

## DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 311, 2501, 2304(15)(c) and 2312 (18 Del.C. §§311, 2501, 2304(15)(c) & 2312)  
18 DE Admin. Code 906

### PUBLIC NOTICE

### PROPOSED

INSURANCE COMMISSIONER MATTHEW DENN hereby gives notice that a PUBLIC HEARING will be held on Tuesday December 4, 2007 at 1:30 p.m. in the Consumer Services Conference Room of the Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, Delaware. The hearing is to receive public comment in **Docket No. 2007-538**, proposed amendments to **Regulation 906** relating to **THE USE OF CREDIT SCORES IN IN SETTING INSURANCE PREMIUMS IN AUTOMOBILE, MOTORCYCLE, BOAT AND PERSONAL WATERCRAFT, SNOWMOBILES AND OTHER RECREATIONAL VEHICLES, HOMEOWNERS, MOBILE-HOMEOWNERS, MANUFACTURED HOMES AND NON-COMMERCIAL DWELLING FIRE INSURANCE FOR PERSONAL OR FAMILY PROTECTION.**

The purpose for proposing amendments to Regulation 906 is to comply with Delaware law and to prohibit insurance companies using consumer credit information in the setting of renewal premiums in insurance policies in areas noted above, except that consumers may request the use of credit information in renewals if such information would result in a reduction of premiums. The text of the proposed regulation is produced in the November 2007 edition of the *Delaware Register of Regulations*. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.state.de.us/Inscom/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The hearing will be conducted in accordance with 18 Del.C. §311 and the Delaware Administrative Procedures Act, 29 Del.C. Chapter 101. Comments are being solicited from any interested party. Comments may be in writing or may be presented orally at the hearing. Written comments, testimony or other written materials concerning the proposed change to the regulation must be received by the Department of Insurance no later than 9:00 a.m., Tuesday December 4, 2007, and should be addressed to Regulatory Specialist Mitchell G. Crane, c/o Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.739.2021 or email to [mitch.crane@state.de.us](mailto:mitch.crane@state.de.us).

### 906 Use of Credit Information [Formerly Regulation 87]

#### 1.0 Authority

This regulation is adopted by the Commissioner pursuant to the authority granted by 18 Del.C. §§ 311, 2501, 2304(15)(c), and 2312, and promulgated in accordance with the Delaware Administrative Procedures Act, 29 Del.C. Chapter 101.

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#### 2.0 Scope

This regulation shall apply to all insurers offering automobile, motorcycle, boat and personal watercraft, snowmobiles and other recreational vehicles, homeowners, mobile-homeowners, manufactured-home owners and non-commercial dwelling fire insurance policies for personal or family protection. This regulation shall not apply to any line of commercial insurance.

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#### 3.0 Purpose

The purposes of this regulation are:

3.1 To prohibit insurers from engaging in unfair discrimination in the offering or granting of insurance due to the grouping of risks based on criteria which are not actuarially supported and shown to be relevant to risk.

3.2 To prohibit insurers from engaging in unfair discrimination in the cancellation or non-renewal of insurance coverage based on criteria which are not actuarially supported and shown to be relevant to risk or experience.

3.3 To assure that ~~consumers, whether on initial application or renewal,~~ applicants are given notice when consumer reports will be requested and reviewed in connection with ~~a consumer's~~ their eligibility for ~~and/or the continuance of insurance coverage and/or a consumer's~~ their tier or level of premium payment.

3.4 To prohibit the practice of assigning ~~a consumer~~ an applicant to a premium level based solely on the ~~consumer's~~ applicant's credit rating or credit score.

3.5 To assure that the consumer has adequate relief from any adverse action taken by an insurer through the use of credit scoring.

3.6 To prohibit the practice of using a policyholder's credit rating or credit score in any way, except at the policyholder's request as provided for in 18 Del.C. §8303 (c).

3.7 To establish a procedure for policyholders to request, on an annual basis, a recalculation of their insurance score based in a current credit report.

