

**INSURANCE AMENDMENTS - LOSS
HISTORIES AND INQUIRIES**

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Thomas V. Hatch

LONG TITLE

General Description:

This bill modifies the Insurance Code to address use of loss histories and inquiries for insurance purposes.

Highlighted Provisions:

This bill:

- ▶ prohibits the use of certain losses in making adverse eligibility or rate decisions;
- ▶ prohibits use of inquiries for certain insurance purposes; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

31A-19a-212, as last amended by Chapter 252, Laws of Utah 2003

31A-21-303, as last amended by Chapter 116, Laws of Utah 2001

ENACTS:

31A-22-1308, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

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

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

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

(a) a telephone call or other inquiry that does not result in the insured requesting the payment of a claim; or

(b) a claim under a policy of insurance covering a motor vehicle or the operation of a motor vehicle resulting from any incident, including acts of vandalism, in which the person named in the policy or any other person using the insured motor vehicle with the express or implied permission of the named insured is not at fault.

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

(a) a policy is issued; or

(b) a policy is renewed.

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

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

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

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

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

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

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

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

(i) material misrepresentation;

(ii) substantial change in the risk assumed, unless the insurer should reasonably have

foreseen the change or contemplated the risk when entering into the contract;

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

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

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

(A) the named insured; or

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

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

(A) the expiration of the agreed term; or

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

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

(A) nonpayment of a premium when due; or

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

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

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

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

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

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

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

(iii) If the notice required by this Subsection (2)(e) is sent by first-class mail, postage prepaid, to the insured at the insured's last-known address, delivery is considered accomplished after the passing, since the mailing date, of the mailing time specified in the Utah Rules of Civil Procedure.

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

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

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

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

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

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

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

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

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

(A) the renewal premium;

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

(C) that failure to pay the renewal premium by the due date extinguishes the

policyholder's right to renewal;

(iii) the policyholder has:

(A) accepted replacement coverage; or

(B) requested or agreed to nonrenewal; or

(iv) the policy is expressly designated as nonrenewable.

(c) Unless the conditions of Subsection (4)(b)(iii) or (iv) apply, an insurer may not fail to renew an insurance policy as a result of a telephone call or other inquiry that:

(i) references a policy coverage; and

(ii) does not result in the insured requesting payment of a claim [~~being filed or paid~~].

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

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

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

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

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

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

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

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

request by the policyholder.

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

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

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

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

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

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

(1) For purposes of this section:

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

(i) declining insurance coverage;

(ii) terminating insurance coverage;

(iii) not renewing insurance coverage; or

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

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

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

- (A) a governmental entity;
- (B) an insurer;
- (C) an insurance producer;
- (D) an insurance consultant;
- (E) a medical care institution or professional; or
- (F) a peer review committee.

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

- (A) a report specifically provided for fraud prevention; and
 - (B) that portion of a report that includes information related to consumer credit behavior.
- (iv) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the

department may define by rule what constitutes:

- (A) a report specifically provided for fraud prevention; and
 - (B) information related to consumer credit behavior.
- (c) (i) "Score" means a numerical value, categorization, or classification that is:
- (A) derived from a statistical tool, modeling system, or method; and
 - (B) developed to predict the likelihood of future insurance claims.

(ii) A numerical value, categorization, or classification described in Subsection (1)(c)(i) is a score if it is developed to predict the likelihood of future insurance claims regardless of whether it is developed to predict other factors in addition to predicting future insurance claims.

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

- (i) a report by a loss reporting agency of a loss if the loss did not result in the insured requesting the payment of a claim;
- (ii) a telephone call or other inquiry by an insured of a loss if the loss did not result in the insured requesting payment of a claim;
- (iii) a loss that occurred when real property covered by the personal lines insurance was owned by a person other than the:

(A) insured; or

(B) person seeking insurance; or

(iv) a score if the score is determined in whole or in part on the basis of information described in Subsection (2)(a)(i), (ii), or (iii).

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

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

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

(3) (a) If an insurer uses a score that is derived from information obtained from a loss reporting agency or an insured, the insurer shall file with the department a certification that the method used to derive the score complies with the provisions of Subsection (2)(a)(iv).

(b) the insurer shall file a certification required under Subsection (3)(a) within 30 days of the day on which the score described in Subsection (3)(a) is first used by the insurer.

(c) The department shall classify a certification filed under this Subsection (3) as a protected record under Subsection 63-2-304(2) except that the insurer is not required to file the information specified in Section 63-2-308.

(d) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commissioner shall make rules providing for the form and procedure of filing the certification required by Subsection (3)(a).