

By Senator Storms

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1                   A bill to be entitled  
2           An act relating to insurance; amending s. 626.9541,  
3           F.S.; prohibiting any insurer charging premiums for  
4           motor vehicle insurance from using a rate, rating  
5           schedule, rating manual, or an underwriting rule that  
6           is not contained in a rating manual and is determined  
7           in whole or in part on the basis of certain  
8           characteristics of an insured; including the refusal  
9           to insure or continue to insure any individual or risk  
10          because of educational level, trade, business,  
11          occupation, profession, credit report, credit score,  
12          or certain forms of lawful employment among the list  
13          of activities constituting unfair methods of  
14          competition and unfair or deceptive acts; amending s.  
15          626.9741, F.S.; prohibiting the use by insurers of  
16          credit reports and credit scores in making rating  
17          determinations; defining the terms "credit report" and  
18          "credit score"; deleting provisions limiting and  
19          regulating the use of credit score by insurers when  
20          making rating determinations; deleting the definition  
21          of "adverse decision" and "tier"; deleting provisions  
22          authorizing the Financial Services Commission to adopt  
23          rules; providing an effective date.

24  
25 Be It Enacted by the Legislature of the State of Florida:

26  
27           Section 1. Paragraphs (o) and (x) of subsection (1) of  
28           section 626.9541, Florida Statutes, are amended to read:  
29           626.9541 Unfair methods of competition and unfair or

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30 deceptive acts or practices defined.—

31 (1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE  
32 ACTS.—The following are defined as unfair methods of competition  
33 and unfair or deceptive acts or practices:

34 (o) *Illegal dealings in premiums; excess or reduced charges*  
35 *for insurance.—*

36 1. Knowingly collecting any sum as a premium or charge for  
37 insurance, which is not then provided, or is not in due course  
38 to be provided, subject to acceptance of the risk by the  
39 insurer, by an insurance policy issued by an insurer as  
40 permitted by this code.

41 2. Knowingly collecting as a premium or charge for  
42 insurance any sum in excess of or less than the premium or  
43 charge applicable to such insurance, in accordance with the  
44 applicable classifications and rates as filed with and approved  
45 by the office, and as specified in the policy; or, in cases when  
46 classifications, premiums, or rates are not required by this  
47 code to be so filed and approved, premiums and charges collected  
48 from a Florida resident in excess of or less than those  
49 specified in the policy and as fixed by the insurer. This  
50 provision shall not be deemed to prohibit the charging and  
51 collection, by surplus lines agents licensed under part VIII of  
52 this chapter, of the amount of applicable state and federal  
53 taxes, or fees as authorized by s. 626.916(4), in addition to  
54 the premium required by the insurer or the charging and  
55 collection, by licensed agents, of the exact amount of any  
56 discount or other such fee charged by a credit card facility in  
57 connection with the use of a credit card, as authorized by  
58 subparagraph (q)3., in addition to the premium required by the

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59 insurer. This subparagraph shall not be construed to prohibit  
60 collection of a premium for a universal life or a variable or  
61 indeterminate value insurance policy made in accordance with the  
62 terms of the contract.

63 3.a. Imposing or requesting an additional premium for a  
64 policy of motor vehicle liability, personal injury protection,  
65 medical payment, or collision insurance or any combination  
66 thereof or refusing to renew the policy solely because the  
67 insured was involved in a motor vehicle accident unless the  
68 insurer's file contains information from which the insurer in  
69 good faith determines that the insured was substantially at  
70 fault in the accident.

