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1 A bill to be entitled

2 An act relating to use of consumer credit information in  
3 personal insurance underwriting; providing a popular  
4 reference name; providing a purpose; providing  
5 application; providing definitions; specifying prohibited  
6 activities for insurers using credit information for  
7 certain purposes; requiring insurers to reunderwrite or  
8 rerate consumers under certain circumstances; requiring a  
9 refund under certain circumstances; requiring insurers to  
10 disclose certain credit information acquisition  
11 activities under certain circumstances and to secure  
12 authorization for such activities; requiring insurers to  
13 provide certain notice of adverse actions; providing  
14 criteria; requiring insurers to file certain scoring  
15 models or processes with the Office of Insurance  
16 Regulation of the Financial Services Commission;  
17 requiring insurers to indemnify, defend, and hold  
18 harmless certain agents from liability, fees, and costs  
19 under certain circumstances; prohibiting consumer  
20 reporting agencies from providing or selling certain  
21 lists or data relating to certain consumer credit  
22 information; providing an exception; providing  
23 severability; requiring the Office of Insurance  
24 Regulation of the Financial Services Commission to  
25 conduct a study of the use of credit information for  
26 underwriting and rating purposes; providing study  
27 criteria; providing for construction of the act in pari  
28 materia with laws enacted during the 2003 Regular Session  
29 of the Legislature; providing an effective date.

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

32

33 Section 1. (1) This section may be popularly referred to  
34 as the "Use of Credit Information in Personal Insurance Act."

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

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

47 (4) For purposes of this section:

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

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

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

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



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61 (e) "Consumer reporting agency" means any entity which,  
62 for monetary fees or dues, or on a cooperative nonprofit basis,  
63 regularly engages in whole or in part in the practice of  
64 assembling or evaluating consumer credit information or other  
65 information on consumers for the purpose of furnishing consumer  
66 reports to third parties.

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

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

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

86 (5) An insurer authorized to do business in this state  
87 that uses credit information to underwrite or rate risks shall  
88 not:

89 (a) Use an insurance score that is calculated using  
90 income, gender, address, zip code, ethnic group, religion,



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91 marital status, or nationality of the consumer as a factor.

92 (b) Deny, cancel, or nonrenew a policy of personal  
93 insurance solely on the basis of credit information without  
94 consideration of any other applicable factor independent of  
95 credit information and not expressly prohibited by paragraph  
96 (a).

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

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

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

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

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

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

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

118 (g) Use credit information unless, not later than every 36  
119 months following the last time that the insurer obtained current  
120 credit information for the insured, the insurer recalculates the



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121 insurance score or obtains an updated credit report. Regardless  
122 of the requirements of this paragraph:

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

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

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

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

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

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

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

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



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151 insurance:

152 1. Credit inquiries not initiated by the consumer or  
153 inquiries requested by the consumer for his or her own credit  
154 information.

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

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

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

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

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

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



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181 overpaid premium, the insurer shall refund to the insured the  
182 amount of overpayment calculated back to the shorter of the last  
183 12 months of coverage or the actual policy period.

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

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

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

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

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



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

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

226  
227 Standardized credit explanations provided by consumer reporting  
228 agencies or other third-party vendors are deemed to comply with  
229 this subsection.

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

239 (10) An insurer shall indemnify, defend, and hold agents  
240 harmless from and against all liability, fees, and costs arising





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241 out of or relating to the actions, errors, or omissions of an  
242 agent or a producer who obtains or uses credit information or  
243 insurance scores for an insurer, provided the agent or producer  
244 follows the instructions of or procedures established by the  
245 insurer and complies with any applicable law or regulation.  
246 Nothing in this subsection shall be construed to provide a  
247 consumer or other insured with a cause of action that does not  
248 exist in the absence of this subsection.

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

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

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

266 (12) If any provision of this section or the application  
267 thereof to any person or circumstance is held invalid, the  
268 invalidity shall not affect other provisions or applications of  
269 the section which can be given effect without the invalid



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270 provision or application, and to this end the provisions of this  
271 section are declared severable.

272 Section 2. The Office of Insurance Regulation of the  
273 Financial Services Commission shall conduct a study of the use  
274 of credit information as an underwriting and rating factor. The  
275 study shall evaluate and determine the increased risk of  
276 insurance loss posed by an individual's credit worthiness,  
277 credit standing, or credit capacity and the appropriate weight  
278 that should be given to such factors in determining insurability  
279 in conjunction with other risk factors.

280 Section 3. If any law amended by this act was also amended  
281 by a law enacted at the 2003 Regular Session of the Legislature,  
282 such laws shall be construed as if they had been enacted at the  
283 same session of the Legislature, and full effect shall be given  
284 to each if possible.

285 Section 4. This act shall take effect October 1, 2003, and  
286 shall apply to personal insurance policies written to be  
287 effective or renewed on or after July 1, 2004.