RULE-MAKING ORDER
EMERGENCY RULE ONLY

CR-103E (October 2017)
(Implements RCW 34.05.350 and 34.05.360)

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STATE OF WASHINGTON
FILED

DATE: March 22, 2021
TIME: 12:45 PM

WSR 21-07-103

Agency: Office of the Insurance Commissioner

Effective date of rule:

Emergency Rules

☒ Immediately upon filing.

☐ Later (specify) _____

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

☐ Yes ☒ No If Yes, explain:

Purpose: Temporarily prohibiting the use of credit history to determine premiums and eligibility for coverage in private automobile, homeowners, and renter's insurance products.

Insurance Commissioner Matter Number: R 2021-02

Citation of rules affected by this order:

New: WAC 284-24A-088, 284-24A-089
Repealed:
Amended:
Suspended:

Statutory authority for adoption: RCW 48.02.060, 48.18.480, 48.19.020, 48.19.035, 48.19.080

Other authority: None

EMERGENCY RULE

Under RCW 34.05.350 the agency for good cause finds:

☒ That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

☐ That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding: The Commissioner is tasked with ensuring that insurance rates are not excessive, inadequate, or unfairly discriminatory, and with enacting rules that ensure the use of credit history and credit history factors in setting insurance premiums is not excessive, inadequate, or unfairly discriminatory.

Insurance companies which use credit-based insurance scoring claim that credit scoring is a predictive tool to identify risk of loss from a specific consumer. This credit-based insurance score is then used to determine premiums charged to each consumer.

On February 29, 2020, the Governor of the State of Washington issued 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. On March 13, 2020 under the National Emergencies Act (50 U.S.C. 1601 et seq.) the President of the United States declared a national emergency concerning the novel coronavirus disease (COVID–19) outbreak in the United States. Addressing the state of emergency caused by the coronavirus pandemic has required difficult steps that have had a severe financial impact on large groups within our state.

In part to mitigate the financial impacts of the COVID 19 pandemic to individual households, on March 27, 2020, the President of the United States signed the CARES Act (P.L. 116-136). Section 4021 of the CARES Act addresses credit reporting during the pandemic. The CARES Act requires financial institutions to report consumers

as current if they were not previously delinquent or, for consumers that were previously delinquent, not to advance the level of delinquency, for credit obligations for which the furnisher makes payment accommodations to consumers affected by COVID-19 and the consumer makes any payments the accommodation requires. Section 4022 of the CARES Act requires certain lenders to offer forbearance options to borrowers, and imposed a moratorium on foreclosures for certain home loans. In addition, section 3513 of the CARES Act specifically addresses the furnishing of federally-held student loans for which payments are suspended. This provision results in all non-defaulted federally-held student loans being reported as current.

In addition, the Governor of the State of Washington has issued several emergency proclamations limiting state agencies from charging late fees and penalties, and placing a moratorium on garnishment actions (Emergency Proclamation 20-49, and subsequent amendments) and evictions (Emergency Proclamation 20-19, and subsequent amendments). The critical consumer protections included in these proclamations have also had the effect of preventing creditors from taking actions that are otherwise reportable on a consumer's credit history.

The result of the CARES Act is that all credit bureaus are collecting a credit history that is objectively inaccurate for some consumers and therefore results in an unreliable credit score being assigned to them. Consequently, this untrustworthy credit score degrades any predicative value that may be found in a consumer's credit-based insurance score.

The Commissioner finds that the current protections to consumer credit history at the state and federal level have disrupted the credit reporting process. This disruption has caused credit-based insurance scoring models to be unreliable and therefore inaccurate when applied to produce a premium amount for an insurance consumer in Washington state. This makes the use of currently filed credit based insurance scoring models unfairly discriminatory within the meaning of RCW 48.19.020.

There is evidence that the negative economic impacts of the pandemic have disproportionately fallen on people of color. Therefore, when the CARES Act protections are eliminated, and negative credit information can be fully reported again, credit histories for people of color will have been disproportionately eroded by the pandemic.