71 b. An insurer which imposes and collects such a surcharge  
72 or which refuses to renew such policy shall, in conjunction with  
73 the notice of premium due or notice of nonrenewal, notify the  
74 named insured that he or she is entitled to reimbursement of  
75 such amount or renewal of the policy under the conditions listed  
76 below and will subsequently reimburse him or her or renew the  
77 policy, if the named insured demonstrates that the operator  
78 involved in the accident was:

79 (I) Lawfully parked;

80 (II) Reimbursed by, or on behalf of, a person responsible  
81 for the accident or has a judgment against such person;

82 (III) Struck in the rear by another vehicle headed in the  
83 same direction and was not convicted of a moving traffic  
84 violation in connection with the accident;

85 (IV) Hit by a "hit-and-run" driver, if the accident was  
86 reported to the proper authorities within 24 hours after  
87 discovering the accident;

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88 (V) Not convicted of a moving traffic violation in  
89 connection with the accident, but the operator of the other  
90 automobile involved in such accident was convicted of a moving  
91 traffic violation;

92 (VI) Finally adjudicated not to be liable by a court of  
93 competent jurisdiction;

94 (VII) In receipt of a traffic citation which was dismissed  
95 or nolle prossed; or

96 (VIII) Not at fault as evidenced by a written statement  
97 from the insured establishing facts demonstrating lack of fault  
98 which are not rebutted by information in the insurer's file from  
99 which the insurer in good faith determines that the insured was  
100 substantially at fault.

101 c. In addition to the other provisions of this  
102 subparagraph, an insurer may not fail to renew a policy if the  
103 insured has had only one accident in which he or she was at  
104 fault within the current 3-year period. However, an insurer may  
105 nonrenew a policy for reasons other than accidents in accordance  
106 with s. 627.728. This subparagraph does not prohibit nonrenewal  
107 of a policy under which the insured has had three or more  
108 accidents, regardless of fault, during the most recent 3-year  
109 period.

110 4. Imposing or requesting an additional premium for, or  
111 refusing to renew, a policy for motor vehicle insurance solely  
112 because the insured committed a noncriminal traffic infraction  
113 as described in s. 318.14 unless the infraction is:

114 a. A second infraction committed within an 18-month period,  
115 or a third or subsequent infraction committed within a 36-month  
116 period.

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117           b. A violation of s. 316.183, when such violation is a  
118 result of exceeding the lawful speed limit by more than 15 miles  
119 per hour.

120           5. Upon the request of the insured, the insurer and  
121 licensed agent shall supply to the insured the complete proof of  
122 fault or other criteria which justifies the additional charge or  
123 cancellation.

124           6. No insurer shall impose or request an additional premium  
125 for motor vehicle insurance, cancel or refuse to issue a policy,  
126 or refuse to renew a policy because the insured or the applicant  
127 is a handicapped or physically disabled person, so long as such  
128 handicap or physical disability does not substantially impair  
129 such person's mechanically assisted driving ability.

130           7. No insurer may cancel or otherwise terminate any  
131 insurance contract or coverage, or require execution of a  
132 consent to rate endorsement, during the stated policy term for  
133 the purpose of offering to issue, or issuing, a similar or  
134 identical contract or coverage to the same insured with the same  
135 exposure at a higher premium rate or continuing an existing  
136 contract or coverage with the same exposure at an increased  
137 premium.

138           8. No insurer may issue a nonrenewal notice on any  
139 insurance contract or coverage, or require execution of a  
140 consent to rate endorsement, for the purpose of offering to  
141 issue, or issuing, a similar or identical contract or coverage  
142 to the same insured at a higher premium rate or continuing an  
143 existing contract or coverage at an increased premium without  
144 meeting any applicable notice requirements.

145           9. No insurer shall, with respect to premiums charged for

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146 motor vehicle insurance, unfairly discriminate solely on the  
147 basis of age, sex, marital status, or scholastic achievement.

148 10. No insurer shall, with respect to premiums charged for  
149 motor vehicle insurance, use any rate, rating schedule, rating  
150 manual, or underwriting rule that is not contained in a rating  
151 manual and that is determined in whole or in part on the basis  
152 of any of the following as they relate to an insured:

153 a. Educational level.

154 b. Trade, business, occupation, profession, or any lawful  
155 form of employment that does not directly involve the use of one  
156 or more vehicles specifically insured or identified in the  
157 insurance policy.

158 c. Credit report or credit score as defined in s. 626.9741.

159 ~~11.10.~~ Imposing or requesting an additional premium for  
160 motor vehicle comprehensive or uninsured motorist coverage  
161 solely because the insured was involved in a motor vehicle  
162 accident or was convicted of a moving traffic violation.

