

1 **INSURANCE AMENDMENTS - LOSS**

2 **HISTORIES AND INQUIRIES**

3 2004 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Thomas V. Hatch**

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7 **LONG TITLE**

8 **General Description:**

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

11 **Highlighted Provisions:**

12 This bill:

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

16 **Monies Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 None

20 **Utah Code Sections Affected:**

21 AMENDS:

22 **31A-19a-212**, as last amended by Chapter 252, Laws of Utah 2003

23 **31A-21-303**, as last amended by Chapter 116, Laws of Utah 2001

24 ENACTS:

25 **31A-22-1308**, Utah Code Annotated 1953

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



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 the  
34 payment of a claim; or

35 (b) a claim resulting from any incident, including acts of vandalism, in which the  
36 person named in the policy or any other person using [~~the~~] an insured motor vehicle with 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 payment of a claim [~~being 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 the payment of a claim;

199 (ii) a report by an insured of a loss if the loss did not result in the insured demanding  
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 the

214 method used to derive the score:  
215 (i) that is in sufficient detail so that the department can determine whether the score  
216 complies with Subsection (2)(a)(iv); and  
217 (ii) within 30 days of the day on which the score is first used by the insurer.  
218 (b) The department shall classify a summary filed under this 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) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
222 commissioner shall make rules providing for the form and procedure of filing the summary  
223 required by Subsection (3)(a).

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**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.

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**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.

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**Office of the Legislative Fiscal Analyst**