

By the Committee on Commerce and Tourism; and Senator Siplin

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1                   A bill to be entitled  
2           An act relating to credit reports; prohibiting an  
3           employer from using a job applicant's credit report or  
4           credit history to make certain hiring, compensation,  
5           or other employment decisions; providing specific  
6           situations where an employer may use such information;  
7           providing definitions; providing exemptions for  
8           certain types of employers; providing remedies for  
9           aggrieved persons; providing for court costs;  
10          providing for a plaintiff to post a bond in certain  
11          situations; amending s. 626.9541, F.S.; prohibiting an  
12          insurer using a rate, rating schedule, rating manual,  
13          or an underwriting rule that is not contained in a  
14          rating manual and is determined in whole or in part on  
15          the basis of a credit report or credit score of an  
16          insured; including the refusal to insure or continue  
17          to insure any individual or risk because of the  
18          insured's or applicant's credit report or credit score  
19          among the list of activities constituting unfair  
20          methods of competition and unfair or deceptive acts;  
21          amending s. 626.9741, F.S.; prohibiting the use by  
22          insurers of credit reports and credit scores in making  
23          rating determinations; deleting provisions limiting  
24          and regulating the use of credit scores by insurers  
25          when making rating determinations; deleting the  
26          definitions of the terms "adverse decision" and  
27          "tier"; providing an effective date.

28  
29   Be It Enacted by the Legislature of the State of Florida:

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30  
31       Section 1. Use of a job applicant's credit report or credit  
32 history.-

33       (1) Except as provided in subsection (2), an employer may  
34 not use an applicant's credit report or credit history for the  
35 purpose of denying employment to the applicant or for  
36 determining the applicant's compensation or the terms,  
37 conditions, or privileges of employment.

38       (2) An employer may request or use an applicant's credit  
39 report or credit history if:

40       (a) The information will be used for a purpose other than  
41 one prohibited by this section;

42       (b) The employer has a bona fide purpose for requesting or  
43 using information in the credit report or credit history which  
44 is substantially related to the job; and

45       (c) The ability to request such information was disclosed  
46 to the applicant and the employer obtained permission from the  
47 applicant to request the information.

48       (3) For purposes of this section, a position for which an  
49 employer has a bona fide purpose includes a position that:

50       (a) Is managerial or supervisory;

51       (b) Involves access to personal information of a customer,  
52 employee, or employer, except for personal information  
53 customarily provided in a retail transaction;

54       (c) Involves a fiduciary responsibility to the employer,  
55 including the authority to issue payments, collect debts,  
56 transfer money, or enter into contracts;

57       (d) Involves the use of an expense account or a corporate  
58 debit or credit card;

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59 (e) Authorizes the employee to have access to information,  
60 including a trade secret, formula, pattern, compilation,  
61 program, device, method, technique, or process that derives  
62 actual or potential independent economic value from not being  
63 generally known to, and not being readily ascertainable by  
64 proper means by, other persons who can obtain economic value  
65 from the disclosure or use of the information and is the subject  
66 of efforts that are reasonable under the circumstances to  
67 maintain its secrecy; or

68 (f) Involves public safety, such as a law enforcement  
69 officer, peace officer, or other position involving enforcement  
70 of state or federal criminal laws.

71 (4) As used in paragraph (3) (a), the term:

72 (a) "Managerial" means a position that requires an  
73 individual to formulate and effectuate management policies by  
74 expressing and making operative the decisions of the employer.

75 (b) "Supervisory" means a position in which an individual  
76 has the authority, in the interest of the employer, to hire,  
77 transfer, suspend, lay off, recall, promote, discharge, assign,  
78 reward, or discipline other employees, or the responsibility to  
79 direct them, adjust their grievances, or recommend such action  
80 where the authority or responsibility is not merely routine or  
81 clerical, but requires the use of independent judgment.

82 (5) This section does not apply to an employer that is:

83 (a) Expressly permitted or required to inquire into an  
84 applicant's credit report or credit history for employment  
85 purposes pursuant to a federal or state law.

