Members of the Legislative Commission;

On behalf of the Insurance Trade Associations, please find attached a letter and supplemental information objecting to LCB File No. R087-20.

I previously sent this information, however, now that this proposed and adopted regulation from the Division of Insurance has been officially added to your Legislative Commission's Dec. 28th meeting I wanted to distribute to you personally.

The insurance industry has been an active participant in the workshops and hearing on this matter with the Division.

While the attachments will provide you with more detail there are two main points we want to convey:

1) **Less restrictive alternatives may be utilized with more immediate effect.** The Insurance Trade Associations have proposed solutions and processes to accomplish the Division's goal that work within the existing statutes and without creating regulatory uncertainty.

2) **Prior approved rates and processes are retroactively made unfairly discriminatory.** Nevada is a prior approval state, meaning that rates and processes must be submitted to the Division and approved before their usage by insurance carriers. This Ex Post Facto regulation destabilizes the regulatory system by declaring prior approved conduct actionable.

We hope you will review this information and return this regulation to the Division of Insurance for further consideration. There are ways to protect the consumer and accomplish the Division's stated goals without creating these regulatory issues. The Insurance Trade Associations will continue to work in good faith to these ends.

Should you have any questions, please do not hesitate to contact me or any one of the trade association representatives.

Best,

Jesse

***Please note the new email address effective 8/1/2020**

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December 21, 2020

Legislative Commission
Subcommittee to Review Regulations

Re: LCB File No. R087-20, Regulation Concerning Adverse Credit-Based Rescoring

Dear Chairwoman Cannizzaro and Members of the Subcommittee;

National Association of Mutual Insurance Companies, the American Property Casualty Insurance Association, and the Nevada Insurance Council (collectively the "trades") representing the majority of property casualty insurers in Nevada urge the Legislative Commission to return the proposed regulation to the Division of Insurance for continued discussion and amendment.

The trades have actively participated in each step of the rulemaking process with the Division of Insurance ("Division") since the inception of this regulation.

Throughout the rulemaking process, the trades have been consistent – we are, and remain, willing to work with the Division on this proposal.

However, we have identified several significant concerns with the proposed regulation:

1) The regulation declares that statutorily authorized, currently filed, Division approved rates and processes are now unfairly discriminatory.

2) The retroactive application of the regulation is prohibited under the Filed Rate Doctrine and is an unconstitutional taking of insurer property without compensation.

3) Nevada law provides the ability for insurers to use Credit-Based Insurance Scores and provides a process for consumers to request an accommodation regarding that usage – even specifically in this declared emergency. Specifically, policyholders may request from their insurer an extraordinary life circumstances (ELC) accommodation to address any COVID related impact upon their credit-based insurance score

4) The Division did not provide data to support the regulation or to show why the statutory ELC process is not sufficient and working as intended.

5) The goals of the Division can be accomplished without being actuarially problematic and creating immediate instability in regulation.

Throughout the workshops and hearing, the trades did not object for the sake of objection; we have offered specific amendment drafts and concepts to both address our concerns and

accommodate the Division's objectives (Attached). We have offered expert opinions from nationally recognized authorities on credit during the pandemic. And we have submitted independent legal analysis outlining the problems with the proposed regulation (Attached). Further, the trades have suggested processes and actions the Division could take which would advance the Division's stated goals on a near immediate basis.

However, as this commission will note, there has been no alteration, no amendment, and no consideration of these alternatives by the Division. Each concern, each amendment, each data point has been summarily dismissed.

And now, following the October 20, 2020 Adoption Hearing, we have concerns over the process and notice. To date, the Division has not notified the stakeholders who participated in the NRS 233B rulemaking process of their November 23rd order and adoption, nor has it posted any notice of adoption of this regulation on their website.

In fact, only through a specific open records request was industry made aware the Division had adopted this regulation – on December 14th.

