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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
01/19/2012	.	
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The Committee on Commerce and Tourism (Detert) recommended the following:

1           **Senate Amendment to Amendment (792042) (with title**  
2 **amendment)**

3  
4           Between lines 84 and 85  
5 insert:

6           Section 2. Paragraphs (o) and (x) of subsection (1) of  
7 section 626.9541, Florida Statutes, are amended to read:

8           626.9541 Unfair methods of competition and unfair or  
9 deceptive acts or practices defined.—

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



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

15           1. Knowingly collecting any sum as a premium or charge for  
16 insurance, which is not then provided, or is not in due course  
17 to be provided, subject to acceptance of the risk by the  
18 insurer, by an insurance policy issued by an insurer as  
19 permitted by this code.

20           2. Knowingly collecting as a premium or charge for  
21 insurance any sum in excess of or less than the premium or  
22 charge applicable to such insurance, in accordance with the  
23 applicable classifications and rates as filed with and approved  
24 by the office, and as specified in the policy; or, in cases when  
25 classifications, premiums, or rates are not required by this  
26 code to be so filed and approved, premiums and charges collected  
27 from a Florida resident in excess of or less than those  
28 specified in the policy and as fixed by the insurer. This  
29 provision does ~~shall~~ not be ~~deemed~~ to prohibit the charging and  
30 collection, by surplus lines agents licensed under part VIII of  
31 this chapter, of the amount of applicable state and federal  
32 taxes, or fees as authorized by s. 626.916(4), in addition to  
33 the premium required by the insurer or the charging and  
34 collection, by licensed agents, of the exact amount of any  
35 discount or other such fee charged by a credit card facility in  
36 connection with the use of a credit card, as authorized by  
37 subparagraph (q)3., in addition to the premium required by the  
38 insurer. This subparagraph does ~~shall~~ not be ~~construed~~ to  
39 prohibit collection of a premium for a universal life or a  
40 variable or indeterminate value insurance policy made in  
41 accordance with the terms of the contract.



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42           3.a. Imposing or requesting an additional premium for a  
43 policy of motor vehicle liability, personal injury protection,  
44 medical payment, or collision insurance or any combination  
45 thereof or refusing to renew the policy solely because the  
46 insured was involved in a motor vehicle accident unless the  
47 insurer's file contains information from which the insurer in  
48 good faith determines that the insured was substantially at  
49 fault in the accident.

50           b. An insurer that ~~which~~ imposes and collects such a  
51 surcharge or ~~which~~ refuses to renew such policy shall, in  
52 conjunction with the notice of premium due or notice of  
53 nonrenewal, notify the named insured that he or she is entitled  
54 to reimbursement of such amount or renewal of the policy under  
55 the conditions listed below and will subsequently reimburse him  
56 or her or renew the policy, if the named insured demonstrates  
57 that the operator involved in the accident was:

58           (I) Lawfully parked;

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

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

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

67           (V) Not convicted of a moving traffic violation in  
68 connection with the accident, but the operator of the other  
69 automobile involved in such accident was convicted of a moving  
70 traffic violation;



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

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

75 (VIII) Not at fault as evidenced by a written statement  
76 from the insured establishing facts demonstrating lack of fault  
77 which are not rebutted by information in the insurer's file from  
78 which the insurer in good faith determines that the insured was  
79 substantially at fault.

80 c. In addition to the other provisions of this  
81 subparagraph, an insurer may not fail to renew a policy if the  
82 insured has had only one accident in which he or she was at  
83 fault within the current 3-year period. However, an insurer may  
84 nonrenew a policy for reasons other than accidents in accordance  
85 with s. 627.728. This subparagraph does not prohibit nonrenewal  
86 of a policy under which the insured has had three or more  
87 accidents, regardless of fault, during the most recent 3-year  
88 period.

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

93 a. A second infraction committed within an 18-month period,  
94 or a third or subsequent infraction committed within a 36-month  
95 period.

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

99 5. Upon the request of the insured, the insurer and



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100 licensed agent shall supply to the insured the complete proof of  
101 fault or other criteria that ~~which~~ justifies the additional  
102 charge or cancellation.