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### 4.0 Definitions

4.1 **"Adverse action"** has the meaning given that term in the Fair Credit Reporting Act, 15 U.S.C. sec. 1681 et seq. (referred to in this regulation as "the FCRA"). An adverse action includes but is not limited to the following:

4.1.1 Cancellation, denial or nonrenewal of insurance coverage;

4.1.2 Charging a higher insurance premium than would have been offered if the credit history or insurance score had been more favorable in the absence of a rate change occasioned by other applicable underwriting factors independent of credit related information, whether the charge is by:

4.1.2.1 application of a rating rule;

4.1.2.2 assignment to a rating category within a single insurer, into which insureds with substantially like insuring, risk or exposure factors and expense elements are placed for purposes of determining rate or premium, that does not have the lowest available rates; or

4.1.3 A reduction or an adverse or unfavorable change in the terms of coverage or amount of insurance owing to a consumer's credit history or insurance score. A reduction or an adverse or unfavorable change in the terms of coverage occurs when:

4.1.3.1 coverage provided to the consumer is not as broad in scope as coverage requested by the consumer but available to other insureds of the insurer or any affiliate; or

4.1.3.2 the consumer is not eligible for benefits such as dividends that are available through affiliate insurers.

4.14 The placement of the consumer with an affiliated company shall not be considered an adverse action under this regulation.

4.1.5 Notwithstanding the foregoing, a decision to reject an insurance application, to deny renewal or to condition renewal, to assign an application or renewal to a tier, class or group, or to issue the policy based on or with restrictions that would not apply but for the consideration of the consumer report.

4.1.6 Notwithstanding the foregoing, if a consumer, upon renewal, is not assigned to a less favorable tier or if there is a change in premium not resulting from any use of credit information, such event shall not be deemed an adverse action.

4.2 **"Applicant"** shall mean an applicant for insurance coverage but shall not include persons receiving a quote for premium that would be due under a policy of insurance, provided however, that such insurance is not ultimately applied for and that the process for making and delivering such quotes is not used as a means for denying coverage on the basis of a credit score in violation of this regulation.

4.23 **"Commissioner"** shall mean the Insurance Commissioner of the State of Delaware, or any person designated by the Commissioner to enforce the provisions of this regulation or any related statute or regulation.

4.4 **"Consumer"** shall mean applicants or policyholders.

4.35 **"Consumer report"** means any written, oral, or other communication of any information by a consumer reporting agency (as defined in the FCRA) bearing on a consumer's credit worthiness, credit standing, or

credit capacity, which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for personal lines automobile or homeowner insurance to be used primarily for person, family, or household purposes. Consumer report shall not include motor vehicle reports or claims history reports or any other report that is not credit related.

4.46 "Credit score" means any alpha, numeric and/or alpha-numeric rating or classification of any person based on information contained in said person's consumer report created by an insurer or any person, firm or entity for use by an insurer.

4.57 "Document" or "public record" shall have the same meaning as described in 29 Del.C. § 10002(d) and 18 Del.C. §§ 320, 321.

4.68 "Insurance score" shall have the same meaning as "credit score."

4.79 "Insured," "Policyholder" or "consumer" shall mean the applicant(s) for coverage or person or persons insured under a policy of insurance but shall not include persons receiving a quote for premium that would be due under a policy of insurance, provided however, that such insurance is not ultimately applied for and that the process for making and delivering such quotes is not used as a means for denying coverage on the basis of a credit score in violation of this regulation.

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## 5.0 Prohibited Practices

5.1 No individual consumer report or credit score shall be valid if the age of the report is greater than two years from the date of its first use for an individual application ~~or renewal of coverage~~ if the repost or credit score or utilizes in any manner, factors which include any or all of race, color, creed, sex, religion, national origin, place of residency, marital status, nature of employment, physical disability, or any similar category prohibited by federal or state law.

5.2 Each insurer proposing to use an insurance score as part of its rating or underwriting criteria shall file with the Commissioner, as part of its rate filings required pursuant to 18 Del.C. Ch. 25, such supporting models, algorithms, actuarial and statistical data and reports sufficient, in the discretion of the Commissioner, to permit the Commissioner to determine that the use of such credit report or score shall not:

5.2.1 Unfairly discriminate or assign a consumer to a class or tier based on criteria which are not actuarially supported and shown to be relevant to risk or experience, or

5.2.2 Be the sole basis upon which the insurer denies coverage ~~or upon which the insurer cancels, refuses to renew~~ or sets a premium or rate for insurance coverage without consideration of other underwriting or rating factors.

