



BULLETIN B 18-08

**TO: ALL INSURERS AND PRODUCERS WRITING PERSONAL LINES POLICIES
IN THE STATE OF ALASKA AND OTHER INTERESTED PARTIES**

**RE: REVISED STANDARDS FOR THE USE OF CREDIT INFORMATION IN
INSURANCE RATING AND UNDERWRITING**

On March 27, 2018, Governor Bill Walker signed into law [HB 195](#), an act related to insurer actions based on credit history and insurance scores at insurance policy renewal; and providing for insurer consideration of consumer requests for exceptions of credit history or insurance scores. The new law applies to all insurers that use credit history or insurance scoring for personal lines underwriting or rating. The standards established in the new law take effect June 25, 2018.

1. Disclosure of use of credit history information

The disclosure requirement in Alaska Statute (AS) 21.36.460(a) now applies to renewals, if a company uses credit at renewal. This disclosure document does not need to be filed unless it is made a part of the policy. This is similar to the current requirement for applications (see AS 21.42.120(a)), except that applications for auto policies are statutorily considered part of the policy, under AS 28.22.111(3), so personal auto applications must be filed.

2. Disclosure of adverse action

An insurer that takes an "adverse action" as the term is defined under AS 21.36.460(i) must provide a notice of adverse action required under AS 21.36.460(b) to the consumer at the time the adverse action is taken. The notice must be in writing and must contain all of the information required under AS 21.36.460(b)(1) – (6) including informing the consumer of their right to request reconsideration of the adverse action and including information related to the availability of, and procedures for, requesting an exception for extraordinary life circumstances. An insurer is not required to file the notice of adverse action form that the insurer intends to utilize with the division.

Consistent with the intent of the statute, the division interprets the consumer's right to request the insurer's reconsideration under AS 21.36.460 or 21.36.461 to also require the insurer to have reasonable procedures in place for reviewing the consumer's request, for reconsidering the adverse action, and for notifying the consumer of its reconsideration decision.

3. Reconsideration Certification Form Requirements

Attached to this bulletin is a model reconsideration certification form, developed for insurers to comply with the requirements of AS 21.36.460 and 21.36.461. The form has been revised from the version previously attached to B 03-11 to apply to all adverse action types rather than just cancellation or denials. The model form assumes the consumer has already been separately notified of the adverse action, including the significant factors of the credit history that resulted in the adverse action, as required by AS 21.36.460(b)(1). The bracketed text represents variable language that would be selected based on the type of adverse action taken by an insurer. An insurer is required under AS 21.36.460(f)(1) to file the reconsideration certification form the insurer intends to utilize with the division. This should be done as soon as practicable. Except as noted below, insurers must provide this form to the consumer at the same time the notice of adverse action is provided to the consumer.

AS 21.36.460(e) only applies to situations where an insurer uses incorrect credit history to underwrite or rate personal insurance coverage and a consumer is charged higher premiums or offered less favorable policy terms due to the disputed credit history.¹ Under this subsection, the consumer must discover the incorrect credit history within 12 months after the policy is issued. Due to the fact the insurer may not know the credit history is incorrect and does not know if, or when, a consumer may dispute the credit history and seek resolution of a dispute, an insurer should provide the insurer's insurance reconsideration certification form to the consumer at the time the insurer uses credit history to underwrite or rate personal insurance coverage when a consumer is charged higher premiums or offered less favorable policy terms due to the insurer's use of credit history and also at the time the consumer informs the insurer that the insurer used incorrect credit history.

If the 12 month requirement is met, the consumer has the right to seek resolution of the dispute either under AS 21.36.460(f) or under the process under 15 U.S.C. 1681 – 1681 et seq. The division interprets the phrase "resolves the dispute under (f) of this section" in AS 21.36.460(e) to mean resolves the dispute with the insurer under subsection (f). If the consumer resolves the dispute under the federal statute, then under AS 21.36.460(e) the consumer has the further requirement to notify the insurer that the dispute over the incorrect credit history has been resolved under the federal process. In both situations, if it is determined incorrect credit history was used, the insurer must take the actions set out under AS 21.36.460(e).

