

By the Committee on Banking and Insurance; and Senator Miller

311-1930-03

1 A bill to be entitled
2 An act relating to the use of credit reports
3 and credit scores by insurers; creating s.
4 626.9741, F.S.; specifying that the act's
5 purpose is to regulate and limit the use of
6 credit reports and credit scores by insurers
7 for underwriting and rating purposes;
8 specifying the types of insurance to which the
9 act applies; defining terms; requiring that an
10 insurer identify the items in a credit report
11 which resulted in an adverse decision;
12 prohibiting an insurer from making an adverse
13 decision based solely on a credit report or
14 score or certain other factors; requiring an
15 insurer to provide a means for appeal to an
16 applicant or insured under certain
17 circumstances; prohibiting the use of a credit
18 report or score unless the Office of Insurance
19 Regulation determines, based on a filing by the
20 insurer, that such use is valid and reasonable;
21 authorizing the Office of Insurance Regulation
22 to disapprove such filings; requiring an
23 insurer to adhere to certain laws and rules;
24 providing a public-records exemption for credit
25 report methods that are trade secrets;
26 requiring an insurer to provide for an
27 adjustment in the premium of an insured to
28 reflect an improvement in credit history;
29 authorizing the Financial Services Commission
30 to adopt rules; providing for application;
31 providing an effective date.

1 Be It Enacted by the Legislature of the State of Florida:

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3 Section 1. Section 626.9741, Florida Statutes, is
4 created to read:

5 626.9741 Use of credit reports and credit scores by
6 insurers.--

7 (1) The purpose of this section is to regulate and
8 limit the use of credit reports and credit scores by insurers
9 for underwriting and rating purposes. This section applies
10 only to personal lines motor vehicle insurance and personal
11 lines residential insurance, which includes homeowners, mobile
12 homeowners dwelling, tenants, condominium unit owners,
13 cooperative unit owners, and similar types of insurance.

14 (2) As used in this section, the term:

15 (a) "Adverse decision" means a decision to refuse to
16 issue or renew a policy of insurance; to issue a policy with
17 exclusions or restrictions; to increase the rates or premium
18 charged for a policy of insurance; to place an insured or
19 applicant in a rating tier that does not have the lowest
20 available rates for which that insured or applicant is
21 otherwise eligible; or to place an applicant or insured with a
22 company operating under common management, control, or
23 ownership which does not offer the lowest rates available,
24 within the affiliate group of insurance companies, for which
25 that insured or applicant is otherwise eligible.

26 (b) "Credit report" means any written, oral, or other
27 communication of any information by a consumer reporting
28 agency, as defined in the federal Fair Credit Reporting Act,
29 15 U.S.C. s. 1681, et seq., bearing on a consumer's credit
30 worthiness, credit standing, or credit capacity, which is used
31 or expected to be used or collected as a factor to establish a

1 person's eligibility for credit or insurance, or any other
2 purpose authorized pursuant to the applicable provision of
3 such federal act. A credit score alone, as calculated by a
4 credit reporting agency or by or for the insurer, may not be
5 considered a credit report.

6 (c) "Credit score" means a score, grade, or value that
7 is derived by using any or all data from a credit report in
8 any type of model, method, or program, whether electronically,
9 in an algorithm, computer software or program, or any other
10 process, for the purpose of grading or ranking credit report
11 data.

12 (d) "Tier" means a category within a single insurer
13 into which insureds with substantially similar risk, exposure,
14 or expense factors are placed for purposes of determining rate
15 or premium.

16 (3) An insurer must inform an applicant or insured, in
17 the same medium as the application is taken, that a credit
18 report or score is being requested for underwriting or rating
19 purposes. An insurer that makes an adverse decision based, in
20 whole or in part, upon a credit report must provide at no
21 charge, a copy of the credit report to the applicant or
22 insured or provide the applicant or insured with the name,
23 address, and telephone number of the consumer reporting agency
24 from which the insured or applicant may obtain the credit
25 report. The insurer must provide notification to the consumer
26 explaining the reasons for the adverse decision. The reasons
27 must be provided in sufficiently clear and specific language
28 so that a person can identify the basis for the insurer's
29 adverse decision. Such notification shall include a
30 description of the four primary reasons, or such fewer number
31 as existed, which were the primary influences of the adverse

1 decision. The use of generalized terms such as "poor credit
2 history," "poor credit rating," or "poor insurance score" does
3 not meet the explanation requirements of this paragraph. A
4 credit score may not be used in underwriting or rating
5 insurance unless the scoring process produces information in
6 sufficient detail to permit compliance with the requirements
7 of this subsection.

8 (4)(a) An insurer may not request a credit report or
9 score based upon the race, color, religion, marital status,
10 age, gender, income, national origin, or place of residence of
11 the applicant or insured.

12 (b) An insurer may not make an adverse decision solely
13 because of information contained in a credit report or score
14 without consideration of any other underwriting factor.

15 (c) An insurer may not make an adverse decision or use
16 a credit score that could lead to such a decision if based, in
17 whole or in part, on:

18 1. The absence of, or an insufficient, credit history;

19 2. The number of credit reports or credit inquiries
20 requested or made regarding the applicant or insured;

21 3. Collection accounts with a medical industry code,
22 if so identified on the consumer's credit report;

23 4. Place of residence; or

24 5. Any other circumstance that the Financial Services
25 Commission determines, by rule, lacks sufficient logical
26 validity as a predictor of insurance risk.