103 6. An ~~No~~ insurer may not ~~shall~~ impose or request an  
104 additional premium for motor vehicle insurance, cancel or refuse  
105 to issue a policy, or refuse to renew a policy because the  
106 insured or the applicant is a handicapped or physically disabled  
107 person, so long as such handicap or physical disability does not  
108 substantially impair such person's mechanically assisted driving  
109 ability.

110 7. An ~~No~~ insurer may not cancel or otherwise terminate any  
111 insurance contract or coverage, or require execution of a  
112 consent to rate endorsement, during the stated policy term for  
113 the purpose of offering to issue, or issuing, a similar or  
114 identical contract or coverage to the same insured with the same  
115 exposure at a higher premium rate or continuing an existing  
116 contract or coverage with the same exposure at an increased  
117 premium.

118 8. An ~~No~~ insurer may not issue a nonrenewal notice on any  
119 insurance contract or coverage, or require execution of a  
120 consent to rate endorsement, for the purpose of offering to  
121 issue, or issuing, a similar or identical contract or coverage  
122 to the same insured at a higher premium rate or continuing an  
123 existing contract or coverage at an increased premium without  
124 meeting any applicable notice requirements.

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



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129           10. An insurer may not use any rate, rating schedule,  
130 rating manual, or underwriting rule that is not contained in a  
131 rating manual and that is determined in whole or in part on the  
132 basis of an insured's credit report or credit score as defined  
133 in s. 626.9741.

134           ~~11.10.~~ Imposing or requesting an additional premium for  
135 motor vehicle comprehensive or uninsured motorist coverage  
136 solely because the insured was involved in a motor vehicle  
137 accident or was convicted of a moving traffic violation.

138           ~~12.11.~~ An ~~No~~ insurer may not ~~shall~~ cancel or issue a  
139 nonrenewal notice on any insurance policy or contract without  
140 complying with any applicable cancellation or nonrenewal  
141 provision required under the Florida Insurance Code.

142           ~~13.12.~~ An ~~No~~ insurer may not ~~shall~~ impose or request an  
143 additional premium, cancel a policy, or issue a nonrenewal  
144 notice on any insurance policy or contract because of any  
145 traffic infraction when adjudication has been withheld and no  
146 points have been assessed pursuant to s. 318.14(9) and (10).  
147 However, this subparagraph does not apply to traffic infractions  
148 involving accidents in which the insurer has incurred a loss due  
149 to the fault of the insured.

150           (x) *Refusal to insure.*—In addition to other provisions of  
151 this code, the refusal to insure, or continue to insure, any  
152 individual or risk solely because of:

153           1. Race, color, creed, marital status, sex, or national  
154 origin;

155           2. The residence, age, or lawful occupation of the  
156 individual or the location of the risk, unless there is a  
157 reasonable relationship between the residence, age, or lawful



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158 occupation of the individual or the location of the risk and the  
159 coverage issued or to be issued;

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

165 4. The insured's or applicant's failure to purchase  
166 noninsurance services or commodities, including automobile  
167 services as defined in s. 624.124;

168 5. The fact that the insured or applicant is a public  
169 official; or

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

174 7. The insured's or applicant's credit report or credit  
175 score as defined in s. 626.9741.

176 Section 3. Section 626.9741, Florida Statutes, is amended  
177 to read:

178 626.9741 Use of credit reports and credit scores by  
179 insurers.—

180 (1) An insurer may not use credit reports or credit scores  
181 in making rating determinations. ~~The purpose of this section is~~  
182 ~~to regulate and limit the use of credit reports and credit~~  
183 ~~scores by insurers for underwriting and rating purposes. This~~  
184 ~~section applies only to personal lines motor vehicle insurance~~  
185 ~~and personal lines residential insurance, which includes~~  
186 ~~homeowners, mobile home owners' dwelling, tenants, condominium~~



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187 ~~unit owners, cooperative unit owners, and similar types of~~  
188 ~~insurance.~~

