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**SENATE BILL 5010**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** Senators Das, Randall, Billig, Carlyle, Conway, Dhingra, Hasegawa, Hunt, Keiser, Kuderer, Liias, Lovelett, Nobles, Nguyen, Pedersen, Robinson, Rolfes, Saldaña, Stanford, Van De Wege, and Wilson, C.; by request of Insurance Commissioner and Office of the Governor

AN ACT Relating to prohibiting the use of credit scores to determine rates for personal lines of insurance; amending RCW 48.18.547, 48.18.610, and 48.19.035; adding a new section to chapter 48.19 RCW; creating a new section; repealing RCW 48.18.545; and providing effective dates.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  The use of credit scoring to calculate rates for personal lines of insurance is unfair and has a disproportionate economic impact on the poor and communities of color in our state. Consequently, no insurer engaged in writing personal lines of insurance including property and casualty coverage shall, in connection with underwriting of those lines of insurance, refuse to issue or renew a private insurance policy based upon an individual's credit information or history including, but not limited to, a numerical credit-based insurance score or other credit rating of an applicant or insured. Furthermore, no insurer shall file rates for personal lines of insurance based upon credit information including, but not limited to, a numerical credit-based insurance score or other credit rating of an applicant or insured.

**Sec.**  RCW 48.18.547 and 2006 c 8 s 211 are each amended to read as follows:

(1) For the purposes of this section:

(a) "Affiliate" has the same meaning as in RCW 48.31B.005(1).

(b) "Claim" means a demand for monetary damages by a claimant.

(c) "Claimant" means a person, including a decedent's estate, who is seeking or has sought monetary damages for injury or death caused by medical malpractice.

(d) "Tier" ((~~has the same meaning as in RCW 48.18.545(1)(h)~~)) means a category within a single insurer into which insureds with substantially similar insuring, risk or exposure factors, and expense elements are placed for purposes of determining rate or premium.

(e) "Underwrite" or "underwriting" means the process of selecting, rejecting, or pricing a risk, and includes each of these activities:

(i) Evaluation, selection, and classification of risk, including placing a risk with an affiliate insurer that has higher rates and/or rating plan components that will result in higher premiums;

(ii) Application of classification plans, rates, rating rules, and rating tiers to an insured risk; and

(iii) Determining eligibility for:

(A) Insurance coverage provisions;

(B) Higher policy limits; or

(C) Premium payment plans.

(2) During each underwriting process, an insurer may consider the following factors only in combination with other substantive underwriting factors:

(a) An insured has inquired about the nature or scope of coverage under a medical malpractice insurance policy;

(b) An insured has notified their insurer about an incident that may be covered under the terms of their medical malpractice insurance policy, and that incident does not result in a claim; or

(c) A claim made against an insured was closed by the insurer without payment. An insurer may consider the effect of multiple claims if they have a significant effect on the insured's risk profile.

(3) If any underwriting activity related to the insured's risk profile results in higher premiums as described under subsection (1)(e)(i) and (ii) of this section or reduced coverage as described under subsection (1)(e)(iii) of this section, the insurer must provide written notice to the insured, in clear and simple language, that describes the significant risk factors which led to the underwriting action. The commissioner must adopt rules that define the components of a risk profile that require notice under this subsection.

**Sec.**  RCW 48.18.610 and 2016 c 121 s 1 are each amended to read as follows:

(1) An insurer may include contractual benefits based on customer satisfaction as part of an insurance policy. The insurer must file the policy or endorsement for approval as required by RCW 48.18.100. The contractual benefits may include sums of money provided or credited to a policyholder if the policyholder is dissatisfied with the service provided by their insurer. A sum that is provided to or credited to a policyholder as part of an approved contractual benefit based on customer satisfaction is not "premium" for the purposes of RCW 48.18.170. A policy premium reduced by such a credit will be taxed on the full cost of the premium before application of the customer satisfaction credit.

(2) This section applies only to personal insurance as defined in RCW ((~~48.18.545(1)(g)~~)) 48.19.035(1)(d).

**Sec.**  RCW 48.19.035 and 2004 c 86 s 1 are each amended to read as follows:

(1) For the purposes of this section:

(a) "Affiliate" has the same meaning as defined in RCW 48.31B.005(1).

(b) "Consumer" means an individual policyholder or applicant for insurance.

