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National Council of Insurance Legislators (NCOIL)

Insurance Underwriting Transparency Model Act

**Draft as of ~~October 18~~ ~~September 26~~ June 14, 2022*

**To be discussed and considered by the NCOIL Property & Casualty Insurance Committee on ~~November 18~~ ~~September 29~~ July 16, 2022.*

**Sponsored by Rep. Matt Lehman (IN) – NCOIL Immediate Past President*

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Section 1. Title

This Act shall be known and cited as the “[State] Insurance Underwriting Transparency Act.”

Section 2. Definitions

“**Adverse Action**” means a declination, non-renewal, or cancellation of, or an increase of more than 97.9% or more increase in a rate charge for, or a reduction in coverage or other adverse or unfavorable change in the terms of coverage or amount of insurance in connection with the underwriting of a property & casualty personal insurance policy based on external consumer data, excluding any increase in the insurer’s statewide rate and any additional premium due to a policyholder-initiated change in the insured’s coverage.

Drafting Note: The intent of including the phrase “inherently part of the risk” is to distinguish between factors that fall into this classification and those that do not when

the transparency requirements set forth in Section 3 of the Model apply to denials. It is the intent for the transparency requirements to apply to **adverse actions** denials based on data or information that is not “inherently part of the risk.”, **Those not “inherently part of the risk” would include, but not be limited to, such as a consumer’s social media footprint, purchasing habits, internet activities, etc., Data or information that are “inherently part of the risk” and not to denials that are based on traditional underwriting data or information such as physical condition of the risk, motor vehicle records (MVR), or a Comprehensive Loss Underwriting Exchange (CLUE) report.**

Drafting Note: This Model is intended to apply to property & casualty personal lines insurance policies such as personal auto insurance and personal homeowners’ insurance. This may also include farm and farm auto policies. Other lines of insurance, such as life insurance and commercial property & casualty insurance, are not intended to be brought within the scope of this Model.

Drafting note: Some states have existing laws governing notices for cancellations, non-renewals, and/or significant premium increases. Where in place, this model should be modified to be consistent with the percentages in these existing laws.

“**Applicant**” means a person who has completed and submitted an application to an insurer for the purpose of obtaining insurance coverage.

“**External Consumer Data**” means data or information that is obtained from an external source and used by an insurer to supplement traditional underwriting or rating. The term does not include:

- (1) Traditional rating and underwriting tools, including physical condition of the risk, motor vehicle records, or an insurance claim loss history report; or
- (2) Driving data or information the policyholder provides to the insurer or agent, including through participation in usage-based programs and/or telematics programs when those programs are limited to driving based information only.

Drafting Note: The intent of this Model is to require transparency of factors based on external consumer data that are not inherently part of the risk. The exclusions set forth in this definition distinguish between factors that fall into this classification and those that do not. It is the intent for the transparency requirements to apply to adverse actions based on data or information that is not inherently part of the risk. Those not inherently part of the risk would include, but not be limited to, a consumer’s social media footprint, purchasing habits, internet activities, etc.

Section 3. Transparency Requirements

(a) If an insurer¹ uses external consumer data to underwrite and rate risks, the insurer, upon a written request, whether delivered electronically or hard copy, by an applicant who received a declination for insurance coverage from that insurer consumer, must disclose to that applicant consumer all primary those factors, in no particular order, based on external consumer data, up to a maximum of ten (10), of those most heavily weighed; by that the insurer uses in issuing the declination calculating a premium; however, if the insurer uses more than ten (10) such factors, then only the 10 most heavily weighed must be disclosed.

(b) If an insurer takes an adverse action on an existing insured based on external consumer data, the insurer must provide written notice, whether delivered electronically or hard copy, to the insured consumer explaining the reason for the adverse action. The notice must include:

(1) sufficiently clear and specific language so the insured consumer is able to identify the basis for the insurer's decision to take an adverse action; and

(2) all those factors, in no particular order, based on external consumer data most heavily weighed by the insurer in determining the adverse action; however, if the insurer uses more than up to a maximum of ten (10) such factors, then only the 10 most heavily weighed must be disclosed that were the primary influences on the adverse action.

(c) With the written consent of a policyholder, an insurer shall provide the disclosure required under subsections (a) or (b) to a designated agent or producer.

(d) Nothing in this Act prohibits an insurer from voluntarily providing the disclosures required by this section.

Drafting Note: The use of generalized terms such as "poor credit history," "poor credit rating," or "poor insurance score" do not meet the explanation requirements of Section 3(b).

Section 4. Penalties

A violation concerning external consumer data shall constitute a violation of [*insert citation to state unfair trade practices statute*] to be enforced solely by the Commissioner. A violation of this Act shall not create a private cause of action.

Drafting Note: If states have existing laws where their unfair trade practices statute is enforced by another state official, then that existing statute should govern.

Section 5. Rules

¹ Terms such as "insurer" are intentionally not defined in this Model so that the specific definitions of each state's insurance code shall govern.

The Commissioner shall adopt rules as necessary to effectuate the provisions of this Act.

Drafting Note: "Commissioner" may be replaced with the title of the state's chief insurance regulatory officer.

Section 6. Effective Date

This Act shall be effective in ~~twelve~~^{six} (12~~6~~) months for all actions governed by this Act~~applications, renewals, and declinations thereafter~~.