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

190 ~~(a) "Adverse decision" means a decision to refuse to issue~~  
191 ~~or renew a policy of insurance; to issue a policy with~~  
192 ~~exclusions or restrictions; to increase the rates or premium~~  
193 ~~charged for a policy of insurance; to place an insured or~~  
194 ~~applicant in a rating tier that does not have the lowest~~  
195 ~~available rates for which that insured or applicant is otherwise~~  
196 ~~eligible; or to place an applicant or insured with a company~~  
197 ~~operating under common management, control, or ownership which~~  
198 ~~does not offer the lowest rates available, within the affiliate~~  
199 ~~group of insurance companies, for which that insured or~~  
200 ~~applicant is otherwise eligible.~~

201 ~~(a)~~ (b) "Credit report" means any written, oral, or other  
202 communication of any information by a consumer reporting agency,  
203 as defined in the federal Fair Credit Reporting Act, 15 U.S.C.  
204 ss. 1681 et seq., bearing on a consumer's credit worthiness,  
205 credit standing, or credit capacity, which is used or expected  
206 to be used or collected as a factor to establish a person's  
207 eligibility for credit or insurance, or any other purpose  
208 authorized pursuant to the applicable provision of such federal  
209 act. A credit score alone, as calculated by a credit reporting  
210 agency or by or for the insurer, may not be considered a credit  
211 report.

212 ~~(b)~~ (e) "Credit score" means a score, grade, or value that  
213 is derived by using any or all data from a credit report in any  
214 type of model, method, or program, whether electronically, in an  
215 algorithm, computer software or program, or any other process,





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216 for the purpose of grading or ranking credit report data.  
217 ~~(d) "Tier" means a category within a single insurer into~~  
218 ~~which insureds with substantially similar risk, exposure, or~~  
219 ~~expense factors are placed for purposes of determining rate or~~  
220 ~~premium.~~  
221 ~~(3) An insurer must inform an applicant or insured, in the~~  
222 ~~same medium as the application is taken, that a credit report or~~  
223 ~~score is being requested for underwriting or rating purposes. An~~  
224 ~~insurer that makes an adverse decision based, in whole or in~~  
225 ~~part, upon a credit report must provide at no charge, a copy of~~  
226 ~~the credit report to the applicant or insured or provide the~~  
227 ~~applicant or insured with the name, address, and telephone~~  
228 ~~number of the consumer reporting agency from which the insured~~  
229 ~~or applicant may obtain the credit report. The insurer must~~  
230 ~~provide notification to the consumer explaining the reasons for~~  
231 ~~the adverse decision. The reasons must be provided in~~  
232 ~~sufficiently clear and specific language so that a person can~~  
233 ~~identify the basis for the insurer's adverse decision. Such~~  
234 ~~notification shall include a description of the four primary~~  
235 ~~reasons, or such fewer number as existed, which were the primary~~  
236 ~~influences of the adverse decision. The use of generalized terms~~  
237 ~~such as "poor credit history," "poor credit rating," or "poor~~  
238 ~~insurance score" does not meet the explanation requirements of~~  
239 ~~this subsection. A credit score may not be used in underwriting~~  
240 ~~or rating insurance unless the scoring process produces~~  
241 ~~information in sufficient detail to permit compliance with the~~  
242 ~~requirements of this subsection. It shall not be deemed an~~  
243 ~~adverse decision if, due to the insured's credit report or~~  
244 ~~credit score, the insured continues to receive a less favorable~~



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245 ~~rate or placement in a less favorable tier or company at the~~  
246 ~~time of renewal except for renewals or reunderwriting required~~  
247 ~~by this section.~~

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

252 ~~(b) An insurer may not make an adverse decision solely~~  
253 ~~because of information contained in a credit report or score~~  
254 ~~without consideration of any other underwriting or rating~~  
255 ~~factor.~~

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

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

261 ~~a. Treat the consumer as otherwise approved by the Office~~  
262 ~~of Insurance Regulation if the insurer presents information that~~  
263 ~~such an absence or inability is related to the risk for the~~  
264 ~~insurer;~~

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

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

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

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

272 ~~4. Any other circumstance that the Financial Services~~  
273 ~~Commission determines, by rule, lacks sufficient statistical~~



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274 ~~correlation and actuarial justification as a predictor of~~  
275 ~~insurance risk.~~

