

AN ACT concerning the use of credit information and insurance.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Short title. This Act may be cited as the Use of Credit Information in Personal Insurance Act.

Section 5. Purpose. The purpose of this Act is to regulate the use of credit information for personal insurance so that consumers are afforded certain protections with respect to the use of that information.

Section 10. Scope. This Act applies to personal insurance and not to commercial insurance. For purposes of this Act, "personal insurance" means private passenger automobile, homeowners, motorcycle, mobile-homeowners and non-commercial dwelling fire insurance policies, and boat, personal watercraft, snowmobile, and recreational vehicle policies. Such policies must be individually underwritten for personal, family, or household use. No other type of insurance shall be included as personal insurance for the purpose of this Act.

Section 15. Definitions. For the purposes of this Act, these defined words have the following meanings:

"Adverse Action" means a denial or cancellation of, an increase in any charge for, or a reduction or other adverse or unfavorable change in the terms of coverage or amount of, any insurance, existing or applied for, in connection with the underwriting of personal insurance.

"Affiliate" means any company that controls, is controlled by, or is under common control with another

company.

"Applicant" means an individual who has applied to be covered by a personal insurance policy with an insurer.

"Consumer" means an insured or an applicant for a personal insurance policy whose credit information is used or whose insurance score is calculated in the underwriting or rating of a personal insurance policy.

"Consumer reporting agency" means any person that, for monetary fees or dues or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.

"Credit information" means any credit-related information derived from a credit report, found on a credit report itself, or provided on an application for personal insurance. Information that is not credit-related shall not be considered "credit information," regardless of whether it is contained in a credit report or in an application or is used to calculate an insurance score.

"Credit report" means any written, oral, or other communication of information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, or credit capacity, that is used or expected to be used or collected in whole or in part for the purpose of serving as a factor to determine personal insurance premiums, eligibility for coverage, or tier placement.

"Department" means the Department of Insurance.

"Insurance score" means a number or rating that is derived from an algorithm, computer application, model, or other process that is based in whole or in part on credit information for the purposes of predicting the future insurance loss exposure of an individual applicant or insured.

Section 20. Use of credit information. An insurer authorized to do business in this State that uses credit information to underwrite or rate risks shall not:

(1) Use an insurance score that is calculated using income, gender, address, ethnic group, religion, marital status, or nationality of the consumer as a factor.

(2) Deny, cancel, or nonrenew a policy of personal insurance solely on the basis of credit information, without consideration of any other applicable underwriting factor independent of credit information and not expressly prohibited by item (1). An insurer shall not be considered to have denied, cancelled, or nonrenewed a policy if coverage is available through an affiliate.

(3) Base an insured's renewal rates for personal insurance solely upon credit information, without consideration of any other applicable factor independent of credit information. An insurer shall not be considered to have based rates solely on credit information if coverage is available in a different tier of the same insurer.

(4) Take an adverse action against a consumer solely because he or she does not have a credit card account, without consideration of any other applicable factor independent of credit information.

(5) Consider an absence of credit information or an inability to calculate an insurance score in underwriting or rating personal insurance, unless the insurer does one of the following:

(A) Treats the consumer as otherwise approved by the Department, if the insurer presents information that such an absence or inability relates to the risk for the insurer.

(B) Treats the consumer as if the applicant or

insured had neutral credit information, as defined by the insurer.

(C) Excludes the use of credit information as a factor and uses only other underwriting criteria.

(6) Take an adverse action against a consumer based on credit information, unless an insurer obtains and uses a credit report issued or an insurance score calculated within 90 days from the date the policy is first written or renewal is issued.

(7) Use credit information unless not later than every 36 months following the last time that the insurer obtained current credit information for the insured, the insurer recalculates the insurance score or obtains an updated credit report. Regardless of the other requirements of this Section:

(A) At annual renewal, upon the request of a consumer or the consumer's agent, the insurer shall re-underwrite and re-rate the policy based upon a current credit report or insurance score. An insurer need not recalculate the insurance score or obtain the updated credit report of a consumer more frequently than once in a 12-month period.

(B) The insurer shall have the discretion to obtain current credit information upon any renewal before the expiration of 36 months, if consistent with its underwriting guidelines.

(C) An insurer is not required to obtain current credit information for an insured, despite the requirements of subitem (A) of item (7) of this Section if one of the following applies:

(a) The insurer is treating the consumer as otherwise approved by the Department.

(b) The insured is in the most favorably-priced tier of the insurer, within a

group of affiliated insurers. However, the insurer shall have the discretion to order credit information, if consistent with its underwriting guidelines.

(c) Credit was not used for underwriting or rating the insured when the policy was initially written. However, the insurer shall have the discretion to use credit for underwriting or rating the insured upon renewal, if consistent with its underwriting guidelines.