5.2.3 Be used in any way in connection with renewal decisions and tier or level of premium payment for policyholders, except at the policyholder's request as provided by 18 Del.C. §8303 (c).

5.3 No insurer shall be permitted to use the services of a third party to develop a consumer report or credit score unless the third party shall, without qualification, consent to provide any information, documents, reports (except for consumer reports which may not be disclosed), actuarial and/or statistical bases or models, or other such information required by the Commissioner as part of the insurer's rate approval process.

5.4 In rating a policy or assigning a consumer to a premium level or tier, no insurer shall be permitted to consider the consumer report or score of any person other than the named applicant or policyholder or person(s) who have an insurable interest to be covered under the policy. In the case of homeowner's coverage, no insurer shall be permitted to deny, penalize, impose a higher rate or take any action adverse or detrimental to ~~a current or prospective policyholder~~ an applicant based solely on the credit score of a spouse who has no title or ownership interest in the property to be insured and is not a named ~~policyholder~~ or applicant.

5.5 No insurer, or entity from which the insurer may obtain credit scoring information, shall use credit or consumer reports in any manner prohibited by law.

5.6 No insurer shall be permitted to use obsolete information which shall be defined as follows:

5.6.1 Bankruptcies which, from date of the adjudication of the most recent bankruptcy, antedate the report by more than 10 years;

5.6.2 Suits and judgments which, from date of entry, antedate the report by more than 7 years or until the governing statute of limitations has expired, whichever is the longer period;

5.6.3 Paid tax liens which, from date of payment, antedate the report by more than 7 years;

5.6.4 Accounts placed for collection or charged to profit and loss which antedate the report by more than 7 years;

5.6.5 Records of arrest, indictment, or conviction of crime which, from date of disposition, release, or parole, antedate the report by more than 7 years; and

5.6.6 Any other adverse item of information which antedates the report by more than 7 years.

5.7 The following factors shall not be used by an insurer or by any entity retained by the insurer for the purposes of generating a credit score for underwriting, tier placement or rating purposes:

5.7.1 Information that is disputed by the consumer and has been identified by the consumer reporting agency and coded as such, if the use of such disputed information would result in an adverse action;

5.7.2 Information that has been identified by the consumer reporting agency as related to insurance inquiries and/or non-consumer initiated inquiries and coded as such;

5.7.3 Information that has been identified by the consumer reporting agency as related to collection accounts with a medical industry code;

5.7.4 Information that includes multiple lender inquiries, if coded by the consumer reporting agency as being from the home mortgage industry and made within 30 days of one another, unless only one inquiry is considered.

5.7.5 Information that includes multiple lender inquiries, if coded by the consumer reporting agency as being from the automobile lending industry and made within 30 days of one another, unless only one inquiry is considered.

5.7.6 The total available line of credit, however, an insurer may consider the total amount of outstanding debt in relation to the total available line of credit.

5.8 If a consumer has no available credit history or has insufficient credit history to develop a credit score, the consumer must be underwritten and rated in accordance with the remaining actuarial principles and standards of practice set forth in the appropriate rate filing that are exclusive of the credit score. However, an insurer may consider insufficient credit history or no available credit history in setting a premium or rate, or underwriting an insurance policy, to the extent such use is actuarially justified and consistent with the rate filing in the office of the Commissioner.

5.9 No insurer shall, by underwriting standards or practices, use a consumer's credit score inconsistent with or in violation of this regulation.

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### **6.0 Written Notice to Consumers**

6.1 ~~If an insurer uses credit information in underwriting or rating a consumer, the insurer or its agent shall disclose, either on the insurance application or at the time the insurance application is taken, that it may obtain credit information on the consumer, other persons residing in the consumer's home, or other persons whose credit information may affect the underwriting or rating of the policy in connection with such application. Such disclosure shall be either written or provided to an applicant in the same medium as the application for insurance. The insurer need not provide the disclosure statement required under this section to any insured on a renewal policy if such consumer has previously been provided a disclosure statement. The use of the following example disclosure statement constitutes compliance with this section: "In connection with this application for insurance, we may review your credit report or obtain or use a credit based (credit)(insurance) score based on the information contained in that credit report. We may use a third party in connection with the development of your (credit)(insurance) score."~~ make the following disclosures to the consumer:

6.1.1 Either on the insurance application or at the time the insurance application is taken, the insurer shall disclose to the applicant that it may obtain credit information on the applicant, other persons residing in the applicant's home, or other persons whose credit information may affect the underwriting or rating of the policy in connection with such application. Such disclosure shall be either written or provided to an applicant in the same medium as the application for insurance. The use of the following example disclosure statement constitutes compliance with this section: "In connection with this application for insurance, we may review your credit report or obtain or use a credit based (credit) (insurance) score based on the information contained in that credit report. We may use a third party in connection with the development of your (credit) (insurance) score".

6.1.2 Either on the insurance application or at the time the insurance application is taken, the insurer shall inform the applicant that, if the application is approved and the applicant becomes a policyholder, he or she has the right to have their insurance score reviewed on an annual basis based on a new consumer report. The notice shall state that the review will be conducted for the sole purpose of determining whether the consumer's credit information would lead to a reduction in insurance premiums and will not be used for any other purpose.

including an increase in premiums. The use of the following example disclosure statement constitutes compliance with this section: "If we do use a credit based score, you will have the right on an annual basis to request that we obtain a current credit report for you and determine whether use of the new credit report would reduce your premiums. If the new credit report that we receive would result in a decrease in your premium insurance, we will make that reduction. If the new credit information would not reduce your insurance premiums, the credit report will not be used to impact your premiums in any way."

6.1.3 On an annual basis, the insurer shall inform its policyholders of their right to have their credit information reviewed to determine whether the use of the current credit report would result in a lower premium. This notification shall be sent to policyholders no more than 8 weeks prior to the start of the new policy period for the policyholder. The notification shall inform the policyholder that the policyholder can complete and send to the insurer to request that the credit report be obtained and reviewed. The notification shall inform the policyholder that the policyholder must mail the request form within two weeks of the date of mailing by the insurer in order for the re-rating to occur in time for a premium adjustment to be modifier the upcoming policy period.

6.2 A notice denying an application for insurance ~~or a notice refusing to renew or cancel insurance~~ shall, to the extent that the insurer's action is based on information contained in a consumer report relating to the applicant, insured and/or other named person, contain the following:

6.2.1 The name, address and toll free number of the institutional source from whom the insurer obtained the credit information;

6.2.2 A summary of the most significant reasons for the adverse action that relate to the ~~consumer's~~ applicant's credit history or to the credit factors of the credit score. The reasons need not exceed four, shall be specific and shall identify the information associated with each reason. The notice shall be sufficiently clear and specific that a ~~consumer~~ applicant of reasonable intelligence can identify the basis for the insurer's decision without making further inquiry. For the purpose of the summary, the use of a generalized term such as "poor credit history," "poor credit rating," or "poor credit score" does not meet the requirement of a sufficiently clear and specific summary, however standardized credit explanations provided by consumer reporting agencies or other third party vendors that satisfy the requirements of this section are deemed to comply with this section.

6.2.3 A statement advising the applicant ~~or insured~~ that, if the ~~insured~~ applicant wishes to inquire further about the credit information on which the refusal ~~denial or nonrenewal~~ is based and obtain a free copy of the "consumer report," the ~~insured~~ applicant may do so by mailing a written request to the insurer, or such other party as the insurer shall identify in the notice, no more than thirty days after the date on which the notice of refusal ~~denial or nonrenewal~~ was mailed to the ~~insured~~ applicant.

6.2.4 A statement that the consumer reporting agency that provided the information upon which the credit score was based did not make the decision to take the adverse action and is unable to provide the applicant or insured the specific reasons why the adverse action was taken.