86 (b) A financial institution that accepts deposits that are  
87 insured by a federal agency, or an affiliate or subsidiary of

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88 the financial institution.

89 (c) A credit union or state-chartered bank registered with  
90 the Office of Financial Regulation.

91 (d) An entity that is registered as an investment advisor  
92 with the United States Securities and Exchange Commission, or an  
93 affiliate of the entity.

94 (6) (a) Without regard to any other remedy or relief to  
95 which a person is entitled, a person aggrieved by a violation of  
96 this section may bring an action to obtain a declaratory  
97 judgment that an act or practice violates this section and to  
98 enjoin the violator from further violations.

99 (b) A person who has suffered a loss as a result of a  
100 violation of this section and prevails may recover actual  
101 damages, plus court costs.

102 (c) In any action brought under this section, upon motion  
103 of the defendant, alleging that the action is frivolous, without  
104 legal or factual merit, or brought for the purpose of  
105 harassment, the court may, after hearing evidence as to the  
106 necessity therefor, require the plaintiff to post bond in an  
107 amount that the court finds reasonable to indemnify the  
108 defendant for any damages incurred, including reasonable  
109 attorney fees. This subsection does not apply to any action  
110 initiated by the enforcing authority.

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

113 626.9541 Unfair methods of competition and unfair or  
114 deceptive acts or practices defined.—

115 (1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE  
116 ACTS.—The following are defined as unfair methods of competition

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117 and unfair or deceptive acts or practices:

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

120 1. Knowingly collecting any sum as a premium or charge for  
121 insurance, which is not then provided, or is not in due course  
122 to be provided, subject to acceptance of the risk by the  
123 insurer, by an insurance policy issued by an insurer as  
124 permitted by this code.

125 2. Knowingly collecting as a premium or charge for  
126 insurance any sum in excess of or less than the premium or  
127 charge applicable to such insurance, in accordance with the  
128 applicable classifications and rates as filed with and approved  
129 by the office, and as specified in the policy; or, in cases when  
130 classifications, premiums, or rates are not required by this  
131 code to be so filed and approved, premiums and charges collected  
132 from a Florida resident in excess of or less than those  
133 specified in the policy and as fixed by the insurer. This  
134 provision does ~~shall not be deemed to~~ prohibit the charging and  
135 collection, by surplus lines agents licensed under part VIII of  
136 this chapter, of the amount of applicable state and federal  
137 taxes, or fees as authorized by s. 626.916(4), in addition to  
138 the premium required by the insurer or the charging and  
139 collection, by licensed agents, of the exact amount of any  
140 discount or other such fee charged by a credit card facility in  
141 connection with the use of a credit card, as authorized by  
142 subparagraph (q)3., in addition to the premium required by the  
143 insurer. This subparagraph does ~~shall not be construed to~~  
144 prohibit collection of a premium for a universal life or a  
145 variable or indeterminate value insurance policy made in

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146 accordance with the terms of the contract.

147 3.a. Imposing or requesting an additional premium for a  
148 policy of motor vehicle liability, personal injury protection,  
149 medical payment, or collision insurance or any combination  
150 thereof or refusing to renew the policy solely because the  
151 insured was involved in a motor vehicle accident unless the  
152 insurer's file contains information from which the insurer in  
153 good faith determines that the insured was substantially at  
154 fault in the accident.

155 b. An insurer that ~~which~~ imposes and collects such a  
156 surcharge or ~~which~~ refuses to renew such policy shall, in  
157 conjunction with the notice of premium due or notice of  
158 nonrenewal, notify the named insured that he or she is entitled  
159 to reimbursement of such amount or renewal of the policy under  
160 the conditions listed below and will subsequently reimburse him  
161 or her or renew the policy, if the named insured demonstrates  
162 that the operator involved in the accident was:

163 (I) Lawfully parked;

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

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

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

172 (V) Not convicted of a moving traffic violation in  
173 connection with the accident, but the operator of the other  
174 automobile involved in such accident was convicted of a moving

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175 traffic violation;

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

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

180 (VIII) Not at fault as evidenced by a written statement  
181 from the insured establishing facts demonstrating lack of fault  
182 which are not rebutted by information in the insurer's file from  
183 which the insurer in good faith determines that the insured was  
184 substantially at fault.