On behalf of our members, the trades object to the adoption of this regulation by the Division. We request that the Legislative Commission return this regulation to the Division of Insurance for continued workshopping within the statutory authorized framework of NRS 686A.600. Throughout this pandemic, insurers have proactively worked to address the needs of their policyholders. Insurers voluntarily returned auto insurance premium to policyholders when it appeared as though COVID shutdowns were resulting in temporarily less driving and potentially less claims losses exposure for insurers.

To that end, the trades and our members reiterate our strong desire to collaborate with the Division this issue.

Thanks for your time and consideration on this matter.

Respectfully,

Melissa Crawford
Board President
Nevada Insurance Council
(503) 312-4439

Mark Sektnan
Vice President, State Government Relations
APCIA
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Christian John Rataj, Esq.
Sr. Regional Vice-President
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Attachments:
Legal Opinion on R087-20
Concept draft regulation proposed to the Division of Insurance

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September 30, 2020

Via Electronic Mail

Melissa Crawford
Board President
Nevada Insurance Council
Crawfm12@nationwide.com

Re: Opinion Letter On the Proposed Regulation of the Division of Insurance, LCB File No. R087-20

Ms. Crawford:

I. INTRODUCTION.

You have asked this firm to review, research, and render an opinion on the legality and propriety of the Nevada Division of Insurance's (the "Division") proposed permanent regulation LCB File No. R087-20 (the "Regulation"). Among other things, the Division seeks to (1) restrict insurers' use of consumer reports to raise insurance premiums or make adverse underwriting decisions during the current COVID state of emergency and for two years after its conclusion; and (2) require insurers who have made changes to insurance policies because of post-March 12, 2020 credit information to (i) restore those policies to their prior versions and (ii) refund the additional premium payments.

Simply put, the Division has concluded that because people have had no control over COVID's widespread disruptions to their lives, health, and jobs, they should not suffer negative insurance-related consequences merely because of declining credit. Undoubtedly, the Division's efforts are well-intentioned. Moreover, despite a relatively thin evidentiary record, it is likely that COVID is the sole cause of many (if not most) of the credit-damaging events Nevadans are now seeing. The severity of the pandemic and the need for unprecedented, emergency action by lawmakers and regulators must factor into any analysis of legal change. Lawmakers do not create laws in a vacuum. That said, lawmakers must follow established procedure and meet established standards when writing laws, even during emergencies.

In this letter, I will examine and opine on the following:

1. Does the Division have statutory authority to issue the Regulation?

2. Does the Regulation conflict with current statutes?

3. May the Division retroactively apply the Regulation to rewrite existing contracts and require refunds of insurance premiums already paid?

4. Are there any other less burdensome options that the Division could pursue to achieve similar ends?

II. LEGAL ANALYSIS

The Nevada Supreme Court has held that regulations are invalid "when the regulation violates the constitution, conflicts with existing statutory provisions, or exceeds the statutory authority of the agency or is otherwise arbitrary or capricious." *State, Div. of Ins. v. State Farm Mut. Auto. Ins. Co.*, 116 Nev. 290, 293, 995 P.2d 482, 485 (2000). When examining whether an administrative regulation is valid, "[courts] will generally defer to the 'agency's interpretation of a statute the agency is charged with enforcing.' . . . However, [courts] will not defer to the agency's interpretation if, for instance, the regulation 'conflicts with existing statutory provisions or exceeds the statutory authority of the agency.'" *Nevada Attorney for Insured Workers v. Nevada Self-Insurers Ass'n.*, 126 Nev. 74, 83, 225 P.3d 1265, 1271 (2010) (quoting *State, Div. of Ins. v. State Farm*, 116 Nev. at 293, 995 P.2d at 485).

"Administrative regulations cannot contradict the statutes they implement." *DeMaranville v. Emp'rs Ins. Co. of Nev.*, 135 Nev. 259, 266, 448 P.3d 526, 532 (2019); *see also Jerry's Nugget v. Keith*, 111 Nev. 49, 54, 888 P.2d 921, 924 (1995); *Pub. Agency Comp. Trust (PACT) v. Blake*, 127 Nev. 863, 868, 265 P.3d 694, 697 (2011).