27 (d) An insurer must, upon the request of an applicant
28 or insured, provide a means of appeal for an applicant or
29 insured whose credit report or credit score is unduly
30 influenced by the death of a spouse or temporary loss of
31 employment. The insurer must complete its review within 10

1 days after the request by the applicant or insured and, if the
2 insurer determines that the credit report or credit score was
3 unduly influenced by either of such factors, the insurer must
4 reconsider the credit report or credit score without
5 consideration of those portions of the credit report or credit
6 score that were affected.

7 (5) A rate filing that uses credit reports or credit
8 scores must comply with the requirements of s. 627.062 or s.
9 627.0651 to ensure that rates are not excessive, inadequate,
10 or unfairly discriminatory.

11 (6) Credit scoring methods that are trade secrets, as
12 defined in s. 688.002, and that are filed with the office
13 pursuant to a rate filing, or upon request by the office
14 pursuant to an investigation, are exempt from the public
15 records requirements of chapter 119 and s. 24(a), Art. I of
16 the State Constitution.

17 (7) An insurer that requests or uses credit reports
18 and credit scoring in its underwriting and rating methods
19 shall maintain and adhere to established written procedures
20 that reflect the restrictions set forth in the federal Fair
21 Credit Reporting Act, this section, and all rules related
22 thereto.

23 (8)(a) An insurer shall establish procedures that
24 provide that at least every 3 years, or upon the request of
25 the insured, the insurer shall review the credit history of an
26 insured who was adversely impacted by the use of the insured's
27 credit history at the initial rating of the policy, or at a
28 subsequent renewal thereof, and shall adjust the premium of
29 the insured to reflect any improvement in the credit history.
30 The procedures must provide that with respect to existing
31 policyholders, the review of a credit report will not be used

1 by the insurer to cancel, refuse to renew, or require a change
2 in the method of payment or payment plan.

3 (b) However, as an alternative to the requirements of
4 paragraph (a), an insurer that used a credit report or credit
5 score for an insured upon inception of a policy may reevaluate
6 the insured within the first 3 years after inception, based on
7 other allowable underwriting or rating factors, excluding
8 credit information if the insurer does not increase the rates
9 or premium charged to the insured based on the exclusion of
10 credit reports or credit scores.

11 (9) The commission may adopt rules to administer this
12 section. The rules may include, but need not be limited to:

13 (a) Information that must be included in filings to
14 demonstrate compliance with subsection (3).

15 (b) Statistical detail that insurers using credit
16 reports or scores under subsection (5) must retain and report
17 annually to the Office of Insurance Regulation.

18 (c) Standards that ensure that rates or premiums
19 associated with the use of a credit report or score are not
20 unfairly discriminatory, based upon race, color, religion,
21 marital status, age, gender, income, national origin, or place
22 of residence.

23 (d) Standards for review of models, methods, programs,
24 or any other process by which to grade or rank credit report
25 data and which may produce credit scores in order to ensure
26 that the insurer demonstrates that such grading, ranking, or
27 scoring is valid in predicting insurance risk of an applicant
28 or insured.

29 Section 2. This act shall take effect January 1, 2004,
30 and shall apply to policies issued or renewed on or after that
31 date.

1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 204

- 4 1. Expands the scope of the bill to include the regulation
5 and limitation of the use of credit reports and credit
6 scores for underwriting and rating personal automobile
7 insurance and personal lines residential insurance.
8 2. Expands the definition of the term, "adverse decision."
9 3. Adds age, income, and place of residence to the reasons
10 for which an insurer may not request a credit report or
11 credit score.
12 4. Specifies that an insurer must notify an applicant or
13 insured, in the same medium as the application is being
14 taken, that a credit report or credit score is being
15 requested.
16 5. Clarifies and revises notification procedures relating to
17 an adverse decision by an insurer.
18 6. Requires an insurer, upon request, to provide an appeals
19 process for an applicant or insured whose credit report
20 or credit score is unduly influenced by the death of a
21 spouse or temporary loss of employment.
22 7. Provides that if a credit scoring method is a trade
23 secret, as defined in s. 688.002, F.S., and filed with
24 the office, it is exempt from the public records
25 requirement of chapter 119 and s. 24(a), Art. I of the
26 State Constitution.
27 8. Revises statutory standards to be used by the Office of
28 Insurance Regulation relating to filing and approval of
29 the use of credit reports or credit scores.
30 9. Requires an insurer to periodically evaluate the credit
31 history of an insured that was adversely impacted by the
use of credit history.
10. Requires insurers to adhere to established written
procedures that reflect the restrictions set forth in the
federal Fair Credit Reporting Act and related rules.
11. Authorizes the Financial Services Commission to adopt
rules.
12. Eliminates the requirement that an insurer may not cancel
or renew a policy until 30 days after the resolution of
disputed information contained in a credit report.
13. Eliminates the requirement in the bill that the Office of
Insurance Regulation conduct a study of the use of credit
information as an underwriting and rating factor.