or
139 extent of the risk insured against; or

140 (iii) a policy form change made to make the form consistent with Utah law.

141 (6) (a) If a notice of cancellation or nonrenewal under Subsection (2)(c) does not state
142 with reasonable precision the facts on which the insurer's decision is based, the insurer shall
143 send by first-class mail or deliver that information within ten working days after receipt of a
144 written request by the policyholder.

145 (b) A notice under Subsection (2)(c) is not effective unless it contains information
146 about the policyholder's right to make the request.

147 (7) If a risk-sharing plan under Section 31A-2-214 exists for the kind of coverage
148 provided by the insurance being cancelled or nonrenewed, a notice of cancellation or
149 nonrenewal required under Subsection (2)(c) or (4)(b)(i) may not be effective unless it contains
150 instructions to the policyholder for applying for insurance through the available risk-sharing
151 plan.

152 (8) There is no liability on the part of, and no cause of action against, any insurer, its
153 authorized representatives, agents, employees, or any other person furnishing to the insurer
154 information relating to the reasons for cancellation or nonrenewal or for any statement made or
155 information given by them in complying or enabling the insurer to comply with this section
156 unless actual malice is proved by clear and convincing evidence.

157 (9) This section does not alter any common law right of contract rescission for material
158 misrepresentation.

159 Section 3. Section 31A-22-1308 is enacted to read:

160 **31A-22-1308. Use of loss history by insurers.**

161 (1) For purposes of this section:

162 (a) "Adverse eligibility or rate decision" means:

163 (i) declining insurance coverage;

164 (ii) terminating insurance coverage;

165 (iii) not renewing insurance coverage; or

166 (iv) the charging of a higher rate for insurance coverage.

167 (b) (i) "Loss reporting agency" means any person who regularly engages, in whole or in
168 part, in the business of assembling or collecting information for the primary purpose of
169 providing the information to insurers or insurance producers for insurance transactions
170 including assembling or collecting loss or claims information.

171 (ii) Notwithstanding Subsection (1)(b)(i), the following persons are not loss reporting
172 agents:

173 (A) a governmental entity;

174 (B) an insurer;

175 (C) an insurance producer;

176 (D) an insurance consultant;

177 (E) a medical care institution or professional; or

178 (F) a peer review committee.

179 (iii) Notwithstanding Subsection (1)(b)(i), the following are not considered a report
180 from a loss reporting agency:

181 (A) a report specifically provided for fraud prevention; and

182 (B) that portion of a report that includes information related to consumer credit

183 behavior.

184 (iv) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
185 the department may define by rule what constitutes:

186 (A) a report specifically provided for fraud prevention; and

187 (B) information related to consumer credit behavior.

188 (c) (i) "Score" means a numerical value, categorization, or classification that is:

189 (A) derived from a statistical tool, modeling system, or method; and

190 (B) developed to predict the likelihood of future insurance claims.

191 (ii) A numerical value, categorization, or classification described in Subsection

192 (1)(c)(i) is a score if it is developed to predict the likelihood of future insurance claims

193 regardless of whether it is developed to predict other factors in addition to predicting § [the] § future
194 insurance claims.

195 (2) (a) An insurer may not make an adverse eligibility or rate decision related to
196 personal lines insurance in whole or in part on the basis of:

197 (i) a report by a loss reporting agency of a loss if the loss did not result in the insured

198 § [demanding] REQUESTING § the payment of a claim;

199 (ii) a § [report] TELEPHONE CALL OR OTHER INQUIRY § by an insured of a loss if the loss

199a did not result in the insured § [demanding] REQUESTING §

200 payment of a claim;

201 (iii) a loss that occurred when real property covered by the personal lines insurance was

202 owned § [or-occupied] § by a person other than the:

203 (A) insured; or

204 (B) person seeking insurance; or

205 (iv) a score if the score is determined in whole or in part on the basis of information

206 described in Subsection (2)(a)(i), (ii), or (iii).

207 (b) Notwithstanding Subsection (2)(a), an insurer may:

208 (i) use the information described in Subsection (2)(a)(iii) to require a review of the
209 condition of the premises; and

210 (ii) make an adverse eligibility or rate decision on the basis of the condition of the
211 premises.

212 (3) (a) If an insurer uses a score that is derived from information obtained from a loss
213 reporting agency or an insured, the insurer shall file with the department a § [summary of]

213a CERTIFICATION THAT § the

214 method used to derive the score § [z
 215 ~~—— (i) that is in sufficient detail so that the department can determine whether the score~~
 216 ~~complies with Subsection (2)(a)(iv); and]~~ **COMPLIES WITH THE PROVISIONS OF SUBSECTION**
 216a **(2)(a)(iv).**

217 **[~~(ii)~~ (b) THE INSURER SHALL FILE A CERTIFICATION REQUIRED UNDER SUBSECTION**
 217a **(3)(a) §** within 30 days of the day on which the score § **DESCRIBED IN SUBSECTION (3)(a) §** is first
 217b used by the insurer.

218 **§ [~~(b)~~ (c) §** The department shall classify a § **[summary] CERTIFICATION §** filed under this
 218a Subsection (3) as a
 219 protected record under Subsection 63-2-304(2) except that the insurer is not required to file the
 220 information specified in Section 63-2-308.

221 **§ [~~(c)~~ (d) §** In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
 221a the
 222 commissioner shall make rules providing for the form and procedure of filing the § **[summary]**
 222a **CERTIFICATION §**
 223 required by Subsection (3)(a).

Legislative Review Note
as of 1-30-04 9:48 AM

This bill prohibits the use of loss history reports for certain insurance decisions. These loss history reports could be considered credit reports subject to the federal Fair Credit Reporting Act (FCRA). Because FCRA permits a credit agency to provide credit reports to persons who intend to use the information in connection with the underwriting of insurance and addresses insurance transactions not initiated by the consumer, this bill might be challenged as being preempted by the FCRA. The FCRA provides that it does not annul, alter, affect, or exempt any person from complying with state law with respect to the collection, distribution, or use of any information, except to the extent that the state law is inconsistent with the FCRA. The FCRA then expressly prohibits certain state laws including laws related to prescreening for insurance. In reviewing this legislation it would be for a court to decide whether loss history reports are subject to FCRA and if so, whether this bill is consistent with the FCRA.

Office of Legislative Research and General Counsel

State Impact

The provisions of this bill can be implemented within existing budgets. However, this bill has a Legislative Review Note. There may be additional costs to the state if there is a challenge in the courts.

Individual and Business Impact

These changes may result in a slight increase in costs to insurers that they will pass on to customers. Some customers, however, may be able to get insurance who otherwise couldn't get it, and some may see lower premiums.

Office of the Legislative Fiscal Analyst