A. Does the Division have statutory authority to issue the Regulation?

The Division cites NRS 679B.130, 679B.150, 686A.015, 686A.100, and 686A.130 as authority for Sections 1-4 of the Regulation, and NRS 679B.130 and 686A.015 as authority for Section 5.

The above statutes do supply the Division with general authority to make Insurance Code regulations (NRS 679B.130), set standards for insurance policies (NRS 679B.150), and claim exclusive jurisdiction to investigate and punish unfair trade practices within the business of insurance (NRS 686A.015). NRS 686A.100 and 686A.130 also bar unfair discrimination and other practices in life, health, property, casualty, surety, and title insurance. NRS 686A.680, the statute authorizing the use of consumer reports, details no role for the Division other than approving procedures an insurer may use when an insured has no credit information. None of these statutes, though, provide the Division with the specific authority to override statutes or to prohibit insurers from using consumer reports. Nor do these statutes give the Division the

particular power to pass regulations with clear retroactive effect on otherwise legal activity and valid contracts.

The Regulation makes substantial changes to current law. In addition to prohibiting the use of consumer reports, and retroactively punishing certain conduct, the Regulation also forbids increases to and use of "insurance scores," expands the meaning of "unfair discrimination," adds new limits on what "reasonable way[s]" insurers may calculate risks, and rewrites rates and procedures that the Division has already approved. The Division lacks specific statutory authority to do all of these things.

Nevertheless, during an emergency, the Division's broad, general authority to issue regulations for the entire Insurance Code is likely enough to regulate the use of consumer reports, as long as such regulations do not conflict with the statutes themselves. Still, general authority is not absolute authority; the further the Division drifts away from bedrock statutory commands, the more likely it is to run into conflict with other statutory provisions.

B. Does the Regulation conflict with the statutes?

Even if the Division is acting within its authority, it cannot rewrite or circumvent statutory law. Here, the Regulation conflicts with plain statutory text and legislative intent in multiple ways.

1. Wholesale prohibition on the use of consumer reports contradicts statute.

NRS 686A.680 expressly permits insurers to use consumer reports when setting rates. The statute also establishes clear limits on the types of reports insurers may use, and how they may use them. For instance, insurers who rely on credit information from consumer reports may not calculate insurance scores based on "income, gender, sexual orientation, gender identity or expression, address, zip code, ethnic group, religion, marital status, or nationality of the consumer, or that would otherwise lead to unfair or invidious discrimination." NRS 686A.680(1)(a). The law also prohibits insurers from basing renewal rates solely on credit information. *Id.* at 686A.680(1)(c).

NRS 686A.680 contains multiple other restrictions on the use of consumer reports as well, but nowhere does it empower the Division to mandate a blanket restriction on consumer reports because of something like COVID. Indeed, NRS 686A.680's next-door neighbor, NRS 686A.685, directly and explicitly accounts for the use of consumer reports during catastrophes. The statutorily prescribed solution is for insurers to grant reasonable exceptions to insureds for the sort of tragic events that COVID has undoubtedly caused. Federal and state emergencies, death or serious injury to the insured (or to his or her immediate family), involuntary job loss, and more, are all covered under NRS 686A.685. For such events, NRS 686A.685 requires insurers using consumer reports to make reasonable exceptions to insurance policies. And the

Division will have already approved these reasonable exceptions (and the insurer's associated policies and procedures) when pre-approving insurance rates.

Rather than utilize the "reasonable exceptions" process in NRS 686A.685, though, the Division essentially erases NRS 686.680 from the law. Regulations that "nullify the provisions" in a statute contradict that statute. *DeMaranville*, 135 Nev. at 266, 448 P.3d at 532.

2. The Regulation conflicts with the statutes governing unfair discrimination.

Sec. 2(3) of the Regulation states that any "increase in a premium or adverse underwriting decision which violates the [Regulation's prohibition on using consumer reports] shall be deemed by the Division to be unfairly discriminatory." "Unfair discrimination," however, is a term with statutory meaning and textual roots. The Division is not painting on a blank canvas, and the statutes do not give the Division the authority to simply pack any activity it may not like into the meaning of "unfair discrimination."

