



HB 0233

2003

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A bill to be entitled

An act relating to use of consumer credit information in personal insurance underwriting; providing a popular reference name; providing a purpose; providing application; providing definitions; specifying prohibited activities for insurers using credit information for certain purposes; requiring insurers to reunderwrite or rerate consumers under certain circumstances; requiring a refund under certain circumstances; requiring insurers to disclose certain credit information acquisition activities under certain circumstances and to secure authorization for such activities; requiring insurers to provide certain notice of adverse actions; providing criteria; requiring insurers to file certain scoring models or processes with the Office of Insurance Regulation of the Financial Services Commission; requiring insurers to indemnify, defend, and hold harmless certain agents from liability, fees, and costs under certain circumstances; prohibiting consumer reporting agencies from providing or selling certain lists or data relating to certain consumer credit information; providing an exception; providing severability; requiring the Office of Insurance Regulation of the Financial Services Commission to conduct a study of the use of credit information for underwriting and rating purposes; providing study criteria; providing an effective date.

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

Section 1. (1) This section may be popularly referred to



HB 0233

2003

31 as the "Use of Credit Information in Personal Insurance Act."

32 (2) The purpose of this section is to regulate the use of
33 credit information for personal insurance to protect consumers
34 with respect to the use of such information.

35 (3) This section applies to personal insurance only. For
36 purposes of this section, "personal insurance" means private
37 passenger automobile, homeowners', motorcycle, mobile-
38 homeowners', and noncommercial dwelling fire insurance policies
39 and boat, personal watercraft, snowmobile, and recreational
40 vehicle insurance policies. Such policies must be individually
41 underwritten for personal, family, or household use. No other
42 type of insurance shall be included as personal insurance for
43 purposes of this section.

44 (4) For purposes of this section:

45 (a) "Adverse action" means a denial or cancellation of, an
46 increase in any charge for, or a reduction or other adverse or
47 unfavorable change in the terms of coverage or amount of, any
48 insurance, existing or applied for, in connection with the
49 underwriting of personal insurance.

50 (b) "Affiliate" means any company that controls, is
51 controlled by, or is under common control with another company.

52 (c) "Applicant" means an individual who has applied for
53 coverage under a personal insurance policy with an insurer.

54 (d) "Consumer" means an insured whose credit information
55 is used or whose insurance score is calculated in the
56 underwriting or rating of a personal insurance policy or an
57 applicant for such a policy.

58 (e) "Consumer reporting agency" means any entity which,
59 for monetary fees or dues, or on a cooperative nonprofit basis,
60 regularly engages in whole or in part in the practice of



HB 0233

2003

61 assembling or evaluating consumer credit information or other
62 information on consumers for the purpose of furnishing consumer
63 reports to third parties.

64 (f) "Credit information" means any credit-related
65 information derived from a credit report, found on a credit
66 report itself, or provided on an application for personal
67 insurance. Information that is not credit-related shall not be
68 considered credit information, regardless of whether it is
69 contained in a credit report or in an application or is used to
70 calculate an insurance score.

71 (g) "Credit report" means any written, oral, or other
72 communication of information by a consumer reporting agency
73 bearing on a consumer's credit worthiness, credit standing, or
74 credit capacity which is used or expected to be used or
75 collected in whole or in part for the purpose of serving as a
76 factor to determine personal insurance premiums, eligibility for
77 coverage, or tier placement.

78 (h) "Insurance score" means a number or rating that is
79 derived from an algorithm, computer application, model, or other
80 process that is based in whole or in part on credit information
81 for the purposes of predicting the future insurance loss
82 exposure of an individual applicant or insured.

83 (5) An insurer authorized to do business in this state
84 that uses credit information to underwrite or rate risks shall
85 not:

86 (a) Use an insurance score that is calculated using
87 income, gender, address, zip code, ethnic group, religion,
88 marital status, or nationality of the consumer as a factor.

89 (b) Deny, cancel, or nonrenew a policy of personal
90 insurance solely on the basis of credit information without



HB 0233

2003

91 consideration of any other applicable factor independent of
92 credit information and not expressly prohibited by paragraph
93 (a).

94 (c) Base an insured's renewal rates for personal insurance
95 solely upon credit information without consideration of any
96 other applicable factor independent of credit information.

97 (d) Take an adverse action against a consumer solely
98 because he or she does not have a credit card account without
99 consideration of any other applicable factor independent of
100 credit information.

