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May 26, 2020

Colorado Division of Insurance
Consumer Services, Property & Casualty Section
1560 Broadway, Suite 850
Denver, CO 80202

RE: DRAFT Bulletin No. B-5.4X

Dear Commissioner Conway,

I write to you as director of finance, insurance and trade policy for the R Street Institute, a nonprofit, nonpartisan public-policy research organization whose mission is to engage in policy research and outreach to promote free markets and limited, effective government. Since our founding in 2012, R Street has had a successful history of research into public policy regarding the business of insurance.

The COVID-19 pandemic has had tremendous impact across the economy, including on the insurance sector. We commend the division for seeking to address potential consumer issues arising from the emergency in a prompt and transparent manner. The recently issued draft bulletin does, however, raise some concerns.

The bulletin instructs regulated insurers not to "use any adverse credit information that is related to the COVID-19 emergency in determining the rate/premium of property or casualty policies of insurance." In the abstract, this is a reasonable policy goal consistent with Section 6 of the National Council of Insurance Legislators' Model Act Regarding Use of Credit Information in Personal Insurance, as adopted in November 2015.[1]

Among the "extraordinary life circumstances" specified in the model act from which an insurer is required to provide reasonable exceptions from credit-based rates, rating classification and tier placement are:

- Catastrophic event, as declared by the federal or state government;
- Serious illness or injury, or serious illness or injury to an immediate family member;
- Death of a spouse, child, or parent; and

[1] http://ncoil.org/wp-content/uploads/2016/04/11262015PropertyCasualtyModelAct.pdf.

- Temporary loss of employment for a period of three months or more, if it results from involuntary termination.

Clearly, each of these circumstances is potentially relevant in the current emergency. Moreover, the model act spells out insurers' responsibility to provide notice to consumers of the availability of these reasonable exceptions and a means for them to inquire further.

However, the NCOIL model nonetheless stipulates that an applicant or insured must ultimately submit a request for an exception on grounds of emergency life circumstances. Colorado's draft bulletin, by contrast, provides no mechanism that would allow insurers to delineate those credit items in a given applicant's record that are related to COVID-19 and those that are not.

In the absence of such a mechanism, insurers would almost certainly default to not considering any credit information at all. We think this would be a mistake. Over the past 30 years, credit-based insurance scoring models have contributed to vibrant and competitive insurance markets and, particularly, to the depopulation of once-large residual market mechanisms for auto insurance.

To take Colorado as an example, the most recent edition of R Street's Insurance Regulation Report Card reflects that the private passenger auto market had a Herfindahl-Hirschman Index (HHI) score of 930.2, well below the 1,500.0 score that the Federal Trade Commission uses to define a "moderately concentrated" market.[2] Moreover, drivers written by the Colorado Motor Vehicle Insurance Plan comprise just 0.01 percent of the overall auto insurance market in the state.

We urge the division to revise the draft bulletin to provide for a reasonable process for reporting COVID-19 related credit events that is fair to both insurers and consumers.

Sincerely,

R.J. Lehmann
Director of Finance, Insurance and Trade Policy
R Street Institute

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[2] https://www.rstreet.org/wp-content/uploads/2019/12/191.pdf.