185 c. In addition to the other provisions of this  
186 subparagraph, an insurer may not fail to renew a policy if the  
187 insured has had only one accident in which he or she was at  
188 fault within the current 3-year period. However, an insurer may  
189 nonrenew a policy for reasons other than accidents in accordance  
190 with s. 627.728. This subparagraph does not prohibit nonrenewal  
191 of a policy under which the insured has had three or more  
192 accidents, regardless of fault, during the most recent 3-year  
193 period.

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

198 a. A second infraction committed within an 18-month period,  
199 or a third or subsequent infraction committed within a 36-month  
200 period.

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

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204           5. Upon the request of the insured, the insurer and  
205 licensed agent shall supply to the insured the complete proof of  
206 fault or other criteria that ~~which~~ justifies the additional  
207 charge or cancellation.

208           6. An ~~No~~ insurer may not ~~shall~~ impose or request an  
209 additional premium for motor vehicle insurance, cancel or refuse  
210 to issue a policy, or refuse to renew a policy because the  
211 insured or the applicant is a handicapped or physically disabled  
212 person, so long as such handicap or physical disability does not  
213 substantially impair such person's mechanically assisted driving  
214 ability.

215           7. An ~~No~~ insurer may not cancel or otherwise terminate any  
216 insurance contract or coverage, or require execution of a  
217 consent to rate endorsement, during the stated policy term for  
218 the purpose of offering to issue, or issuing, a similar or  
219 identical contract or coverage to the same insured with the same  
220 exposure at a higher premium rate or continuing an existing  
221 contract or coverage with the same exposure at an increased  
222 premium.

223           8. An ~~No~~ insurer may not issue a nonrenewal notice on any  
224 insurance contract or coverage, or require execution of a  
225 consent to rate endorsement, for the purpose of offering to  
226 issue, or issuing, a similar or identical contract or coverage  
227 to the same insured at a higher premium rate or continuing an  
228 existing contract or coverage at an increased premium without  
229 meeting any applicable notice requirements.

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



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233 achievement.

234 10. An insurer may not use any rate, rating schedule,  
235 rating manual, or underwriting rule that is not contained in a  
236 rating manual and that is determined in whole or in part on the  
237 basis of an insured's credit report or credit score as defined  
238 in s. 626.9741.

239 ~~11.10.~~ Imposing or requesting an additional premium for  
240 motor vehicle comprehensive or uninsured motorist coverage  
241 solely because the insured was involved in a motor vehicle  
242 accident or was convicted of a moving traffic violation.

243 ~~12.11.~~ An ~~No~~ insurer may not ~~shall~~ cancel or issue a  
244 nonrenewal notice on any insurance policy or contract without  
245 complying with any applicable cancellation or nonrenewal  
246 provision required under the Florida Insurance Code.

247 ~~13.12.~~ An ~~No~~ insurer may not ~~shall~~ impose or request an  
248 additional premium, cancel a policy, or issue a nonrenewal  
249 notice on any insurance policy or contract because of any  
250 traffic infraction when adjudication has been withheld and no  
251 points have been assessed pursuant to s. 318.14(9) and (10).  
252 However, this subparagraph does not apply to traffic infractions  
253 involving accidents in which the insurer has incurred a loss due  
254 to the fault of the insured.

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

258 1. Race, color, creed, marital status, sex, or national  
259 origin;

260 2. The residence, age, or lawful occupation of the  
261 individual or the location of the risk, unless there is a

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262 reasonable relationship between the residence, age, or lawful  
263 occupation of the individual or the location of the risk and the  
264 coverage issued or to be issued;

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

270 4. The insured's or applicant's failure to purchase  
271 noninsurance services or commodities, including automobile  
272 services as defined in s. 624.124;

273 5. The fact that the insured or applicant is a public  
274 official; ~~or~~

275 6. The fact that the insured or applicant had been  
276 previously refused insurance coverage by any insurer, when such  
277 refusal to insure or continue to insure for this reason occurs  
278 with such frequency as to indicate a general business practice;  
279 or-

280 7. The insured's or applicant's credit report or credit  
281 score as defined in s. 626.9741.