"Unfair discrimination" is mentioned in the Insurance Code multiple times. In particular (and as it relates here), the law tasks the Division with protecting against unfair discrimination in two main ways: (1) when an insurer submits rates to the division for approval (NRS 686B.050); and (2) when an insurer actually engages in particular unfair prejudice with respect to its insureds (NRS 686A.100 and 686A.130). In both instances, the statutes also provide some guidance on what "unfair discrimination" actually means.

With respect to the Division's pre-approval of rates, NRS 686B.050 states:

> One rate is unfairly discriminatory in relation to another in the same class if it clearly fails to reflect equitably the differences in expected losses and expenses. Rates are not unfairly discriminatory because different premiums result for policyholders with similar exposure to loss but different expense factors, or similar expense factors but different exposure to loss, so long as the rates reflect the differences with reasonable accuracy. Rates are not unfairly discriminatory if they are averaged broadly among persons insured under a group, franchise or blanket policy.

Insurers are familiar with this standard and know how to meet it. With the Regulation, though, the Division has not analyzed whether insurers can or will use post-COVID consumer reports in a non-discriminatory way per the terms of the statute. All the Division has said is that the use of consumer reports is categorically and automatically unfair discrimination when combined with a premium increase. This is not the law.

As for investigating and punishing insurers who engage in unfair discrimination on a case-by-case basis, the statutes provide clarity. Differences in casualty premiums, for instance, are only discriminatory if two insureds have different premiums despite having "like insuring or risk characteristics." NRS 686A.130(5). Insurers must treat like insureds alike. Again, the Division has offered no evidence that insurers will rely on post-COVID consumer reports to charge different premiums to individuals who share insuring and risk characteristics.

In fact, by the Division's own reworked definition of "unfair discrimination," the Regulation opens the door to the same type of conduct it seeks to stop. Insurers are allowed to use consumer reports to *lower* premiums. Sec. 3(3)-(4). If only those with good credit may qualify for lower premiums, though, how is this premium requirement any less discriminatory than the activity the Regulation prohibits? The problem is the same: differing premiums based on differing credit. That the only way to guard against this discrimination is to arbitrarily bar premium reductions shows what an ill fit "unfair discrimination" is as the vehicle for the Division's preferred policy. Unfair discrimination is a precise evil with precise remedies.

3. The Regulation conflicts with NRS 686B.060.

NRS 686B.060(2) states: "Risks may be classified in **any reasonable way** for the establishment of rates and minimum premiums, except that classifications may not be based on race, color, creed, national origin, sexual orientation or gender identity or expression. Rates thus produced may be modified for individual risks in accordance with rating plans or schedules which establish reasonable standards for measuring probable variations in hazards, expenses, or both." (Emphasis added).

The Division has determined that using post-COVID consumer reports to set premiums is "not a reasonable way, as that term is utilized in NRS 686B.060(2), to classify risks due to the lack of relationship of such deterioration of consumer credit information or credit-based insurance score to individual behavior and due to the systemic causes of such deterioration arising out of the COVID-19 pandemic." NRS 686B.060(2) does provide specific classifications that may not be used in configuring rates: "race, color, creed, national origin, sexual orientation or gender identity or expression." For good or ill, the statute does not authorize the Division to add to that list of prohibited classifications. Why else have a specific list?

The Legislature simply requires "reasonable" risk classifications done in "any way" save those ways the laws expressly forbids. To allow the Division to unilaterally restrict otherwise legal and customary practices for classifying risk makes the plain terms of NRS 686A.060(2) superfluous. Why have any statutory standards for risk calculations or statutory approvals for things like consumer reports if the Division's discretion is all that matters? Are there any limits at all on the Division's ability to deem certain practices "unreasonable" even if the statutes say otherwise?

