

1 A bill to be entitled
2 An act relating to insurance consumer
3 protection; reenacting and amending s.
4 626.7451(11), F.S., notwithstanding amendments
5 to that subsection by HB 513; providing for
6 retroactive application; providing for
7 construction of the act in pari materia with
8 laws enacted during the Regular Session of the
9 Legislature; creating s. 626.9741, F.S.;
10 specifying that the act's purpose is to
11 regulate and limit the use of credit reports
12 and credit scores by insurers for underwriting
13 and rating purposes; specifying the types of
14 insurance to which the act applies; defining
15 terms; requiring that an insurer identify the
16 items in a credit report which resulted in an
17 adverse decision; prohibiting an insurer from
18 making an adverse decision based solely on a
19 credit report or score or certain other
20 factors; requiring an insurer to provide a
21 means for appeal to an applicant or insured
22 under certain circumstances; prohibiting the
23 use of a credit report or score unless the
24 Office of Insurance Regulation determines,
25 based on a filing by the insurer, that such use
26 is valid and reasonable; authorizing the Office
27 of Insurance Regulation to disapprove such
28 filings; requiring an insurer to adhere to
29 certain laws and rules; requiring an insurer to
30 provide for an adjustment in the premium of an
31 insured to reflect an improvement in credit

1 history; authorizing the Financial Services
2 Commission to adopt rules; providing for
3 application; providing a contingent effective
4 date.

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

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8 Section 1. (1) Notwithstanding the amendment to
9 section 626.7451, Florida Statutes, by HB 513, subsection (11)
10 of section 626.7451, Florida Statutes is not amended as
11 provided by that act, but is reenacted to read:

12 626.7451 Managing general agents; required contract
13 provisions.--No person acting in the capacity of a managing
14 general agent shall place business with an insurer unless
15 there is in force a written contract between the parties which
16 sets forth the responsibility for a particular function,
17 specifies the division of responsibilities, and contains the
18 following minimum provisions:

19 (11) A licensed managing general agent, when placing
20 business with an insurer under this code, may charge a
21 per-policy fee not to exceed \$25. In no instance shall the
22 aggregate of per-policy fees for a placement of business
23 authorized under this section, when combined with any other
24 per-policy fee charged by the insurer, result in per-policy
25 fees which exceed the aggregate amount of \$25. The per-policy
26 fee shall be a component of the insurer's rate filing and
27 shall be fully earned.

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29 For the purposes of this section and ss. 626.7453 and
30 626.7454, the term "controlling person" or "controlling" has
31 the meaning set forth in s. 625.012(5)(b)1., and the term

1 "controlled person" or "controlled" has the meaning set forth
2 in s. 625.012(5)(b)2.

3 (2) This section shall take effect upon this act
4 becoming a law, except that, if this act does not become a law
5 before HB 513 becomes a law, this section shall operate
6 retroactively to the date that HB 513 becomes a law.

7 Section 2. If any law that is amended by this act was
8 also amended by a law enacted at the 2003 Regular Session of
9 the Legislature, such laws shall be construed as if they had
10 been enacted during the same session of the Legislature, and
11 full effect should be given to each if that is possible.

12 Section 3. Section 626.9741, Florida Statutes, is
13 created to read:

14 626.9741 Use of credit reports and credit scores by
15 insurers.--

16 (1) The purpose of this section is to regulate and
17 limit the use of credit reports and credit scores by insurers
18 for underwriting and rating purposes. This section applies
19 only to personal lines motor vehicle insurance and personal
20 lines residential insurance, which includes homeowners, mobile
21 homeowners dwelling, tenants, condominium unit owners,
22 cooperative unit owners, and similar types of insurance.

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

24 (a) "Adverse decision" means a decision to refuse to
25 issue or renew a policy of insurance; to issue a policy with
26 exclusions or restrictions; to increase the rates or premium
27 charged for a policy of insurance; to place an insured or
28 applicant in a rating tier that does not have the lowest
29 available rates for which that insured or applicant is
30 otherwise eligible; or to place an applicant or insured with a
31 company operating under common management, control, or

1 ownership which does not offer the lowest rates available,
2 within the affiliate group of insurance companies, for which
3 that insured or applicant is otherwise eligible.

4 (b) "Credit report" means any written, oral, or other
5 communication of any information by a consumer reporting
6 agency, as defined in the federal Fair Credit Reporting Act,
7 15 U.S.C. s. 1681, et seq., bearing on a consumer's credit
8 worthiness, credit standing, or credit capacity, which is used
9 or expected to be used or collected as a factor to establish a
10 person's eligibility for credit or insurance, or any other
11 purpose authorized pursuant to the applicable provision of
12 such federal act. A credit score alone, as calculated by a
13 credit reporting agency or by or for the insurer, may not be
14 considered a credit report.

15 (c) "Credit score" means a score, grade, or value that
16 is derived by using any or all data from a credit report in
17 any type of model, method, or program, whether electronically,
18 in an algorithm, computer software or program, or any other
19 process, for the purpose of grading or ranking credit report
20 data.