6.3 If the applicant ~~or insured~~ submits the written notification required under section 6.2.3, the refusal ~~denial or nonrenewal~~ shall not become effective until thirty days after the accuracy of the credit information, which the applicant ~~or insured~~ has questioned and on which the refusal ~~denial or nonrenewal~~ was based, has been verified and communicated to the applicant ~~or insured~~. Such verification shall be deemed to have been made upon completion of the investigation of the credit information which the applicant ~~or insured~~ has questioned and on which the refusal ~~denial or nonrenewal~~ was based. The applicant ~~or insured~~ must cooperate in the investigation of the credit information, including responding to any communication submitted by, or on behalf of, the insurer or credit reporting agency no more than ten days after the date on which such communication subsequent to the notice required under section 6.2.3 was mailed to the applicant ~~or insured~~. If the applicant or insured fails to cooperate in the investigation of the credit information, the insurer may, after providing a minimum of fifteen days' written notice to the applicant ~~or insured~~, terminate such investigation and may refuse to insure the applicant or cancel ~~or nonrenew~~ the policy.

6.4 If the applicant or insured, after receipt of a notice under this section, and pursuant to procedures established under the FCRA, obtains changes, modifications or corrections to his/her credit information maintained by one or more credit reporting agencies, the insured shall notify the insurer who shall recalculate or obtain an new credit score. In that case, the provisions of section 7.2 shall apply to any adjustments to be made to the insured's premium.

**6 DE Reg. 1706 (6/1/03)**

## **7.0 Corrections or Changes to a Consumer's Credit Score**

7.1 When an insurer uses credit histories or credit scores for the purpose of rating, if the insurer receives notice of corrected information affecting the credit history or the credit factors of the credit score of a consumer from the consumer reporting agency of the insurer, the insurer shall correct the consumer's credit score or obtain a corrected credit score or credit history, as appropriate, based on the corrected information.

7.2 When an insurer has taken an adverse action against a consumer on the basis of the consumer's credit history or the credit factors of the consumer's credit score, if the insurer subsequently makes or obtains a correction or change under section 6.4 or 7.1, the insurer shall determine the difference between the premium paid by the consumer based on the prior credit history or credit score and the premium based on the current history or score. If the policy period is 12 months or more, the difference shall be determined for the most recent 12 months. If the policy period is less than 12 months, the difference shall be determined for the current period of the policy. If the difference is in favor of the consumer, the insurer shall credit or refund the difference to the consumer. If the difference is in favor of the insurer, the insurer may charge the difference to the consumer or collect the difference from the consumer.

7.3 ~~An insured or an applicant for insurance~~ A consumer, upon written request to an insurer, shall have a right to seek review by the insurer of its use of a credit score in the event ~~an insured's or applicant's~~ a consumer's consumer report is adversely affected by extraordinary personal circumstances.

7.3.1 Extraordinary personal circumstance is defined as serious illness or injury, involuntary unemployment, divorce, identity theft, and involuntary interruption of alimony or support payments. An insurer may elect to extend this definition to consider an extraordinary personal circumstance not listed in this section. In no event is an insurer required to review repeated events or events the insurer reviewed previously as an extraordinary personal circumstance.

7.3.2 An insurer may require that ~~an insured or applicant~~ a consumer provide sufficient documentation to establish the existence and duration of such extraordinary personal circumstance.

7.3.3 An insurer may elect to eliminate the credit score from consideration in such instance and rely on its other underwriting and rating guidelines, may assign a neutral credit score or may elect to establish such procedural guidelines as will allow the insurer to consider such requests in a consistent manner.

7.3.4 An insurer will not be considered out of compliance with any law or rule relating to underwriting, rating or rate filing as a result of granting an exception under this section.

#### **6 DE Reg. 1706 (6/1/03)**

### **8.0 Requesting Re-rating Based on Current Credit Report**

8.1 Any policyholder whose credit report has been used by his/her insurer for the purpose of rating renewals or initial underwriting and who wishes to have a current credit report reviewed by his/her insurer to determine whether the current report will result in an improvement in the policyholder's insurance score must, within two weeks of receipt of the notice from the insurer required by paragraph 6.1.3, submit the form provided with the notice to the insurer.

8.2 After receiving notice from a policyholder that he/she is requesting that his/her credit report be obtained and reviewed for the purpose of lowering his/her insurance score, the insurer shall obtain the credit information and recalculate the insurance score for the policyholder to determine whether the credit information will lower the policyholder's premium.

8.3 If the new credit report results in a reduction in premium, the notice of insurance renewal and the accompanying bill for premium payment that is sent to the policyholder for the upcoming year shall reflect the lowered premium amount and shall inform the policyholder that the premium has been lowered due to the review of their credit report.

