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2010

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

22  
23   Be It Enacted by the Legislature of the State of Florida:

24  
25           Section 1. Paragraphs (o) and (x) of subsection (1) of  
26           section 626.9541, Florida Statutes, are amended to read:

27           626.9541 Unfair methods of competition and unfair or  
28           deceptive acts or practices defined.—

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

32 (o) Illegal dealings in premiums; excess or reduced  
 33 charges for insurance.—

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

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

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

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

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

77 (I) Lawfully parked;

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

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

83 (IV) Hit by a "hit-and-run" driver, if the accident was  
 84 reported to the proper authorities within 24 hours after

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85 discovering the accident;

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

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

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

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

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

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

112 a. A second infraction committed within an 18-month

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113 | period, or a third or subsequent infraction committed within a  
 114 | 36-month period.

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

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

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

129 |       7. An ~~No~~ insurer may not cancel or otherwise terminate any  
 130 | insurance contract or coverage, or require execution of a  
 131 | consent to rate endorsement, during the stated policy term for  
 132 | the purpose of offering to issue, or issuing, a similar or  
 133 | identical contract or coverage to the same insured with the same  
 134 | exposure at a higher premium rate or continuing an existing  
 135 | contract or coverage with the same exposure at an increased  
 136 | premium.

137 |       8. An ~~No~~ insurer may not issue a nonrenewal notice on any  
 138 | insurance contract or coverage, or require execution of a  
 139 | consent to rate endorsement, for the purpose of offering to  
 140 | issue, or issuing, a similar or identical contract or coverage

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141 to the same insured at a higher premium rate or continuing an  
 142 existing contract or coverage at an increased premium without  
 143 meeting any applicable notice requirements.

144 9. An ~~No~~ insurer may not ~~shall~~, with respect to premiums  
 145 charged for motor vehicle insurance, unfairly discriminate  
 146 solely on the basis of age, sex, marital status, or scholastic  
 147 achievement.

148 10. An insurer may not, with respect to premiums charged  
 149 for motor vehicle insurance, use any rate, rating schedule,  
 150 rating manual, or underwriting rule that is not contained in a  
 151 rating manual and that is determined in whole or in part on the  
 152 basis 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.  
 159 626.9741.

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

164 ~~12.11.~~ An ~~No~~ insurer may not ~~shall~~ cancel or issue a  
 165 nonrenewal notice on any insurance policy or contract without  
 166 complying with any applicable cancellation or nonrenewal  
 167 provision required under the Florida Insurance Code.

168 ~~13.12.~~ An ~~No~~ insurer may not ~~shall~~ impose or request an

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

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

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

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

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

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

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

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

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

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

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

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

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

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225 ~~does not offer the lowest rates available, within the affiliate~~  
 226 ~~group of insurance companies, for which that insured or~~  
 227 ~~applicant is otherwise eligible.~~

228 (1)~~(b)~~ "Credit report" means any written, oral, or other  
 229 communication of any information by a consumer reporting agency,  
 230 as defined in the federal Fair Credit Reporting Act, 15 U.S.C.  
 231 ss. 1681 et seq., bearing on a consumer's credit worthiness,  
 232 credit standing, or credit capacity, which is used or expected  
 233 to be used or collected as a factor to establish a person's  
 234 eligibility for credit or insurance, or any other purpose  
 235 authorized pursuant to the applicable provision of such federal  
 236 act. A credit score alone, as calculated by a credit reporting  
 237 agency or by or for the insurer, may not be considered a credit  
 238 report.

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

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

248 ~~(3) An insurer must inform an applicant or insured, in the~~  
 249 ~~same medium as the application is taken, that a credit report or~~  
 250 ~~score is being requested for underwriting or rating purposes. An~~  
 251 ~~insurer that makes an adverse decision based, in whole or in~~  
 252 ~~part, upon a credit report must provide at no charge, a copy of~~

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253 ~~the credit report to the applicant or insured or provide the~~  
254 ~~applicant or insured with the name, address, and telephone~~  
255 ~~number of the consumer reporting agency from which the insured~~  
256 ~~or applicant may obtain the credit report. The insurer must~~  
257 ~~provide notification to the consumer explaining the reasons for~~  
258 ~~the adverse decision. The reasons must be provided in~~  
259 ~~sufficiently clear and specific language so that a person can~~  
260 ~~identify the basis for the insurer's adverse decision. Such~~  
261 ~~notification shall include a description of the four primary~~  
262 ~~reasons, or such fewer number as existed, which were the primary~~  
263 ~~influences of the adverse decision. The use of generalized terms~~  
264 ~~such as "poor credit history," "poor credit rating," or "poor~~  
265 ~~insurance score" does not meet the explanation requirements of~~  
266 ~~this subsection. A credit score may not be used in underwriting~~  
267 ~~or rating insurance unless the scoring process produces~~  
268 ~~information in sufficient detail to permit compliance with the~~  
269 ~~requirements of this subsection. It shall not be deemed an~~  
270 ~~adverse decision if, due to the insured's credit report or~~  
271 ~~credit score, the insured continues to receive a less favorable~~  
272 ~~rate or placement in a less favorable tier or company at the~~  
273 ~~time of renewal except for renewals or reunderwriting required~~  
274 ~~by this section.~~

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

279 ~~(b) An insurer may not make an adverse decision solely~~  
280 ~~because of information contained in a credit report or score~~

281 ~~without consideration of any other underwriting or rating~~  
 282 ~~factor.~~

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

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

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

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

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

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

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

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

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

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

308 ~~2. Inquiries relating to insurance coverage, if so~~

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309 ~~identified on a consumer's credit report.~~

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

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

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

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

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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337 ~~this subsection.~~

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

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

347 ~~(7) (a) An insurer shall establish procedures to review the~~  
348 ~~credit history of an insured who was adversely affected by the~~  
349 ~~use of the insured's credit history at the initial rating of the~~  
350 ~~policy, or at a subsequent renewal thereof. This review must be~~  
351 ~~performed at a minimum of once every 2 years or at the request~~  
352 ~~of the insured, whichever is sooner, and the insurer shall~~  
353 ~~adjust the premium of the insured to reflect any improvement in~~  
354 ~~the credit history. The procedures must provide that, with~~  
355 ~~respect to existing policyholders, the review of a credit report~~  
356 ~~will not be used by the insurer to cancel, refuse to renew, or~~  
357 ~~require a change in the method of payment or payment plan.~~

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

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365 ~~the rates or premium charged to the insured based on the~~  
366 ~~exclusion of credit reports or credit scores.~~

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

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

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

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

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

384 Section 3. This act shall take effect July 1, 2010.