

WSR 22-22-050
EXPEDITED RULES
OFFICE OF THE
INSURANCE COMMISSIONER

[Insurance Commissioner Matter R 2022-08—Filed October 27, 2022, 10:28 a.m.]

Title of Rule and Other Identifying Information: Removing language concerning prohibiting use of credit history.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: On February 1, 2022, the insurance commissioner filed Insurance Commissioner Matter R 2021-07 (as filed in WSR 22-040-090), which prohibits insurers' use of consumers' credit histories to determine personal insurance rates, premiums, or eligibility for coverage for all homeowners, renters, and private passenger automobile insurance for a period lasting until three years following the day the national emergency concerning the outbreak of COVID-19 declared by the president on March 13, 2020, terminates, or until three years after the day the Governor's Proclamation 20-05 declaring a state of emergency throughout the state of Washington as a result of the COVID-19 outbreak expires, whichever is later. The R 2021-07 rule making adopted WAC 284-24A-090 and amended WAC 284-24A-050.

Two insurance trade associations filed lawsuits seeking declaratory and injunctive relief with respect to the R 2021-07 rule making. During the pendency of the litigation, the insurance commissioner agreed to stay implementation of the rule.

On August 29, 2022, the Thurston County Superior Court issued an order invalidating the rule in Insurance Commissioner Matter R 2021-07.

The purpose of this rule proposal is to effectuate the court's ruling. This rule proposal will repeal WAC 284-24A-090 and amend WAC 284-24A-050, restoring the language to its state prior to the R 2021-07 rule making.

There are no anticipated effects due to the changes to existing rules, as the R 2021-07 rule making was never implemented and the court's ruling has already taken effect. The proposed rule seeks to align regulatory language with the court's ruling.

Reasons Supporting Proposal: Currently, there is conflict between invalidation of the R 2021-07 rule making by a Thurston County superior court order and the language that is in the two sections that were affected by that R 2021-07 rule making (WAC 284-24A-050 and 284-24A-090). This rule proposal will provide clarity to the public on those sections.

Statutory Authority for Adoption: RCW 48.02.060(3).

Rule is necessary because of state court decision, *Nat'l Ass'n of Mut. Ins. Co., et al. v. State of Washington*, Order Granting in Part Petition for Declaratory Relief, Docket No. 22-2-00180-34 (consolidated) (Thurston Co. Sup. Ct., 2022).

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Andrew Davis, Insurance Building (Capitol Campus), 360-725-7170; Implementation: Molly Nollette, 5000 Building (Tumwater), 360-725-7117; and Enforcement: Charles Malone, 5000 Building (Tumwater), 360-725-7050.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

This notice meets the following criteria to use the expedited adoption process for these rules:

Corrects typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

The rule is no longer necessary because of changed circumstances.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: Expedited adoption of WAC 284-24A-050 is appropriate because the changes that are being made are clarifying the language in the section without changing its effect. A court invalidated Insurance Commissioner Matter R 2021-07 (WSR 22-04-090); the changes made to this section are in line with the court ruling and will restore the section to its state prior to the R 2021-07 rule making.

Expedited repeal of WAC 284-24A-090 is appropriate because circumstances have changed such that the section is no longer necessary. A court invalidated Insurance Commissioner Matter R 2021-07 (WSR 22-04-090); that rule making adopted WAC 284-24A-090. The language in the section is no longer valid and therefore no longer necessary.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Andrew Davis, Office of the Insurance Commissioner, 302 Sid Snyder Avenue S.W., Olympia, WA 98504, phone 360-725-7036, fax 360-586-3109, email rulescoordinator@oic.wa.gov, www.insurance.wa.gov, AND RECEIVED BY January 3, 2023.

October 27, 2022
Mike Kreidler
Insurance Commissioner

OTS-4147.3

AMENDATORY SECTION (Amending WSR 22-04-090, filed 2/1/22, effective 3/4/22)

WAC 284-24A-050 What types of information must an insurer include in a multivariate analysis? (1) A multivariate statistical analysis must evaluate the rating factors listed below (if applicable to the rating plan, and to the extent that data are credible):

(a) For homeowners, dwelling property, earthquake, and personal inland marine insurance:

- (i) Insurance score;
- (ii) Territory and/or geographic area;
- (iii) Protection class;
- (iv) Amount of insurance;
- (v) Surcharges or discounts based on loss history;
- (vi) Number of family units; and
- (vii) Policy form relativity.

(b) For private passenger automobile, personal liability and theft, and mechanical breakdown insurance:

- (i) Insurance score;
- (ii) Driver class;
- (iii) Multicar discount;
- (iv) Territory and/or geographic area;
- (v) Vehicle use;
- (vi) Rating factors related to driving record; and
- (vii) Surcharges or discounts based on loss history.

(2) An insurer must provide a general description of the model used to perform the multivariate analysis, including the:

- (a) Formulas the model uses;
- (b) Rating factors that are included in the modeling process; and
- (c) Output from the model, such as indicated rates or rating factors.

(3) An insurer must show how the proposed rates or rating factors are related to the multivariate analysis.

~~((4) The temporary prohibition in WAC 284-24A-090 on the use of credit history to determine personal insurance rates, premiums, or eligibility for coverage for all homeowners and private passenger automobile coverage will remain in effect for three years following the day the national emergency concerning the novel coronavirus disease (COVID-19) outbreak declared by the President on March 13, 2020, under the National Emergencies Act (50 U.S.C. 1601 et seq.) terminates, or the day the Governor's Proclamation 20-05, proclaiming a state of emergency throughout the state of Washington as a result of the coronavirus disease 2019 (COVID-19) outbreak in the United States expires, whichever is later.~~

~~(a) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.~~

~~(i) Homeowners coverage includes dwelling property, mobile homeowners, manufactured homeowners, renters, and condominium owner's coverage.~~

~~(ii) Private passenger automobile coverage includes motorcycles and recreational vehicle coverage.~~

~~(b) The temporary prohibition on the use of credit history to determine personal insurance rates, premiums, or eligibility for homeowners and private passenger automobile coverage does not apply to commercial lines, personal liability and theft, earthquake, personal inland marine, or mechanical breakdown coverage.)~~

[Statutory Authority: RCW 48.02.060, 48.18.480, 48.19.020, 48.19.035, 48.19.080. WSR 22-04-090 (Matter R 2021-07), § 284-24A-050, filed 2/1/22, effective 3/4/22. Statutory Authority: RCW 48.02.060, 48.18.545, 48.19.035, and 48.30.010. WSR 05-02-026 (Matter No. R 2004-01), § 284-24A-050, filed 12/29/04, effective 7/1/05. Statutory Authority: RCW 48.02.060, 48.18.100, 48.18.120, 48.19.080, 48.19.370, 48.30.010, 49.60.178, 48.18.545(7), 48.19.035(5). WSR 02-19-013 (Matter No. R 2001-11), § 284-24A-050, filed 9/6/02, effective 10/7/02.]

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 284-24A-090

Temporary prohibition of use of credit
history.