8.4 If the credit report would result in no change or an increase in the premium or in any adverse action, the insurer shall take no further action regarding the credit report except that the notice of insurance renewal shall inform the policyholder that ten review was conducted and that it did not result in any changes to the premium or policy.

8.5 Sections 8.1 through 8.4 do not apply any renewal for which the insurer's filed rating plan does not use any credit information, including any residual effect from the use of credit information at initial underwriting.

### **89.0 General Business Practices**

89.1 Any insurer that elects to use credit scoring to determine, in whole or in part, the premium to be paid by the insured or the tier or class of risk to which the insured shall be assigned, shall be deemed to have done so under the provisions of 18 **Del.C.** Ch. 25.

89.2 No insurer shall implement credit scoring for rate making or underwriting purposes without first having obtained the approval of the Commissioner as part of a rate filing under 18 **Del.C.** Ch. 25. Policies and renewal notices issued on or before the ~~effective date of this regulation~~ September 1, 2003, in which credit information was used in the underwriting or rating of the policy shall be deemed valid for the term thereof but not for any renewal thereunder in the absence of compliance with this regulation.

89.3 No insurer shall alter or modify the approved tier or classification structure or change the premiums applicable to any such tier or classification system without having first obtained the Commissioner's approval to do so under 18 **Del.C.** Ch. 25.

89.4 When an insurer denies ~~or fails to renew~~ a policy, evidence of the notice of denial or nonrenewal shall be retained by the insurer and a record of the insurance score, related notice and correspondence with the ~~insured applicant~~ shall be maintained by the insurer and/or by the appropriate vendor (source of the credit score) pursuant to the insurer's agreement with such vendor for a minimum of three years from the date of notice to the ~~insured applicant~~.

89.5 An insurer shall indemnify, defend, and hold agents harmless from and against all liability, fees, and costs arising out of or relating to the actions, errors, or omissions of an insurer who obtains or uses credit information and/or credit scores from an independent source, provided that the agent follows the instructions of or procedures established by the insurer and complies with any applicable law or regulation. Nothing in this section shall be construed to provide a consumer or other insured with a cause of action that does not exist in the absence of this section.

**6 DE Reg. 1706 (6/1/03)**

#### **910.0 Confidentiality**

910.1 Any document, report, model or other supporting information filed with the Commissioner, irrespective of the format or media in which it is contained, shall be considered proprietary or trade secret and subject to the confidentiality provisions of 18 **Del.C.** §321(g) and/or, upon the request of the insurer or owner of the document, 29 **Del.C.** §10002(d)(2). Where an insurer or third party is required to file proprietary or trade secret insurance scoring algorithms, models, documents or supporting information as part of its filed rates, the insurer or third party may elect to segregate such materials from the remainder of its rate filing by filing such materials separately in a sealed envelope or container. Materials filed in this manner shall remain segregated from the publicly accessible portions of the rate filing for so long as these materials are on file with the Department, or until the insurer or third party notifies the Department that such materials are no longer proprietary or trade secret. In the event there is a dispute with respect to the confidentiality of a document, the Commissioner shall make the final determination of whether any part or the whole of a disputed document shall be given confidential treatment.

**6 DE Reg. 1706 (6/1/03)**

#### **4011.0 Severability**

If any provision of this Regulation or the application of any such provision to and person or circumstance shall be held invalid the remainder of such provisions, and the application of such provision to any person or circumstance other than those as to which it is held invalid, shall not be affected.

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#### **4412.0 Causes of Action and Defenses**

This regulation shall not create a cause of action for any person or entity, other than the Delaware Insurance Commissioner, against an insurer or its representative based upon a violation of 18 **Del.C.** §2304(15)(c). In the same manner, nothing in this regulation shall establish a defense for any party to any cause of action based upon a violation of 18 **Del.C.** §2304(15)(c).

**6 DE Reg. 1706 (6/1/03)**

#### **4213.0 Effective Date**

This regulation shall become effective on ~~September 1, 2003~~ January 1, 2008.

**6 DE Reg. 1706 (6/1/03)**

11 DE Reg. 630 (11/01/07)(Proposed)