AS 21.36.460(f) only applies to situations where the disputed credit history results in denial or cancellation of personal insurance coverage. Under this subsection, the consumer must provide the completed insurer's reconsideration certification form to the insurer within 10 days following the denial or cancellation.² Therefore, at the time an insurer notifies the consumer of a denial or cancellation and provides the consumer with the notice of adverse action, the insurer must also provide the consumer with the insurer's reconsideration certification form.

¹ The division interprets the "less favorable terms" to include the adverse actions described under AS 21.36.460(i)(1)(C).

² The division interprets the 10 day requirement to apply only to situations where the insurer is cancelling or denying coverage.

Finally, the division's model reconsideration certification form also provides for adverse actions related to nonrenewals by treating nonrenewals the same way that denials and cancellations are processed under AS 21.36.460(f).³

4. Use of consumers' credit history at renewal

AS 21.36.460(d)(1) has been revised to remove the prohibition against using consumers' credit history information to underwrite or rate at renewal. Accordingly, the previously required waiver⁴ is no longer required by law before an insurer can consider consumers' credit information at renewal.

In accordance with AS 21.39.040(a) and (h), insurers may not rate consumers using credit information until a filing has been made with the division to introduce the applicable rating procedures and rules into the insurer's rating manual. For example, if currently approved filings specify that credit will not be used at renewal unless a waiver is obtained, that procedure must be followed until a filing is approved establishing a different rating procedure. Since AS 21.36.460(d)(1) prior to being amended did not allow use of consumers' credit history at renewal without a waiver, insurers wishing to take advantage of the new opportunity to use consumers' credit history at renewal without first obtaining a waiver will generally be required to develop and submit for approval a filing with the applicable rules. Such filing may not become effective prior to June 25, 2018⁵.

HB 195 did not change the fact that there is no statutory requirement for an insurer to use consumers' credit history in rating or underwriting, either at new business or at renewal.

AS 21.36.460(c) outlines requirements related to reevaluation of consumers' risk characteristics when credit is used at renewal. Similar requirements were previously communicated via B03-07 and B03-11 applicable in cases where a consumer provided a waiver. Accordingly, insurers' rating manuals should already comply with these "new" requirements and therefore should not require a filing effective June 25, 2018 solely to implement compliant reevaluation. However, to the extent an insurer's currently approved rating plan does not comply, revisions must be filed and approved as soon as possible.

5. Treatment of consumers when credit history cannot be determined

³ While the division considers denials and nonrenewals to be part of the underwriting process, the legislature differentiated both from underwriting by using these more specific terms and, for underwriting and denials, by incorporating different processes under AS 21.36.460(e) and (f). The legislature, however, did not specify the process to be utilized for nonrenewals. Reading the statute as a whole, the division believes the intent of the legislature can best be met by using the process under AS 21.36.460(f) for nonrenewals rather than the process under AS 21.36.460(e).

⁴ "Waiver" in this Bulletin refers to the language within AS 21.36.460(d)(1) prior to the implementation of HB 195 that allowed, "the prohibition in this paragraph against underwriting or rating a personal insurance policy at renewal may be waived by the consumer; waiver allowed under this paragraph must occur at each renewal."

⁵ The effective date assigned by the division upon disposition of a filing denotes the date on which the approved material must be used for all policies incepting or renewing on or after that date.

While HB 195 makes no substantial revisions to the treatment of consumers when credit history cannot be determined (now numbered AS 21.36.460(d)(1)(A)) other than to add “nonrenew” to the list of applicable prohibited actions, the guidance in B03-07 and B03-11 related to this issue is no longer applicable. Therefore, prospectively the division will individually review insurer’s proposals to treat consumers as if they had neutral credit information without regard to any explicit set of universal guidelines or criteria.

Any currently approved treatment will continue to be considered compliant. To the extent an insurer wishes to revise their current treatment of insureds that are subject to AS 21.36.460(d)(1)(A), the insurer, as required under AS 21.39.040(a), will need to submit a filing with the division.