163 ~~12.11.~~ No insurer shall cancel or issue a nonrenewal notice  
164 on any insurance policy or contract without complying with any  
165 applicable cancellation or nonrenewal provision required under  
166 the Florida Insurance Code.

167 ~~13.12.~~ No insurer shall impose or request an additional  
168 premium, cancel a policy, or issue a nonrenewal notice on any  
169 insurance policy or contract because of any traffic infraction  
170 when adjudication has been withheld and no points have been  
171 assessed pursuant to s. 318.14(9) and (10). However, this  
172 subparagraph does not apply to traffic infractions involving  
173 accidents in which the insurer has incurred a loss due to the  
174 fault of the insured.

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175 (x) *Refusal to insure.*—In addition to other provisions of  
176 this code, the refusal to insure, or continue to insure, any  
177 individual or risk because of the individual's educational  
178 level, trade, business, occupation, profession, any form of  
179 lawful employment, or credit report or credit score as defined  
180 in s. 626.9741, or solely because of:

181 1. Race, color, creed, marital status, gender ~~sex~~, or  
182 national origin;

183 2. The residence, age, or ~~lawful occupation of the~~  
184 ~~individual or the~~ location of the risk, unless there is a  
185 reasonable relationship between the residence, age, or ~~lawful~~  
186 ~~occupation of the individual or the~~ location of the risk and the  
187 coverage issued or to be issued;

188 3. The insured's or applicant's failure to agree to place  
189 collateral business with any insurer, unless the coverage  
190 applied for would provide liability coverage which is excess  
191 over that provided in policies maintained on property or motor  
192 vehicles;

193 4. The insured's or applicant's failure to purchase  
194 noninsurance services or commodities, including automobile  
195 services as defined in s. 624.124;

196 5. The fact that the insured or applicant is a public  
197 official; or

198 6. The fact that the insured or applicant had been  
199 previously refused insurance coverage by any insurer, when such  
200 refusal to insure or continue to insure for this reason occurs  
201 with such frequency as to indicate a general business practice.

202 Section 2. Section 626.9741, Florida Statutes, is amended  
203 to read:

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204           626.9741 Use of credit reports and credit scores by  
205 insurers.An insurer may not use credit reports or credit scores  
206 in making rating determinations. For purposes of this section,  
207 the term:

208           ~~(1) The purpose of this section is to regulate and limit~~  
209 ~~the use of credit reports and credit scores by insurers for~~  
210 ~~underwriting and rating purposes. This section applies only to~~  
211 ~~personal lines motor vehicle insurance and personal lines~~  
212 ~~residential insurance, which includes homeowners, mobile home~~  
213 ~~owners' dwelling, tenants, condominium unit owners, cooperative~~  
214 ~~unit owners, and similar types of insurance.~~

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

216           ~~(a) "Adverse decision" means a decision to refuse to issue~~  
217 ~~or renew a policy of insurance; to issue a policy with~~  
218 ~~exclusions or restrictions; to increase the rates or premium~~  
219 ~~charged for a policy of insurance; to place an insured or~~  
220 ~~applicant in a rating tier that does not have the lowest~~  
221 ~~available rates for which that insured or applicant is otherwise~~  
222 ~~eligible; or to place an applicant or insured with a company~~  
223 ~~operating under common management, control, or ownership which~~  
224 ~~does not offer the lowest rates available, within the affiliate~~  
225 ~~group of insurance companies, for which that insured or~~  
226 ~~applicant is otherwise eligible.~~

227           (1)(b) "Credit report" means any written, oral, or other  
228 communication of any information by a consumer reporting agency,  
229 as defined in the federal Fair Credit Reporting Act, 15 U.S.C.  
230 ss. 1681 et seq., bearing on a consumer's credit worthiness,  
231 credit standing, or credit capacity, which is used or expected  
232 to be used or collected as a factor to establish a person's



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233 eligibility for credit or insurance, or any other purpose  
234 authorized pursuant to the applicable provision of such federal  
235 act. A credit score alone, as calculated by a credit reporting  
236 agency or by or for the insurer, may not be considered a credit  
237 report.