Remaining consumer credit protections in the CARES Act will expire after the national state of emergency. When the CARES Act fully expires, a large volume of negative credit corrections will flood consumer credit histories. This flood of negative credit history has not been accounted for in the current credit scoring models. Without data to demonstrate that the predictive ability of credit scoring models based on pre-pandemic credit and claims histories is unchanged, the predicative ability of current credit scoring models cannot be assumed. This will make the use of currently filed credit based insurance scoring models unfairly discriminatory within the meaning of RCW 48.19.020.

It is impossible to know precisely when the state and federal states of emergency will end. Insurance companies must have an alternative to the currently unreliable credit scoring models they have in place before the protections of the CARES Act end. Therefore, it is necessary to immediately implement changes to the use of credit scoring.

Note: If any category is left blank, it will be calculated as zero. No descriptive text.

Count by whole WAC sections only, from the WAC number through the history note. A section may be counted in more than one category.

The number of sections adopted in order to comply with:

Federal statute:	New	____	Amended	____	Repealed	____
Federal rules or standards:	New	____	Amended	____	Repealed	____
Recently enacted state statutes:	New	____	Amended	____	Repealed	____

The number of sections adopted at the request of a nongovernmental entity:

	New	____	Amended	____	Repealed	____

The number of sections adopted on the agency's own initiative:

	New	2	Amended	____	Repealed	____

The number of sections adopted in order to clarify, streamline, or reform agency procedures:

	New	____	Amended	____	Repealed	____

The number of sections adopted using:

Negotiated rule making:	New	____	Amended	____	Repealed	____
Pilot rule making:	New	____	Amended	____	Repealed	____
Other alternative rule making:	New	2	Amended	____	Repealed	____

Date Adopted: March 22, 2021	**Signature:** Mike Kreidler
Name: Mike Kreidler	
Title: Insurance Commissioner	

New section: WAC 284-24A-88 **Findings and intent of temporary prohibition**

(1) The Commissioner is tasked with ensuring that insurance rates are not excessive, inadequate, or unfairly discriminatory, and with enacting rules that ensure the use of credit history and credit history factors in setting insurance premiums is not excessive, inadequate, or unfairly discriminatory.

(2) Insurance companies which use credit-based insurance scoring claim that credit scoring is a predictive tool to identify risk of loss from a specific consumer. This credit-based insurance score is then used to determine premiums charged to each consumer.

(3) On February 29, 2020, the Governor of the State of Washington issued 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. On March 13, 2020 under the National Emergencies Act (50 U.S.C. 1601 et seq.) the President of the United States declared a national emergency concerning the novel coronavirus disease (COVID–19) outbreak in the United States. Addressing the state of emergency caused by the coronavirus pandemic has required difficult steps that have had a severe financial impact on large groups within our state.

(4) In part to mitigate the financial impacts of the COVID 19 pandemic to individual households, on March 27, 2020, the President of the United States signed the CARES Act (P.L. 116-136). Section 4021 of the CARES Act addresses credit reporting during the pandemic. The CARES Act requires financial institutions to report consumers as current if they were not previously delinquent or, for consumers that were previously delinquent, not to advance the level of delinquency, for credit obligations for which the furnisher makes payment accommodations to consumers affected by COVID-19 and the consumer makes any payments the accommodation requires. Section 4022 of the CARES Act requires certain lenders to offer forbearance options to borrowers, and imposed a moratorium on foreclosures for certain home loans. In addition, section 3513 of the CARES Act specifically addresses the furnishing of federally-held student loans for which payments are suspended. This provision results in all non-defaulted federally-held student loans being reported as current.

(5) In addition, the Governor of the State of Washington has issued several emergency proclamations limiting state agencies from charging late fees and penalties, and placing a moratorium on garnishment actions (Emergency Proclamation 20-49, and subsequent amendments) and evictions (Emergency Proclamation 20-19, and subsequent amendments). The critical consumer protections included in these proclamations have also had the effect of preventing creditors from taking actions that are otherwise reportable on a consumer's credit history.