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

278 ~~1. Credit inquiries not initiated by the consumer or~~  
279 ~~inquiries requested by the consumer for his or her own credit~~  
280 ~~information.~~

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

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

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

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

293 ~~(e) An insurer must, upon the request of an applicant or~~  
294 ~~insured, provide a means of appeal for an applicant or insured~~  
295 ~~whose credit report or credit score is unduly influenced by a~~  
296 ~~dissolution of marriage, the death of a spouse, or temporary~~  
297 ~~loss of employment. The insurer must complete its review within~~  
298 ~~10 business days after the request by the applicant or insured~~  
299 ~~and receipt of reasonable documentation requested by the~~  
300 ~~insurer, and, if the insurer determines that the credit report~~  
301 ~~or credit score was unduly influenced by any of such factors,~~  
302 ~~the insurer shall treat the applicant or insured as if the~~



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303 ~~applicant or insured had neutral credit information or shall~~  
304 ~~exclude the credit information, as defined by the insurer,~~  
305 ~~whichever is more favorable to the applicant or insured. An~~  
306 ~~insurer shall not be considered out of compliance with its~~  
307 ~~underwriting rules or rates or forms filed with the Office of~~  
308 ~~Insurance Regulation or out of compliance with any other state~~  
309 ~~law or rule as a result of granting any exceptions pursuant to~~  
310 ~~this subsection.~~

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

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

320 ~~(7) (a) An insurer shall establish procedures to review the~~  
321 ~~credit history of an insured who was adversely affected by the~~  
322 ~~use of the insured's credit history at the initial rating of the~~  
323 ~~policy, or at a subsequent renewal thereof. This review must be~~  
324 ~~performed at a minimum of once every 2 years or at the request~~  
325 ~~of the insured, whichever is sooner, and the insurer shall~~  
326 ~~adjust the premium of the insured to reflect any improvement in~~  
327 ~~the credit history. The procedures must provide that, with~~  
328 ~~respect to existing policyholders, the review of a credit report~~  
329 ~~will not be used by the insurer to cancel, refuse to renew, or~~  
330 ~~require a change in the method of payment or payment plan.~~

331 ~~(b) However, as an alternative to the requirements of~~



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332 ~~paragraph (a), an insurer that used a credit report or credit~~  
333 ~~score for an insured upon inception of a policy, who will not~~  
334 ~~use a credit report or score for reunderwriting, shall~~  
335 ~~reevaluate the insured within the first 3 years after inception,~~  
336 ~~based on other allowable underwriting or rating factors,~~  
337 ~~excluding credit information if the insurer does not increase~~  
338 ~~the rates or premium charged to the insured based on the~~  
339 ~~exclusion of credit reports or credit scores.~~

340 ~~(3)(8) The commission may adopt rules to administer this~~  
341 ~~section. The rules may include, but need not be limited to:~~

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

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

347 ~~(c) Standards that ensure that rates or premiums associated~~  
348 ~~with the use of a credit report or score are not unfairly~~  
349 ~~discriminatory, based upon race, color, religion, marital~~  
350 ~~status, age, gender, income, national origin, or place of~~  
351 ~~residence.~~

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

358 ===== T I T L E A M E N D M E N T =====

359 And the title is amended as follows:

360 Delete line 101



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361 and insert:  
362 situations; amending s. 626.9541, F.S.; prohibiting an  
363 insurer using a rate, rating schedule, rating manual,  
364 or an underwriting rule that is not contained in a  
365 rating manual and is determined in whole or in part on  
366 the basis of a credit report or credit score of an  
367 insured; including the refusal to insure or continue  
368 to insure any individual or risk because of the  
369 insured's or applicant's credit report or credit score  
370 among the list of activities constituting unfair  
371 methods of competition and unfair or deceptive acts;  
372 amending s. 626.9741, F.S.; prohibiting the use by  
373 insurers of credit reports and credit scores in making  
374 rating determinations; deleting provisions limiting  
375 and regulating the use of credit scores by insurers  
376 when making rating determinations; deleting the  
377 definition of "adverse decision" and "tier"; providing  
378 an effective date.