282 Section 3. Section 626.9741, Florida Statutes, is amended  
283 to read:

284 626.9741 Use of credit reports and credit scores by  
285 insurers.-

286 (1) An insurer may not use credit reports or credit scores  
287 in making rating determinations. ~~The purpose of this section is~~  
288 ~~to regulate and limit the use of credit reports and credit~~  
289 ~~scores by insurers for underwriting and rating purposes. This~~  
290 ~~section applies only to personal lines motor vehicle insurance~~

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291 ~~and personal lines residential insurance, which includes~~  
292 ~~homeowners, mobile home owners' dwelling, tenants, condominium~~  
293 ~~unit owners, cooperative unit owners, and similar types of~~  
294 ~~insurance.~~

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

296 ~~(a) "Adverse decision" means a decision to refuse to issue~~  
297 ~~or renew a policy of insurance; to issue a policy with~~  
298 ~~exclusions or restrictions; to increase the rates or premium~~  
299 ~~charged for a policy of insurance; to place an insured or~~  
300 ~~applicant in a rating tier that does not have the lowest~~  
301 ~~available rates for which that insured or applicant is otherwise~~  
302 ~~eligible; or to place an applicant or insured with a company~~  
303 ~~operating under common management, control, or ownership which~~  
304 ~~does not offer the lowest rates available, within the affiliate~~  
305 ~~group of insurance companies, for which that insured or~~  
306 ~~applicant is otherwise eligible.~~

307 (a)~~(b)~~ "Credit report" means any written, oral, or other  
308 communication of any information by a consumer reporting agency,  
309 as defined in the federal Fair Credit Reporting Act, 15 U.S.C.  
310 ss. 1681 et seq., bearing on a consumer's credit worthiness,  
311 credit standing, or credit capacity, which is used or expected  
312 to be used or collected as a factor to establish a person's  
313 eligibility for credit or insurance, or any other purpose  
314 authorized pursuant to the applicable provision of such federal  
315 act. A credit score alone, as calculated by a credit reporting  
316 agency or by or for the insurer, may not be considered a credit  
317 report.

318 (b)~~(e)~~ "Credit score" means a score, grade, or value that  
319 is derived by using any or all data from a credit report in any

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320 type of model, method, or program, whether electronically, in an  
321 algorithm, computer software or program, or any other process,  
322 for the purpose of grading or ranking credit report data.

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

327 ~~(3) An insurer must inform an applicant or insured, in the~~  
328 ~~same medium as the application is taken, that a credit report or~~  
329 ~~score is being requested for underwriting or rating purposes. An~~  
330 ~~insurer that makes an adverse decision based, in whole or in~~  
331 ~~part, upon a credit report must provide at no charge, a copy of~~  
332 ~~the credit report to the applicant or insured or provide the~~  
333 ~~applicant or insured with the name, address, and telephone~~  
334 ~~number of the consumer reporting agency from which the insured~~  
335 ~~or applicant may obtain the credit report. The insurer must~~  
336 ~~provide notification to the consumer explaining the reasons for~~  
337 ~~the adverse decision. The reasons must be provided in~~  
338 ~~sufficiently clear and specific language so that a person can~~  
339 ~~identify the basis for the insurer's adverse decision. Such~~  
340 ~~notification shall include a description of the four primary~~  
341 ~~reasons, or such fewer number as existed, which were the primary~~  
342 ~~influences of the adverse decision. The use of generalized terms~~  
343 ~~such as "poor credit history," "poor credit rating," or "poor~~  
344 ~~insurance score" does not meet the explanation requirements of~~  
345 ~~this subsection. A credit score may not be used in underwriting~~  
346 ~~or rating insurance unless the scoring process produces~~  
347 ~~information in sufficient detail to permit compliance with the~~  
348 ~~requirements of this subsection. It shall not be deemed an~~