238 (2)~~(e)~~ "Credit score" means a score, grade, or value that  
239 is derived by using any or all data from a credit report in any  
240 type of model, method, or program, whether electronically, in an  
241 algorithm, computer software or program, or any other process,  
242 for the purpose of grading or ranking credit report data.

243 ~~(d) "Tier" means a category within a single insurer into~~  
244 ~~which insureds with substantially similar risk, exposure, or~~  
245 ~~expense factors are placed for purposes of determining rate or~~  
246 ~~premium.~~

247 ~~(3) An insurer must inform an applicant or insured, in the~~  
248 ~~same medium as the application is taken, that a credit report or~~  
249 ~~score is being requested for underwriting or rating purposes. An~~  
250 ~~insurer that makes an adverse decision based, in whole or in~~  
251 ~~part, upon a credit report must provide at no charge, a copy of~~  
252 ~~the credit report to the applicant or insured or provide the~~  
253 ~~applicant or insured with the name, address, and telephone~~  
254 ~~number of the consumer reporting agency from which the insured~~  
255 ~~or applicant may obtain the credit report. The insurer must~~  
256 ~~provide notification to the consumer explaining the reasons for~~  
257 ~~the adverse decision. The reasons must be provided in~~  
258 ~~sufficiently clear and specific language so that a person can~~  
259 ~~identify the basis for the insurer's adverse decision. Such~~  
260 ~~notification shall include a description of the four primary~~  
261 ~~reasons, or such fewer number as existed, which were the primary~~

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262 ~~influences of the adverse decision. The use of generalized terms~~  
263 ~~such as "poor credit history," "poor credit rating," or "poor~~  
264 ~~insurance score" does not meet the explanation requirements of~~  
265 ~~this subsection. A credit score may not be used in underwriting~~  
266 ~~or rating insurance unless the scoring process produces~~  
267 ~~information in sufficient detail to permit compliance with the~~  
268 ~~requirements of this subsection. It shall not be deemed an~~  
269 ~~adverse decision if, due to the insured's credit report or~~  
270 ~~credit score, the insured continues to receive a less favorable~~  
271 ~~rate or placement in a less favorable tier or company at the~~  
272 ~~time of renewal except for renewals or reunderwriting required~~  
273 ~~by this section.~~

274 ~~(4) (a) An insurer may not request a credit report or score~~  
275 ~~based upon the race, color, religion, marital status, age,~~  
276 ~~gender, income, national origin, or place of residence of the~~  
277 ~~applicant or insured.~~

278 ~~(b) An insurer may not make an adverse decision solely~~  
279 ~~because of information contained in a credit report or score~~  
280 ~~without consideration of any other underwriting or rating~~  
281 ~~factor.~~

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

285 ~~1. The absence of, or an insufficient, credit history, in~~  
286 ~~which instance the insurer shall:~~

287 ~~a. Treat the consumer as otherwise approved by the Office~~  
288 ~~of Insurance Regulation if the insurer presents information that~~  
289 ~~such an absence or inability is related to the risk for the~~  
290 ~~insurer;~~

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291 ~~b. Treat the consumer as if the applicant or insured had~~  
292 ~~neutral credit information, as defined by the insurer;~~

293 ~~e. Exclude the use of credit information as a factor and~~  
294 ~~use only other underwriting criteria;~~

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

297 ~~3. Place of residence; or~~

298 ~~4. Any other circumstance that the Financial Services~~  
299 ~~Commission determines, by rule, lacks sufficient statistical~~  
300 ~~correlation and actuarial justification as a predictor of~~  
301 ~~insurance risk.~~

302 ~~(d) An insurer may use the number of credit inquiries~~  
303 ~~requested or made regarding the applicant or insured except for:~~

304 ~~1. Credit inquiries not initiated by the consumer or~~  
305 ~~inquiries requested by the consumer for his or her own credit~~  
306 ~~information.~~

307 ~~2. Inquiries relating to insurance coverage, if so~~  
308 ~~identified on a consumer's credit report.~~

