

**Proposal from the Center for Economic Justice for a  
Model Act Regarding the Use of  
Claims History Information for Personal Auto and Residential Insurance**

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**Section 1. Short Title**

This Act may be called the *Model Act Regarding the Use of Claims History Information in Personal Auto and Residential Property Insurance*.

*Drafting Note: This model provides **minimum** consumer protections regarding insurers' use of claims history information. In some states, because of the peculiar characteristics of insurance markets and types of claims in those states, additional protections or strengthening of the protections in this model may be appropriate. For example, this model specifies that an insurer may not take an adverse action against a consumer for one catastrophe claim within a 12 month period or two catastrophe claims within a 36 month period. This is a modest consumer protection for consumers who must file a claim as a result of a catastrophe event. However, in Florida, for example, a stronger consumer catastrophe claim protection may be indicated.*

**Section 2. Applicability**

This act applies only to personal automobile and residential property insurance.

**Section 3. Definitions**

A. "Adverse Action" has the meaning of 15 U.S.C. 1681a.(k)(1)(b)(i). An adverse action occurs when an insurer offers insurance at less favorable terms than it would have offered an applicant or insured if the applicant's or insured's consumer report, including loss history reports of the property, applicant or insured, had been more favorable. Payment plan eligibility is a term of coverage.

B. "Catastrophe claim" means a claim resulting from a catastrophic event, including earthquake, hurricane, hail storm, tornado or other event and which results in a large number of insurance claims and which is so identified by the commissioner.

C. "Claim" means a demand to an insurer for payment of a benefit by the insured or the payment of a covered benefit by an insurer to an insured. A report of loss to the insurer or a question from the insured to the insurer relating to coverage shall not constitute a claim.

D. "Claims history report" means is a consumer report, as defined in 15 U.S.C. 1681a.(d) containing, in whole or in part, information regarding the claims history or loss experience of natural persons or properties. Reports generated from the A-PLUS Property Database and the Comprehensive Loss Underwriting Exchange (CLUE) are examples of claims history reports.

E. "Closed without payment claim" is a claim resulting in no payment to or on behalf of the insured pursuant to the insurance contract.

F. "Consumer" means an insured or an applicant, new or renewal, for insurance coverage.

G. "Consumer reporting agency" has the meaning of 15 U.S.C. 1681a.(f)

H. "Inquiry" means a communication via personal conversation, electronic mail or written letter from a consumer to an insurer regarding the terms, conditions, or coverage afforded under an insurance contract that does not result in a claim being filed or paid, including questions concerning whether a policy will cover a loss or the process for filing a claim.

I. "Insurer" means an insurance company authorized to do business in this state.

#### **Section 4. Restrictions on the Use of Claims History Information**

A. An insurer shall not take an adverse action based, in whole or in part, on an inquiry.

B. An insurer shall not take an adverse action based, in whole or in part, upon information in a claims history report unless the insurer has utilized that information within 30 days of issuing a binder.

C. An insurer shall not take an adverse action based, in whole or in part, on the claims history of a property or vehicle unless

i. the claim history for the property or vehicle is associated with the applicant for insurance; or

ii. the insurer performs a physical inspection of the property or vehicle, identifies a physical defect or defects affecting the insurability of the property or vehicle and gives the applicant no less than 30 days to repair the physical defect to an insurable condition. The insurer is not required to provide coverage during the period for repairs.

D. An insurer shall not take an adverse action based, in whole or in part, upon one catastrophe claim within the most recent 12 months of continuous coverage or less than three catastrophe claims within the most recent 36 months of continuous coverage. The commissioner shall promulgate a definition of catastrophe specifying the number of claims and/or dollar volume of claims attributable to a single catastrophic event. The commissioner shall issue a bulletin to insurers identifying a catastrophe with 48 hours of the beginning of the event.

E. An insurer shall not take an adverse action based, in whole or in part, upon one closed without payment claim within the most recent 12 months of continuous coverage or less than three closed without payment claims within the most recent 36 months of continuous coverage

### **Section 5. Disclosure to Insurance Consumers**

A. An insurer obtaining a claim history report on an applicant, insured, property and/or vehicle shall disclose, either on the insurance application or in another document at the time the insurance application is taken:

- i. that the insurer obtains claims history or loss experience information in connection with such application;
- ii. whether future claims incurred by the consumer under a policy issued by the insurer will be reported to a consumer reporting agency; and
- iii. upon request by the consumer, the insurer will provide the consumer, at the time of application, a written explanation of how the claims history information will be used. Such explanation shall be specific and explain how the type and number of claims affect the terms and price of coverage.

B. If an insurer takes an adverse action based upon the claims history report of a consumer, property or vehicle, the insurer shall identify the specific claim or claims that resulted, in whole or in part, in the adverse action in, or simultaneously with, the adverse action notification. The insurer shall provide the date, location, amount and brief description of the claim or claims involved within, or in another document given simultaneously with, the adverse action notification.

### **Section 6. Dispute Resolution and Error Correction**

If it is determined through the dispute resolution process set forth in the federal Fair Credit Reporting Act, 15 USC 1681i(a)(5), that the claims history information of an insured or property was incorrect or incomplete and if the insurer receives notice of such determination from either the consumer reporting agency or from the insured, the insurer shall re-underwrite and re-rate the consumer within 30 days of receiving the notice. After re-underwriting or re-rating the insured, the insurer shall make any adjustments necessary, consistent with its underwriting and rating guidelines. If an insurer determines that the insured has overpaid premium, the insurer shall refund to the insured the amount of overpayment calculated back to the shorter of either the last 12 months of coverage or the actual policy period.

## **Section 7. Filings by Insurers**

A. Within 90 days following enactment of this law or when an insurer commences business, whichever is earlier, all insurers writing personal automobile or residential property insurance shall submit in electronic format specified by the Commissioner

- i. underwriting guidelines, tier placement rules and rating plans in effect on the date of submission;
- ii. the name or names of consumer reporting agencies to whom the insurer submits consumer claim information and a list of the information provided; and
- iii. the disclosures from Section 5Aiii of this statute.

B. Following initial submission of the information in section A, insurers shall submit in electronic format specified by the Commissioner any revisions to that information at least 15 days prior to the effective date of the revisions.

## **Section 8. Severability**

If any section, paragraph, sentence, clause, phrase, or any part of this Act passed is declared invalid, the remaining sections, paragraphs, sentences, clauses, phrases, or parts thereof shall be in no manner affected and shall remain in full force and effect.

## **Section 9. Effective Date**

This Act shall take effect on *[insert date]*, applying to homeowners insurance policies either written to be effective or renewed on or after 6 months from the effective date of the bill.