101 (e) Consider an absence of credit information or an
102 inability to calculate an insurance score in underwriting or
103 rating personal insurance, unless the insurer:

104 1. Treats the consumer as otherwise approved by the Chief
105 Financial Officer, if the insurer presents information that such
106 an absence or inability relates to the risk for the insurer;

107 2. Treats the consumer as if the applicant or insured had
108 neutral credit information, as defined by the insurer; or

109 3. Excludes the use of credit information as a factor and
110 uses only other underwriting criteria.

111 (f) Take an adverse action against a consumer based upon
112 credit information unless an insurer obtains and uses a credit
113 report issued or an insurance score calculated within 90 days
114 after the date the policy is first written or renewal is issued.

115 (g) Use credit information unless, not later than every 36
116 months following the last time that the insurer obtained current
117 credit information for the insured, the insurer recalculates the
118 insurance score or obtains an updated credit report. Regardless
119 of the requirements of this paragraph:

120 1. At annual renewal, upon the request of a consumer or



HB 0233

2003

121 the consumer's agent, the insurer shall reunderwrite and rerate
122 the policy based upon a current credit report or insurance
123 score. An insurer need not recalculate the insurance score or
124 obtain the updated credit report of a consumer more frequently
125 than once in a 12-month period.

126 2. The insurer has the discretion to obtain current credit
127 information upon any renewal before the 36-month period, if
128 consistent with the insurer's underwriting guidelines.

129 3. No insurer need obtain current credit information for
130 an insured, despite the requirements of subparagraph 1., if:

131 a. The insurer is treating the consumer as otherwise
132 approved by the Chief Financial Officer;

133 b. The insured is in the most favorably priced tier of the
134 insurer, within a group of affiliated insurers. However, the
135 insurer shall have the discretion to order such report if
136 consistent with its underwriting guidelines;

137 c. Credit was not used for underwriting or rating such
138 insured when the policy was initially written. However, the
139 insurer has the discretion to use credit for underwriting or
140 rating such insured upon renewal if consistent with its
141 underwriting guidelines; or

142 d. The insurer reevaluates the insured beginning no later
143 than 36 months after inception and thereafter based upon other
144 underwriting or rating factors, excluding credit information.

145 (h) Use the following as a negative factor in any
146 insurance scoring methodology or in reviewing credit information
147 for the purpose of underwriting or rating a policy of personal
148 insurance:

149 1. Credit inquiries not initiated by the consumer or
150 inquiries requested by the consumer for his or her own credit



HB 0233

2003

151 information.

152 2. Inquiries relating to insurance coverage, if so
153 identified on a consumer's credit report.

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

156 4. Multiple lender inquiries, if coded by the consumer
157 reporting agency on the consumer's credit report as being from
158 the home mortgage industry and made within 30 days of one
159 another, unless only one inquiry is considered.

160 5. Multiple lender inquiries, if coded by the consumer
161 reporting agency on the consumer's credit report as being from
162 the automobile lending industry and made within 30 days of one
163 another, unless only one inquiry is considered.

164 (i) Use a credit report as an underwriting or rating
165 factor unless the insurer can provide evidence that the methods
166 used to develop and implement the use of credit reports are
167 valid in predicting insurance risk.

168 (6) If it is determined through the dispute resolution
169 process set forth in the federal Fair Credit Reporting Act, 15
170 U.S.C. s. 1681i(a)(5), that the credit information of a current
171 insured was incorrect or incomplete and if the insurer receives
172 notice of such determination from the consumer reporting agency
173 or the insured, the insurer shall reunderwrite and rerate the
174 consumer within 30 days after receiving the notice. After
175 reunderwriting or rerating the insured, the insurer shall make
176 any adjustments necessary consistent with its underwriting and
177 rating guidelines. If an insurer determines that the insured has
178 overpaid premium, the insurer shall refund to the insured the
179 amount of overpayment calculated back to the shorter of the last
180 12 months of coverage or the actual policy period.