(6) The result of the CARES Act is that all credit bureaus are collecting a credit history that is objectively inaccurate for some consumers and therefore results in an unreliable credit score being assigned to them. Consequently, this untrustworthy credit score degrades any predicative value that may be found in a consumer's credit-based insurance score.

(7) The Commissioner finds that the current protections to consumer credit history at the state and federal level have disrupted the credit reporting process. This disruption has caused credit-based insurance scoring models to be unreliable and therefore inaccurate when applied to produce a premium amount for an insurance consumer in Washington state. This makes the use of currently filed credit based insurance scoring models unfairly discriminatory within the meaning of RCW 48.19.020.

(8) There is evidence that the negative economic impacts of the pandemic have disproportionately fallen on people of color. Therefore, when the CARES Act protections are eliminated, and negative credit information can be fully reported again, credit histories for people of color will have been disproportionately eroded by the pandemic.

(9) Remaining consumer credit protections in the CARES Act will expire after the national state of emergency. When the CARES Act fully expires, a large volume of negative credit corrections will flood consumer credit histories. This flood of negative credit history has not been accounted for in the current credit scoring models. Without data to demonstrate that the predictive ability of credit scoring models based on pre-pandemic credit and claims histories is unchanged, the predicative ability of current credit scoring models cannot be assumed. This will make the use of currently filed credit based insurance scoring models unfairly discriminatory within the meaning of RCW 48.19.020.

(10) It is impossible to know precisely when the state and federal states of emergency will end. Insurance companies must have an alternative to the currently unreliable credit scoring models they have in place before the protections of the CARES Act end. Therefore, it is necessary to immediately implement changes to the use of credit scoring.

New section: WAC 284-24A-89 **Temporary prohibition of use of credit history**

(1) Not withstanding any other provision of this chapter, this section applies to all personal insurance pertaining to private passenger automobile coverage, renter's coverage, and homeowner's coverage issued in the state of Washington while this rule is effective.

(2) The insurance commissioner finds that as a result of the broad negative economic impact of the coronavirus pandemic, the disproportionately negative economic impact the coronavirus pandemic has had on communities of color, and the disruption to credit reporting caused by both the state and federal consumer protections designed to alleviate the economic impacts of the pandemic, for private passenger automobile coverage, renter's coverage, and homeowner's coverage issued in the state of Washington, the use of insurance credit scores results in premiums that are excessive, inadequate, or unfairly discriminatory within the meaning of RCW 48.19.020 and RCW 48.18.480.

(3) For all private passenger automobile coverage, renter's coverage, and homeowner's coverage issued in the state of Washington, insurers shall not use credit history to determine personal insurance rates, premiums, or eligibility for coverage.

(4) For purposes of this section, insurers shall not use credit history to place insurance coverage with a particular affiliated insurer or insurer within an overall group of affiliated insurance companies.

(5) In order to comply with this section, insurers subject to this rule may substitute any insurance credit score factor used in a rate filing with a neutral rating factor.
(a) For purposes of this section, "neutral factor" means a single constant factor calculated such that, when it is applied in lieu of insurance-score-base rating factors to all policies in an insurer's book of business, the total premium for the book of business is unchanged.
(b) For purposes of this section, insurers may, but are not required to, implement the neutral factor by peril or coverage.

(6) Insurers may not include rate stability rules in filings submitted to comply with this section.

(7) The prohibitions in this rule shall apply to all new policies effective and existing policies processed for renewal on or after June 20, 2021. Each insurer must submit rate filings to amend its current rating plans with the insurance commissioner for all insurance policies covered by this rule by May 6, 2021. If the policy application form refers to the use of consumer credit information, an amended form filing must also be submitted by May 6, 2021. The amendments should be limited to the changes required by this rule.

(8) This rule takes effect immediately. To the extent this rule is adopted as a permanent rule it shall 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.