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

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

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

319 ~~(e) An insurer must, upon the request of an applicant or~~

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320 ~~insured, provide a means of appeal for an applicant or insured~~  
321 ~~whose credit report or credit score is unduly influenced by a~~  
322 ~~dissolution of marriage, the death of a spouse, or temporary~~  
323 ~~loss of employment. The insurer must complete its review within~~  
324 ~~10 business days after the request by the applicant or insured~~  
325 ~~and receipt of reasonable documentation requested by the~~  
326 ~~insurer, and, if the insurer determines that the credit report~~  
327 ~~or credit score was unduly influenced by any of such factors,~~  
328 ~~the insurer shall treat the applicant or insured as if the~~  
329 ~~applicant or insured had neutral credit information or shall~~  
330 ~~exclude the credit information, as defined by the insurer,~~  
331 ~~whichever is more favorable to the applicant or insured. An~~  
332 ~~insurer shall not be considered out of compliance with its~~  
333 ~~underwriting rules or rates or forms filed with the Office of~~  
334 ~~Insurance Regulation or out of compliance with any other state~~  
335 ~~law or rule as a result of granting any exceptions pursuant to~~  
336 ~~this subsection.~~

337 ~~(5) A rate filing that uses credit reports or credit scores~~  
338 ~~must comply with the requirements of s. 627.062 or s. 627.0651~~  
339 ~~to ensure that rates are not excessive, inadequate, or unfairly~~  
340 ~~discriminatory.~~

341 ~~(6) An insurer that requests or uses credit reports and~~  
342 ~~credit scoring in its underwriting and rating methods shall~~  
343 ~~maintain and adhere to established written procedures that~~  
344 ~~reflect the restrictions set forth in the federal Fair Credit~~  
345 ~~Reporting Act, this section, and all rules related thereto.~~

346 ~~(7) (a) An insurer shall establish procedures to review the~~  
347 ~~credit history of an insured who was adversely affected by the~~  
348 ~~use of the insured's credit history at the initial rating of the~~

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349 ~~policy, or at a subsequent renewal thereof. This review must be~~  
350 ~~performed at a minimum of once every 2 years or at the request~~  
351 ~~of the insured, whichever is sooner, and the insurer shall~~  
352 ~~adjust the premium of the insured to reflect any improvement in~~  
353 ~~the credit history. The procedures must provide that, with~~  
354 ~~respect to existing policyholders, the review of a credit report~~  
355 ~~will not be used by the insurer to cancel, refuse to renew, or~~  
356 ~~require a change in the method of payment or payment plan.~~

357 ~~(b) However, as an alternative to the requirements of~~  
358 ~~paragraph (a), an insurer that used a credit report or credit~~  
359 ~~score for an insured upon inception of a policy, who will not~~  
360 ~~use a credit report or score for reunderwriting, shall~~  
361 ~~reevaluate the insured within the first 3 years after inception,~~  
362 ~~based on other allowable underwriting or rating factors,~~  
363 ~~excluding credit information if the insurer does not increase~~  
364 ~~the rates or premium charged to the insured based on the~~  
365 ~~exclusion of credit reports or credit scores.~~

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

368 ~~(a) Information that must be included in filings to~~  
369 ~~demonstrate compliance with subsection (3).~~

370 ~~(b) Statistical detail that insurers using credit reports~~  
371 ~~or scores under subsection (5) must retain and report annually~~  
372 ~~to the Office of Insurance Regulation.~~

373 ~~(c) Standards that ensure that rates or premiums associated~~  
374 ~~with the use of a credit report or score are not unfairly~~  
375 ~~discriminatory, based upon race, color, religion, marital~~  
376 ~~status, age, gender, income, national origin, or place of~~  
377 ~~residence.~~

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378       ~~(d) Standards for review of models, methods, programs, or~~  
379 ~~any other process by which to grade or rank credit report data~~  
380 ~~and which may produce credit scores in order to ensure that the~~  
381 ~~insurer demonstrates that such grading, ranking, or scoring is~~  
382 ~~valid in predicting insurance risk of an applicant or insured.~~

383       Section 3. This act shall take effect July 1, 2009.