HB 0233

2003

181 (7) If an insurer writing personal insurance uses credit
182 information in underwriting or rating an applicant or consumer:

183 (a) The insurer or its agent shall disclose, on the
184 insurance application or at the time the insurance application
185 is taken, that the insurer may obtain credit information in
186 connection with such application. Such disclosure shall be
187 either written or provided to an applicant in the same medium as
188 the application for insurance. The insurer need not provide the
189 disclosure statement required under this paragraph to any
190 insured on a renewal policy if such consumer has previously been
191 provided a disclosure statement. Use of the following example
192 disclosure statement constitutes compliance with this paragraph:

193
194 "In connection with this application for insurance, we
195 may review your credit report or obtain or use a
196 credit-based insurance score based on the information
197 contained in that credit report. We may use a third
198 party in connection with the development of your
199 insurance score."

200
201 (b) The insurer shall secure authorization from each
202 applicant or consumer whose credit will be checked. If
203 permission or authorization is not granted, the absent credit
204 report shall be treated with neutrality and the applicant or
205 consumer shall not be penalized.

206 (8) If an insurer takes an adverse action based upon
207 credit information, the insurer shall:

208 (a) Provide notification to the consumer that an adverse
209 action has been taken, in accordance with the requirements of
210 the federal Fair Credit Reporting Act, 15 U.S.C. s. 1681m(a).



HB 0233

2003

211 (b) Provide notification to the consumer explaining the
212 reasons for the adverse action. The reasons shall be provided
213 in sufficiently clear and specific language so that a person can
214 identify the basis for the insurer's decision to take an adverse
215 action. The insurer shall identify the specific items in the
216 credit information which resulted in the adverse action. Such
217 items must be described such that the applicant or consumer can
218 identify and correct any errors included in the credit
219 information that contributed to the adverse action. The use of
220 generalized terms, including, but not limited to, "poor credit
221 history," "poor credit rating," or "poor insurance score," does
222 not meet the explanation requirements of this paragraph.

223
224 Standardized credit explanations provided by consumer reporting
225 agencies or other third-party vendors are deemed to comply with
226 this subsection.

227 (9) An insurer that uses insurance scores to underwrite
228 and rate risks shall file its scoring models or other scoring
229 processes with the Office of Insurance Regulation of the
230 Financial Services Commission. A third party may file scoring
231 models on behalf of an insurer. A filing that includes
232 insurance scoring may include loss experience justifying the use
233 of credit information. Any filing relating to credit information
234 is considered a trade secret under s. 688.002 or s. 812.081,
235 Florida Statutes.

236 (10) An insurer shall indemnify, defend, and hold agents
237 harmless from and against all liability, fees, and costs arising
238 out of or relating to the actions, errors, or omissions of an
239 agent or a producer who obtains or uses credit information or
240 insurance scores for an insurer, provided the agent or producer



HB 0233

2003

241 follows the instructions of or procedures established by the
242 insurer and complies with any applicable law or regulation.
243 Nothing in this subsection shall be construed to provide a
244 consumer or other insured with a cause of action that does not
245 exist in the absence of this subsection.

246 (11) (a) No consumer reporting agency shall provide or sell
247 data or lists that include any information that in whole or in
248 part was submitted in conjunction with an insurance inquiry
249 about a consumer's credit information or a request for a credit
250 report or insurance score. Such information includes, but is
251 not limited to, the expiration dates of an insurance policy or
252 any other information that may identify time periods during
253 which a consumer's insurance may expire and the terms and
254 conditions of the consumer's insurance coverage.

255 (b) The restrictions provided in paragraph (a) do not
256 apply to data or lists the consumer reporting agency supplies to
257 the insurance agent or producer from whom information was
258 received, the insurer on whose behalf such agent or producer
259 acted, or such insurer's affiliates or holding companies.

260 (c) Nothing in this subsection shall be construed to
261 restrict any insurer from obtaining a claims history report or a
262 motor vehicle report.

263 (12) If any provision of this section or the application
264 thereof to any person or circumstance is held invalid, the
265 invalidity shall not affect other provisions or applications of
266 the section which can be given effect without the invalid
267 provision or application, and to this end the provisions of this
268 section are declared severable.

269 Section 2. The Office of Insurance Regulation of the
270 Financial Services Commission shall conduct a study of the use



HB 0233

2003

271 of credit information as an underwriting and rating factor. The
272 study shall evaluate and determine the increased risk of
273 insurance loss posed by an individual's credit worthiness,
274 credit standing, or credit capacity and the appropriate weight
275 that should be given to such factors in determining insurability
276 in conjunction with other risk factors.

277 Section 3. This act shall take effect October 1, 2003, and
278 shall apply to personal insurance policies written to be
279 effective or renewed on or after July 1, 2004.