(c) "Credit history" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's creditworthiness, credit standing, or credit capacity that is used or expected to be used, or collected in whole or in part, for the purpose of serving as a factor in determining personal insurance premiums or eligibility for coverage. ((~~(d) "Insurance score" means a~~)) Credit history includes, but is not limited to, any number or rating that is derived from an algorithm, computer application, model, or other process that is based in whole or in part on credit history.

((~~(e)~~)) (d) "Personal insurance" means:

(i) Private passenger automobile coverage;

(ii) Homeowner's coverage, including mobile homeowners, manufactured homeowners, condominium owners, and renter's coverage;

(iii) Dwelling property coverage;

(iv) Earthquake coverage for a residence or personal property;

(v) Personal liability and theft coverage;

(vi) Personal inland marine coverage; and

(vii) Mechanical breakdown coverage for personal auto or home appliances.

(2)((~~(a)~~)) Credit history shall not be used to determine personal insurance rates, premiums, or eligibility for coverage ((~~unless the insurance scoring models are filed with the commissioner. Insurance scoring models include all attributes and factors used in the calculation of an insurance score. RCW 48.19.040(5) does not apply to any information filed under this subsection, and the information shall be withheld from public inspection and kept confidential by the commissioner. All information filed under this subsection shall be considered trade secrets under RCW 48.02.120(3). Information filed under this subsection may be made public by the commissioner for the sole purpose of enforcement actions taken by the commissioner.~~

~~(b) Each insurer that uses credit history or an insurance score to determine personal insurance rates, premiums, or eligibility for coverage must file all rates and rating plans for that line of coverage with the commissioner. This requirement applies equally to a single insurer and two or more affiliated insurers. RCW 48.19.040(5) applies to information filed under this subsection except that any eligibility rules or guidelines shall be withheld from public inspection under RCW 48.02.120(3) from the date that the information is filed and after it becomes effective.~~

~~(3) Insurers shall not use the following types of credit history to calculate a personal insurance score or determine personal insurance premiums or rates:~~

~~(a) The absence of credit history or the inability to determine the consumer's credit history, unless the insurer has filed actuarial data segmented by demographic factors in a manner prescribed by the commissioner that demonstrates compliance with RCW 48.19.020;~~

~~(b) The number of credit inquiries;~~

~~(c) Credit history or an insurance score based on collection accounts identified with a medical industry code;~~

~~(d) The initial purchase or finance of a vehicle or house that adds a new loan to the consumer's existing credit history, if evident from the consumer report; however, an insurer may consider the bill payment history of any loan, the total number of loans, or both;~~

~~(e) The consumer's use of a particular type of credit card, charge card, or debit card; or~~

~~(f) The consumer's total available line of credit; however, an insurer may consider the total amount of outstanding debt in relation to the total available line of credit.~~

~~(4) If a consumer is charged higher premiums due to disputed credit history, the insurer shall rerate the policy retroactive to the effective date of the current policy term. As rerated, the consumer shall be charged the same premiums they would have been charged if accurate credit history was used to calculate an insurance score. This subsection applies only if the consumer resolves the dispute under the process set forth in the fair credit reporting act and notifies the insurer in writing that the dispute has been resolved~~)).

((~~(5)~~)) (3) The commissioner may adopt rules to implement this section.

((~~(6) This section applies to all personal insurance policies issued or renewed on or after June 30, 2003.~~))

NEW SECTION. **Sec.**  A new section is added to chapter 48.19 RCW to read as follows:

If an insurer's filed rates and rating rules for personal insurance use credit history:

(1) On or after January 1, 2022, the commissioner shall disapprove an insurer's filing of rates and rating rules for any type of personal insurance that uses credit history to determine its rates unless:

(a) The filing has the effect of removing credit history from the rates and rating rules for that type of insurance; or

(b) The insurer previously submitted a filing to remove the use of credit history from its rates and rating rules for that type of insurance and the commissioner approved that filing.

(2) Prior to January 1, 2023, if an insurer's filed rates and rating rules for personal insurance use credit history, the insurer must submit a filing to remove the use of credit from its rates and rating rules.

(3) Effective January 1, 2023, insurers must not use credit history to determine premiums for personal insurance policies issued or renewed.

NEW SECTION. **Sec.**  RCW 48.18.545 (Underwriting restrictions that apply to personal insurance—Credit history or insurance score—Rules) and 2002 c 360 s 1, as now existing or hereafter amended, are each repealed, effective January 1, 2023.

NEW SECTION. **Sec.**  Sections 2 through 4 of this act take effect January 1, 2023.

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