Again, the Regulation nullifies governing statutory provisions and text.

4. The Regulation conflicts with the approved use of insurance scores.

In addition to prohibiting premium increases based on post-COVID consumer reports, the Regulation also bans premium increases based on changes to insurance scores. *See* Sec. 2. But consumer reports and insurance scores are not necessarily the same thing. NRS 686A.660 defines an "Insurance Score" as "a number or rating that is derived from an algorithm, computer application, model or other process that is based **in whole or in part** on credit information for the purposes of predicting the future losses or exposure with regard to an applicant or policyholder." (Emphasis added).

By definition, a consumer report may be just one a part of an individual's insurance score. And the Regulation bars consideration of those other parts of the score that may have nothing to do with consumer reports. Indeed, an insurer could stop using consumer reports entirely and still not be allowed to rely on insurance scores to set premiums and policies.

C. May the Regulation Require Contractual Rewrites and Retroactive Refunds?

The Regulation requires insurers who have increased premiums since March 12, 2020 based on post-COVID consumer reports to not only rewrite the policies, but to also refund any overpayments from increased premiums. *See* Sec. 4. This retroactive punishment of lawful activity is the most concerning feature of the Regulation.

"'Retroactivity is not favored in the law.'" *Cnty. of Clark v. LB Props., Inc.*, 129 Nev. 909, 912, 315 P.3d 294, 296 (2013) (quoting *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208, 109 S. Ct. 468 (1998)). Lawmakers may pass retroactive laws, but they are highly disfavored. "[T]he presumption against retroactive legislation is deeply rooted in our jurisprudence, and embodies a legal doctrine centuries older than our Republic." *Sandpointe Apts. v. Eighth Jud. Dist. Ct.*, 129 Nev. 813, 826, 313 P.3d 849, 857 (2013) (quoting *Landgraf v. USI Film Prods.*, 511 U.S. 244, 272, 114 S.Ct. 1483 (1994)). From the Nevada Supreme Court's "inception, it has viewed retroactive statutes with disdain, noting that such laws are 'odious and tyrannical' and 'have been almost uniformly discountenanced by the courts of Great Britain and the United States.'" *Id.*, 129 Nev. at 826, 313 P.3d at 857-58 (quoting *Miliken v. Sloat*, 1 Nev. 573, 577 (1865)).

"[A] statute has a retroactive effect when it takes aware or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past." *Corp. Bishop, LDS v. Seventh Jud. Dist. Ct.*, 132 Nev. 67, 72, 366 P.3d 1117, 1120 (2016) (quoting *Pub. Emps.'*

Benefits Program v. Las Vegas Metro. Police Dep't, 124 Nev. 138, 155, 179 P.3d 542, 553-54 (2008)).

Laws will not be applied retroactively unless "(1) the legislature clearly manifests an intent to apply the statute retroactively, or (2) 'it clearly, strongly, and imperatively appears from the act itself' that the legislature's intent cannot be implemented in any other fashion.'" *Pub. Emps.*,' 124 Nev. at 154, 179 P.3d at 553 (quoting *In re Estate of Thomas*, 116 Nev. 492, 495-96, 998 P.2d 560, 562 (2000)).

Insurers have vested rights in their valid insurance contracts. They entered into these contracts using approved rates and employing legal procedures and methods. The Division alleges no wrongdoing on their part. And yet, the Regulation would require not only a rewriting of these exiting contracts, but also refunds. Therefore, the Regulation is clearly retroactive, and must meet the stringent tests for retroactive laws.

Although the Division manifests clear intent to apply the Regulation retroactively, the Legislature has not. The statutes do not "clearly, strongly, and imperatively" delegate authority to the Division to enact retroactive regulations or impose retroactive punishments for activity the Legislature had approved. Insurers are penalized for following the law at the time they acted. Furthermore, there is no evidence that the Division not could largely achieve the same ends by applying the Regulation prospectively.

