

1 AMENDMENT TO HOUSE BILL 3661

2 AMENDMENT NO. _____. Amend House Bill 3661 by replacing
3 everything after the enacting clause with the following:

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

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

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

20 Section 15. Definitions. For the purposes of this Act,

1 these defined words have the following meanings:

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

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

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

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

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

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

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

1 for coverage, or tier placement.

2 "Department" means the Department of Insurance.

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

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

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

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

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

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

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

5 (A) Treats the consumer in the manner filed
6 with the Department, if the insurer presents
7 information that such an absence or inability
8 relates to the risk for the insurer and submits a
9 filing certification form signed by an officer for
10 the insurer certifying that such treatment is
11 actuarially justified.

12 (B) Treats the consumer as if the applicant or
13 insured had neutral credit information, as defined
14 by the insurer.

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

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

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

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

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

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

9 (a) The insurer is treating the consumer
10 as otherwise filed with the Department.

11 (b) The insured is in the most
12 favorably-priced tier of the insurer, within a
13 group of affiliated insurers. However, the
14 insurer shall have the discretion to order
15 credit information, if consistent with its
16 underwriting guidelines.

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

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

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

33 (A) Credit inquiries not initiated by the
34 consumer or inquiries requested by the consumer for

1 his or her own credit information.

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

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

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

12 (E) Multiple lender inquiries, if coded by the
13 consumer reporting agency on the consumer's credit
14 report as being from the automobile lending industry
15 and made within 30 days of one another, unless only
16 one inquiry is considered.

17 Section 25. Dispute resolution and error correction. If
18 it is determined through the dispute resolution process set
19 forth in the federal Fair Credit Reporting Act, 15 U.S.C.
20 1681i (a)(5), that the credit information of a current
21 insured was incorrect or incomplete and if the insurer
22 receives notice of that determination from either the
23 consumer reporting agency or from the insured, the insurer
24 shall re-underwrite and re-rate the consumer within 30 days
25 after receiving the notice. After re-underwriting or
26 re-rating the insured, the insurer shall make any adjustments
27 necessary, consistent with its underwriting and rating
28 guidelines. If an insurer determines that the insured has
29 overpaid premium, the insurer shall refund to the insured the
30 amount of overpayment calculated back to the shorter of
31 either the last 12 months of coverage or the actual policy
32 period.

1 Section 30. Initial notification.

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

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

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

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

28 (2) Provide notification to the consumer explaining
29 the reason for the adverse action. The reasons must be
30 provided in sufficiently clear and specific language so
31 that a person can identify the basis for the insurer's
32 decision to take an adverse action. The notification
33 shall include a description of up to 4 factors that were

1 the primary influences of the adverse action. The use of
2 generalized terms such as "poor credit history", "poor
3 credit rating", or "poor insurance score" does not meet
4 the explanation requirements of this Section.
5 Standardized credit explanations provided by consumer
6 reporting agencies or other third party vendors are
7 deemed to comply with this Section.

8 Section 40. Filing.

9 (a) Insurers that use insurance scores to underwrite and
10 rate risks must file their scoring models (or other scoring
11 processes) with the Department. A third party may file
12 scoring models on behalf of insurers. A filing that includes
13 insurance scoring may include loss experience justifying the
14 use of credit information.

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

18 Section 45. Enforcement; rates not regulated.

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

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

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

28 (a) No consumer reporting agency shall provide or sell
29 data or lists that include any information that in whole or
30 in part was submitted in conjunction with an insurance
31 inquiry about a consumer's credit information or a request

1 for a credit report or insurance score. Such information
2 includes, but is not limited to, the expiration dates of an
3 insurance policy or any other information that may identify
4 time periods during which a consumer's insurance may expire
5 and the terms and conditions of the consumer's insurance
6 coverage.

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

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

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

23 (215 ILCS 5/155.38 rep)

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

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