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349 ~~adverse decision if, due to the insured's credit report or~~  
350 ~~credit score, the insured continues to receive a less favorable~~  
351 ~~rate or placement in a less favorable tier or company at the~~  
352 ~~time of renewal except for renewals or reunderwriting required~~  
353 ~~by this section.~~

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

358 ~~(b) An insurer may not make an adverse decision solely~~  
359 ~~because of information contained in a credit report or score~~  
360 ~~without consideration of any other underwriting or rating~~  
361 ~~factor.~~

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

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

367 ~~a. Treat the consumer as otherwise approved by the Office~~  
368 ~~of Insurance Regulation if the insurer presents information that~~  
369 ~~such an absence or inability is related to the risk for the~~  
370 ~~insurer;~~

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

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

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

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

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378 ~~4. Any other circumstance that the Financial Services~~  
379 ~~Commission determines, by rule, lacks sufficient statistical~~  
380 ~~correlation and actuarial justification as a predictor of~~  
381 ~~insurance risk.~~

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

384 ~~1. Credit inquiries not initiated by the consumer or~~  
385 ~~inquiries requested by the consumer for his or her own credit~~  
386 ~~information.~~

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

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

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

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

399 ~~(e) An insurer must, upon the request of an applicant or~~  
400 ~~insured, provide a means of appeal for an applicant or insured~~  
401 ~~whose credit report or credit score is unduly influenced by a~~  
402 ~~dissolution of marriage, the death of a spouse, or temporary~~  
403 ~~loss of employment. The insurer must complete its review within~~  
404 ~~10 business days after the request by the applicant or insured~~  
405 ~~and receipt of reasonable documentation requested by the~~  
406 ~~insurer, and, if the insurer determines that the credit report~~

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407 ~~or credit score was unduly influenced by any of such factors,~~  
408 ~~the insurer shall treat the applicant or insured as if the~~  
409 ~~applicant or insured had neutral credit information or shall~~  
410 ~~exclude the credit information, as defined by the insurer,~~  
411 ~~whichever is more favorable to the applicant or insured. An~~  
412 ~~insurer shall not be considered out of compliance with its~~  
413 ~~underwriting rules or rates or forms filed with the Office of~~  
414 ~~Insurance Regulation or out of compliance with any other state~~  
415 ~~law or rule as a result of granting any exceptions pursuant to~~  
416 ~~this subsection.~~

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

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

426 ~~(7) (a) An insurer shall establish procedures to review the~~  
427 ~~credit history of an insured who was adversely affected by the~~  
428 ~~use of the insured's credit history at the initial rating of the~~  
429 ~~policy, or at a subsequent renewal thereof. This review must be~~  
430 ~~performed at a minimum of once every 2 years or at the request~~  
431 ~~of the insured, whichever is sooner, and the insurer shall~~  
432 ~~adjust the premium of the insured to reflect any improvement in~~  
433 ~~the credit history. The procedures must provide that, with~~  
434 ~~respect to existing policyholders, the review of a credit report~~  
435 ~~will not be used by the insurer to cancel, refuse to renew, or~~

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436 ~~require a change in the method of payment or payment plan.~~

437 ~~(b) However, as an alternative to the requirements of~~  
438 ~~paragraph (a), an insurer that used a credit report or credit~~  
439 ~~score for an insured upon inception of a policy, who will not~~  
440 ~~use a credit report or score for reunderwriting, shall~~  
441 ~~reevaluate the insured within the first 3 years after inception,~~  
442 ~~based on other allowable underwriting or rating factors,~~  
443 ~~excluding credit information if the insurer does not increase~~  
444 ~~the rates or premium charged to the insured based on the~~  
445 ~~exclusion of credit reports or credit scores.~~

446 ~~(3)(8) The commission may adopt rules to administer this~~  
447 ~~section. The rules may include, but need not be limited to:~~

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

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

453 ~~(c) Standards that ensure that rates or premiums associated~~  
454 ~~with the use of a credit report or score are not unfairly~~  
455 ~~discriminatory, based upon race, color, religion, marital~~  
456 ~~status, age, gender, income, national origin, or place of~~  
457 ~~residence.~~

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

463 Section 4. This act shall take effect July 1, 2012.