(d) The insurer re-evaluates the insured beginning no later than 36 months after inception and thereafter based upon other underwriting or rating factors, excluding credit information.

(8) Use the following as a negative factor in any insurance scoring methodology or in reviewing credit information for the purpose of underwriting or rating a policy of personal insurance:

(A) Credit inquiries not initiated by the consumer or inquiries requested by the consumer for his or her own credit information.

(B) Inquiries relating to insurance coverage, if so identified on a consumer's credit report.

(C) Collection accounts with a medical industry code, if so identified on the consumer's credit report.

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

(E) Multiple lender inquiries, if coded by the

consumer reporting agency on the consumer's credit report as being from the automobile lending industry and made within 30 days of one another, unless only one inquiry is considered.

Section 25. Dispute resolution and error correction. If it is determined through the dispute resolution process set forth in the federal Fair Credit Reporting Act, 15 U.S.C. 1681i (a)(5), that the credit information of a current insured was incorrect or incomplete and if the insurer receives notice of that determination from either the consumer reporting agency or from the insured, the insurer shall re-underwrite and re-rate the consumer within 30 days after receiving the notice. After re-underwriting or re-rating the insured, the insurer shall make any adjustments necessary, consistent with its underwriting and rating guidelines. If an insurer determines that the insured has overpaid premium, the insurer shall refund to the insured the amount of overpayment calculated back to the shorter of either the last 12 months of coverage or the actual policy period.

Section 30. Initial notification.

(a) If an insurer writing personal insurance uses credit information in underwriting or rating a consumer, the insurer or its agent shall disclose, either on the insurance application or at the time the insurance application is taken, that it may obtain credit information in connection with the application. The disclosure shall be either written or provided to an applicant in the same medium as the application for insurance. The insurer need not provide the disclosure statement required under this Section to any insured on a renewal policy, if the consumer has previously been provided a disclosure statement.

(b) Use of the following example disclosure statement constitutes compliance with this Section: "In connection with this application for insurance, we may review your credit report or obtain or use a credit-based insurance score based on the information contained in that credit report. We may use a third party in connection with the development of your insurance score."

Section 35. Adverse action notification. If an insurer takes an adverse action based upon credit information, the insurer must meet all of the notice requirements of this Section. The insurer shall:

(1) Provide notification to the consumer that an adverse action has been taken, in accordance with the requirements of the federal Fair Credit Reporting Act, 15 U.S.C. 1681m(a).

(2) Provide notification to the consumer explaining the reason for the adverse action. The reasons must be provided in sufficiently clear and specific language so that a person can identify the basis for the insurer's decision to take an adverse action. The notification shall include a description of up to 4 factors that were the primary influences of the adverse action. The use of generalized terms such as "poor credit history", "poor credit rating", or "poor insurance score" does not meet the explanation requirements of this Section. Standardized credit explanations provided by consumer reporting agencies or other third party vendors are deemed to comply with this Section.

Section 40. Filing.

(a) Insurers that use insurance scores to underwrite and rate risks must file their scoring models (or other scoring processes) with the Department. A third party may file

scoring models on behalf of insurers. A filing that includes insurance scoring may include loss experience justifying the use of credit information.

(b) Any filing relating to credit information is considered to be a trade secret under the Illinois Trade Secrets Act.

Section 45. Enforcement; rates not regulated.

(a) The Department shall enforce the provisions of this Act pursuant to the enforcement powers granted to it under the Illinois Insurance Code. The Department may promulgate rules necessary to enforce and administer this Act.

(b) Nothing contained in this Act shall be construed to empower the Department to regulate or set the rates of any insurer pursuant to this Act.

Section 50. Sale of policy term information by consumer reporting agency.

(a) No consumer reporting agency shall provide or sell data or lists that include any information that in whole or in part was submitted in conjunction with an insurance inquiry about a consumer's credit information or a request for a credit report or insurance score. Such information includes, but is not limited to, the expiration dates of an insurance policy or any other information that may identify time periods during which a consumer's insurance may expire and the terms and conditions of the consumer's insurance coverage.

(b) The restrictions provided in subsection (a) of this Section do not apply to data or lists the consumer reporting agency supplies to the insurance agent or producer from whom information was received, the insurer on whose behalf the agent or producer acted, or the insurer's affiliates or holding companies.

(c) Nothing in this Section shall be construed to restrict any insurer from being able to obtain a claims history report or a motor vehicle report.

Section 55. Severability. If any Section, paragraph, sentence, clause, phrase, or part of this Act is declared invalid due to an interpretation of or a future change in the federal Fair Credit Reporting Act, the remaining Sections, paragraphs, sentences, clauses, phrases, or parts thereof shall be in no manner affected thereby but shall remain in full force and effect.

(215 ILCS 5/155.38 rep)

Section 95. The Illinois Insurance Code is amended by repealing Section 155.38.

Section 99. Effective date. This Act takes effect on October 1, 2003.