6. Exceptions for extraordinary life circumstances

New section AS 21.36.461 requires insurers using consumers’ credit history in rating or underwriting to provide reasonable exceptions to the insurer’s rates, rating classifications, company or tier placement, or underwriting rules or guidelines for a consumer whose credit history has been affected by one or more extraordinary life circumstances. Insurers may choose to include a rule within their rating manual describing the exceptions or the procedures the company will follow related to the evaluation and granting of exceptions, in which case the rule would be filed under AS 21.39.040(a). However, consistent with the statute’s “exception” terminology, such a rule is not necessary. As noted in AS 21.36.461(d), an insurer may not be considered out of compliance with a law or rule relating to underwriting, rating, or rate filing (e.g. AS 21.39.040(a) and (h)) as a result of granting an exception under this section.

Similar to other disclosure documents described under paragraphs one and two of this bulletin, the notices identified in AS 21.36.461(e) and (f) are not considered an agreement as to the insurance provided by the policy and therefore are not required to be filed under AS 21.42.120.

7. General filing procedures

As the new law generally does not establish mandatory requirements that necessitate filings be approved prior to the June 25, 2018 effective date of the new law, the division does not intend to give special priority to the review of filings related to HB 195, nor modify the otherwise applicable filing requirements. Filings must follow the usual filing procedures outlined in regulations 3 AAC 31.200 – 299, SERFF instructions, and filing checklists, and the timelines and requirements of AS 21.39.040 (for rates and rules) and AS 21.42.120 (for forms) apply.

If an insurer finds that revisions are necessary to bring current rating manuals or forms portfolios into full compliance with the revised statutes, it is suggested that those revisions be filed without including additional, unrelated program revisions in the same filing in order to speed up the approval process and speed-to-market.

Filings containing revisions that are not compliance-related (for example, filings to change currently approved rating manuals to allow the use of credit at renewal without requiring a waiver) may be combined with other program changes at the insurer’s option, but again, the inclusion of other program changes may slow the division’s review and approval.

For requirements introduced by the new law that do not require filings prior to implementation, insurers must implement the applicable requirements for policies incepting or renewing on or after June 25, 2018.

If you have questions regarding this bulletin, please contact the Division of Insurance, P.O. Box 110805, Juneau, AK 99811-0805; (907) 465-2515; or via electronic mail at insurance@alaska.gov.

This bulletin supersedes Bulletins B 03-07 and B 03-11.

Dated May 9th, 2018.



Lori Wing-Heier
Director

ALASKA ADVERSE ACTION RECONSIDERATION CERTIFICATION

Alaska law allows you to request reconsideration of an adverse action based in whole or in part on your credit history if the information on your credit report is in dispute.

What is an Adverse Action?

Refer to [Alaska Statute 21.36.460\(i\)\(1\)](#) for the full definition for “adverse action.”

An “adverse action” includes:

- cancellation, denial, or failure to renew personal insurance coverage
- charging a higher insurance premium for personal insurance than would have been offered if the credit history or insurance score had been more favorable
- any reduction or adverse or unfavorable change in the terms of coverage or amount of personal insurance due to a consumer’s credit history or insurance score

Requirement to Initiate Dispute

You must initiate the dispute resolution process under the Fair Credit Reporting Act before submitting this form. This form must be submitted:

- no later than 10 days from the date of denial, cancellation, or nonrenewal or
- as soon as possible following your discovery that incorrect credit history has been used in rating or underwriting; such discovery must be within 12 months from the policy issue date

As stated in the notice provided on _____ (date),	
<input type="checkbox"/> [your application has been denied] <input type="checkbox"/> [your policy has been cancelled] <input type="checkbox"/> [your policy has been non-renewed] in part due to information obtained from your credit report	<input type="checkbox"/> [your policy’s premium is higher than it would have been] <input type="checkbox"/> [your policy’s terms of coverage are less favorable than they would have been] if information obtained from your credit report had not been considered.

This form and copies of any applicable documents from the credit reporting agency should be returned to your agent or directly to the insurer at:

Name	
Address	
Fax	
Email	

Reconsideration Certification

_____ (name of applicant or insured) initiated the dispute resolution process under the Fair Credit Reporting Act on _____ (date dispute resolution process began).

The following items on my credit report are in dispute:

A copy of applicable documents from the credit reporting agency are attached.

I am requesting the above-referenced adverse action be reconsidered using accurate credit history or without the use of credit information, in accordance with [AS 21.36.460](#)(e) or (f), as applicable.

Signature of Applicant or Insured

Printed Name

Date