Lastly, retroactive laws like the Regulation run into constitutional problems too. They may be an impairment of a contract barred by both the U.S. Constitution (Art. 1, Sec. 10, Clause 1) and the Nevada Constitution (Art. 1, Sec. 15). The Regulation may also amount to an unconstitutional taking under the Nevada Constitution, which prohibits the direct and indirect transfer of taken property from one private party to another. *See* Nev. Const. Art. 1, Sec. 22(1).

Altogether, the Regulation's retroactivity exposes it to serious legal challenge.

D. Are There Any Less Burdensome Options The Division Could Pursue To Achieve Similar Ends?

Whether the Division may achieve similar ends by less burdensome means does factor into a legal review of the propriety of the Regulation itself. Severe regulations tend to look arbitrary and punitive when alternative paths with clearer statutory authority are available. To the extent that the Division simply wants to make sure individuals are not unjustly punished for COVID disruptions outside their control, the Division has other avenues to explore. As mentioned above, NRS 686A.685 already allows people to seek reasonable exceptions to their insurance policies when experiencing catastrophic events. COVID certainly qualifies as a catastrophic event. So does a COVID-related illness, death, or job loss—all of which NRS 686A.685 covers.

The Division has already approved a particular insurer's policies and procedures for granting reasonable exceptions, and the Division will have a chance to insist on further requirements whenever that insurer submits its rates for pre-approval. What's more, NRS 686A.685(6) specifically grants the Division the authority to adopt regulations to carry out the provisions of the statute. The Division should feel free to issue new regulations making it easier for individuals to request and obtain reasonable exemptions to their policies due to COVID. Doing so should allow the Division to obtain similar ends through less burdensome, and less legally suspect, means than the Regulation.

III. CONCLUSION.

In short, I believe that the Regulation is generally invalid because it conflicts with statute. I also believe that the retroactive portion of the Regulation is specifically invalid or otherwise unlawful. Nevertheless, court challenges to agency regulations are always an uphill battle, and even more so during this pandemic. My legal opinion is that the Regulation is improper, but I make no predictions on any outcome in court. There is a legal path to compromise, and, preferably, the industry and the Division will be able to work out a reasonable solution that will adequately protect the insured from additional COVID hardships.

Thank you for your request. Please do not hesitate to contact me with any questions or concerns.

Sincere regards,

HUTCHISON & STEFFEN, PLLC

Daniel H. Stewart
For the Firm

cc: J. Wadhams

Amendment to

Proposed by:

Rationale:

EXPLANATION: Matter in (1) ***blue bold italics*** is new language (2) variations of **green bold underlining** is language proposed to be added by amendment; (3) ~~red strikethrough~~ is deleted language; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

Section 1. Chapter 686A of NAC is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this regulation.

Sec. 2. ***1.*** ~~An insurer that uses information from a consumer credit report shall not increase a policyholder's premium or make an adverse underwriting decision as a result of any change in the policyholder's consumer credit report or insurance score which occurred on or after March 1, 2020, and on or before the date which is 2 years after the termination date of the Declaration of Emergency for COVID-19 issued by the Governor on March 12, 2020.~~

~~2.~~ ***Every*** ~~such~~ ***change in*** ~~***the***~~ ***an existing policyholder's consumer credit report or insurance score which*** **increases a policyholder's premium as result of any change in the policyholder's consumer credit report or insurance score which occurred on or after March 1, 2020, and on or before** ~~occurred during the period of time described in subsection 1~~ ***December 31, 2022 shall be deemed by the Commissioner to be:***

(a) Caused by the COVID-19 emergency, which is the subject of the Declaration of Emergency mentioned in subsection 1;

(b) Independent of the choice or the financial management decisions of any applicable individual; and

(c) Unrelated to expected losses and expenses for all lines of insurance.

2. ~~A~~ ***An existing*** **policyholder who may experience** ~~Any~~ **an** ***increase in a premium or adverse underwriting decision*** ~~which violates the prohibition~~ **described** ***in subsection 1 shall be deemed by the Commissioner to*** ~~be unfairly discriminatory.~~

a. have requested an exception pursuant to NRS 686A.685(1) and,

b. that the insurer shall have granted that exception by not increasing the policyholder's premium.