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

25 (3) An insurer must inform an applicant or insured, in
26 the same medium as the application is taken, that a credit
27 report or score is being requested for underwriting or rating
28 purposes. An insurer that makes an adverse decision based, in
29 whole or in part, upon a credit report must provide at no
30 charge, a copy of the credit report to the applicant or
31 insured or provide the applicant or insured with the name,

1 address, and telephone number of the consumer reporting agency
2 from which the insured or applicant may obtain the credit
3 report. The insurer must provide notification to the consumer
4 explaining the reasons for the adverse decision. The reasons
5 must be provided in sufficiently clear and specific language
6 so that a person can identify the basis for the insurer's
7 adverse decision. Such notification shall include a
8 description of the four primary reasons, or such fewer number
9 as existed, which were the primary influences of the adverse
10 decision. The use of generalized terms such as "poor credit
11 history," "poor credit rating," or "poor insurance score" does
12 not meet the explanation requirements of this paragraph. A
13 credit score may not be used in underwriting or rating
14 insurance unless the scoring process produces information in
15 sufficient detail to permit compliance with the requirements
16 of this subsection. It shall not be deemed an adverse decision
17 if, due to the insured's credit report or credit score, the
18 insured continues to receive a less favorable rate or
19 placement in a less favorable tier or company at the time of
20 renewal except for renewals or re-underwriting required by
21 this section.

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

26 (b) An insurer may not make an adverse decision solely
27 because of information contained in a credit report or score
28 without consideration of any other underwriting or rating
29 factor.

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

4 1. The absence of, or an insufficient, credit history,
5 in which instance the insurer shall:

6 a. Treat the consumer as otherwise approved by the
7 Office of Insurance Regulation if the insurer presents
8 information that such an absence or inability is related to
9 the risk for the insurer;

10 b. Treat the consumer as if the applicant or insured
11 had neutral credit information, as defined by the insurer;

12 c. Exclude the use of credit information as a factor
13 and use only other underwriting criteria;

14 2. Collection accounts with a medical industry code,
15 if so identified on the consumer's credit report;

16 3. Place of residence; or

17 4. Any other circumstance that the Financial Services
18 Commission determines, by rule, lacks sufficient statistical
19 correlation and actuarial justification as a predictor of
20 insurance risk.

21 (d) An insurer may use the number of credit inquiries
22 requested or made regarding the applicant or insured except
23 for:

24 1. Credit inquiries not initiated by the consumer or
25 inquiries requested by the consumer for his or her own credit
26 information.

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

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

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

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

9 (e) An insurer must, upon the request of an applicant
10 or insured, provide a means of appeal for an applicant or
11 insured whose credit report or credit score is unduly
12 influenced by a dissolution of marriage, the death of a
13 spouse, or temporary loss of employment. The insurer must
14 complete its review within 10 business days after the request
15 by the applicant or insured and receipt of reasonable
16 documentation requested by the insurer, and, if the insurer
17 determines that the credit report or credit score was unduly
18 influenced by any of such factors, the insurer shall treat the
19 applicant or insured as if the applicant or insured had
20 neutral credit information or shall exclude the credit
21 information, as defined by the insurer, whichever is more
22 favorable to the applicant or insured. An insurer shall not be
23 considered out of compliance with its underwriting rules or
24 rates or forms filed with the Office of Insurance Regulation
25 or out of compliance with any other state law or rule as a
26 result of granting any exceptions pursuant to this subsection.

27 (5) A rate filing that uses credit reports or credit
28 scores must comply with the requirements of s. 627.062 or s.
29 627.0651 to ensure that rates are not excessive, inadequate,
30 or unfairly discriminatory.

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1 (6) An insurer that requests or uses credit reports
2 and credit scoring in its underwriting and rating methods
3 shall maintain and adhere to established written procedures
4 that reflect the restrictions set forth in the federal Fair
5 Credit Reporting Act, this section, and all rules related
6 thereto.

7 (7)(a) An insurer shall establish procedures to review
8 the credit history of an insured who was adversely affected by
9 the use of the insured's credit history at the initial rating
10 of the policy, or at a subsequent renewal thereof. This review
11 must be performed at a minimum of once every 2 years or at the
12 request of the insured, whichever is sooner, and the insurer
13 shall adjust the premium of the insured to reflect any
14 improvement in the credit history. The procedures must provide
15 that, with respect to existing policyholders, the review of a
16 credit report will not be used by the insurer to cancel,
17 refuse to renew, or require a change in the method of payment
18 or payment plan.

19 (b) However, as an alternative to the requirements of
20 paragraph (a), an insurer that used a credit report or credit
21 score for an insured upon inception of a policy, who will not
22 use a credit report or score for re-underwriting, shall
23 reevaluate the insured within the first 3 years after
24 inception, based on other allowable underwriting or rating
25 factors, excluding credit information if the insurer does not
26 increase the rates or premium charged to the insured based on
27 the exclusion of credit reports or credit scores.

28 (8) The commission may adopt rules to administer this
29 section. The rules may include, but need not be limited to:

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

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

4 (c) Standards that ensure that rates or premiums
5 associated with the use of a credit report or score are not
6 unfairly discriminatory, based upon race, color, religion,
7 marital status, age, gender, income, national origin, or place
8 of residence.

9 (d) Standards for review of models, methods, programs,
10 or any other process by which to grade or rank credit report
11 data and which may produce credit scores in order to ensure
12 that the insurer demonstrates that such grading, ranking, or
13 scoring is valid in predicting insurance risk of an applicant
14 or insured.

15 Section 4. This act shall take effect January 1, 2004,
16 and shall apply to policies issued or renewed on or after that
17 date, except that this act shall not take effect unless SB
18 42-A or similar legislation is adopted in the same legislative
19 session, or an extension thereof, and becomes law.
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