~~*3.* As used in this section, "adverse underwriting decision" has the meaning ascribed to it in NAC 679B.565.~~

Sec. 3. **1. An insurer may use a consumer credit report or insurance score in rating a policy if the information used for such a report or score was gathered, calculated, updated or recalculated, as appropriate, and any changes to the report or score occurred, before March 1, 2020, or after** ***December 31, 2022.*** ~~the date which is 2 years after the termination date of the Declaration of Emergency for COVID-19 issued by the Governor on March 12, 2020~~**.**

2. Except as otherwise provided in subsection 3, an insurer is not required to update such information, reports or scores for changes that occurred on or after March 1, 2020, and on or before ***December 31, 2022***. ~~*the date which is 2 years after the termination date of the Declaration of Emergency for COVID-19 issued by the Governor on March 12, 2020*~~.

3. If, pursuant to subsection 2 of NRS 686A.680, a policyholder or a policyholder's agent requests an insurer to reunderwrite and rerate the policyholder's policy based on a current consumer credit report or insurance score, the insurer may use a consumer credit report of the policyholder that is updated during the period described in subsection 2, or may recalculate the insurance score of the policyholder during the period described in subsection 2, if the updated consumer credit report or recalculation results in the

policyholder paying a lower premium than the policyholder would have paid absent the updated consumer credit report or recalculation.

4. If an insurer obtains an updated consumer credit report or recalculates the insurance score of the policyholder without a request from the policyholder or from the policyholder's agent pursuant to subsection 2 of NRS 686A.680, the insurer may use the consumer credit report of the policyholder that was updated during the period described in subsection 2, or may use the insurance score of the policyholder that was recalculated during the period described in subsection 2, if the updated consumer credit report or recalculation results in the policyholder paying a lower premium than the policyholder would have paid absent the updated consumer credit report or recalculation.

~~**Sec. 4.** 1. An insurer that uses information from a consumer credit report shall identify any policyholder whose premium was increased as a result of changes in the policyholder's consumer credit report or insurance score which occurred on or after March 1, 2020, and on or before the date which is 2 years after the termination date of the Declaration of Emergency for COVID-19 issued by the Governor on March 12, 2020.~~

~~2. After identifying any increase pursuant to subsection 1, the insurer shall revise the premium by:~~

~~(a) Using a consumer credit report or insurance score that is based on information which was gathered, calculated, updated or recalculated, as appropriate, before March 1, 2020, in rating the policy; or~~

~~(b) Reunderwriting and rerating the policyholder's policy pursuant to subsection 3 or 4 of section 3 of this regulation, as applicable, whichever results in the lower premium paid by the policyholder.~~

~~3. After revising the premium pursuant to subsection 2, the insurer shall refund to the~~

~~policyholder the amount of overpayment that resulted from the increase. The minimum refund must be equal to the amount of the premium increase attributable to the changes in the policyholder's consumer credit report or insurance score which occurred on or after March 1, 2020, and on or before the date which is 2 years after the termination date of the Declaration of Emergency for COVID-19 issued by the Governor on March 12, 2020. 4. Nothing in this section prohibits insurers from offering: (a) Greater refunds than the minimum amounts specified in subsection 3; and (b) Other refunds or measures for consumer relief based on considerations independent of consumer credit information. 5. An insurer that revises a premium pursuant to this section shall: (a) Provide notice to the policyholder that the revision has been made; and (b) Provide notice to the policyholder explaining the reasons for the revision.~~

Sec. 4 . ~~**Sec. 5.**~~ NAC 686A.700 is hereby amended to read as follows:

686A.700 As used in this section and NAC 686A.710 ~~[,]~~ **and sections 2, *and* 3** ~~and 4~~ **of this regulation,** unless the context otherwise requires, the words and terms defined in NRS 686A.610 to 686A.660, inclusive, have the meanings ascribed to them in those sections.