

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 84th General Assembly
3 Regular Session, 2003
4

A Bill

HOUSE BILL 2358

5 By: Representatives Napper, R. Smith, Cleveland, Gillespie, House, Creekmore, Schulte, P. Bookout,
6 Haak, Hathorn, Biggs, Bledsoe, Ferguson, Hutchinson, Ledbetter, Moore, Childers
7 By: Senators Critcher, Miller, Glover
8

For An Act To Be Entitled

11 AN ACT CONCERNING THE USE OF CONSUMER REPORTS IN
12 UNDERWRITING AND RATING OF PROPERTY AND CASUALTY
13 PERSONAL LINES OF INSURANCE; AND FOR OTHER
14 PURPOSES.
15

Subtitle

17 AN ACT CONCERNING THE USE OF CONSUMER
18 REPORTS IN UNDERWRITING AND RATING OF
19 PROPERTY AND CASUALTY PERSONAL LINES OF
20 INSURANCE.
21
22

23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
24

25 SECTION 1. Effective January 1, 2004, Arkansas Code § 23-66-317 is
26 repealed.

27 ~~23-66-317. Effect of a consumer report on issuance or renewal of~~
28 ~~coverage.~~

29 ~~(a) As used in this section, the term "consumer report" means any~~
30 ~~written, oral, or other communication of any information by a consumer~~
31 ~~reporting agency bearing on a consumer's credit worthiness, credit capacity,~~
32 ~~character, general reputation, personal characteristics, or mode of living~~
33 ~~which is used or expected to be used or collected in whole or in part for the~~
34 ~~purpose of serving as a factor in establishing the consumer's eligibility for~~
35 ~~insurance and other purposes authorized by the federal Fair Credit Reporting~~
36 ~~Act. A consumer report shall not include motor vehicle records or claims~~



1 records.

2 (b) ~~No insurer shall refuse to issue or renew coverage or limit the~~
 3 ~~amount of coverage on a risk in this state based solely upon the insurer's~~
 4 ~~knowledge of the insured's or applicant's consumer report, unless:~~

5 (1) ~~The consumer report of the insured or applicant can be shown~~
 6 ~~to identify characteristics which substantially increase the risk of loss at~~
 7 ~~or after policy issuance or renewal;~~

8 (2) ~~The insurer or its agent sends a notice of cancellation,~~
 9 ~~refusal to renew, or declination to the insured or applicant which contains a~~
 10 ~~statement which advises that the cancellation, nonrenewal, or declination is~~
 11 ~~based on information contained in a consumer report relating to an applicant~~
 12 ~~or insured or other resident of the household; and~~

13 (3) ~~The insurer or its agent sends to the applicant or insured~~
 14 ~~the name and address of the institutional source from which the insurer~~
 15 ~~obtained the consumer report and advises the applicant or insured that if~~
 16 ~~more detail on the credit information which formed the basis of the decision~~
 17 ~~is desired, a free copy of the consumer report may be obtained by making a~~
 18 ~~written request or by appearing in person at the credit reporting agency or~~
 19 ~~such other party as the insurer shall identify in the notice, not more than~~
 20 ~~ten (10) days after the date on which the notice of cancellation, nonrenewal,~~
 21 ~~or declination was mailed to the insured or applicant.~~

22 (c) ~~If the insurer is relying solely upon a credit scoring system or~~
 23 ~~model in reaching its underwriting decision, the insurer must:~~

24 (1) ~~File the credit scoring system with the Insurance~~
 25 ~~Commissioner; and~~

26 (2) ~~Provide the applicant or insured with a clear, concise~~
 27 ~~explanation of the factors taken into consideration in reaching its decision.~~

28 (d) ~~If used for rating, the guidelines on the use of consumer reports~~
 29 ~~or consumer report scoring system or model must be filed with the~~
 30 ~~commissioner.~~

31 (e) ~~If an insurer chooses to utilize a consumer report or credit~~
 32 ~~scoring system or model in underwriting a class or subclass of applicants,~~
 33 ~~the insurer must apply the same criteria for all applicants in the class or~~
 34 ~~subclass of business. However, nothing in this section is intended to prevent~~
 35 ~~an insurer from considering each risk on an individual basis nor is it~~
 36 ~~intended to interfere with an insurer's right to rescind a contract ab initio~~

1 ~~based upon a material misrepresentation in the application.~~

2 ~~(f) The provisions of this section shall be subject to provisions of~~
3 ~~the federal Truth in Lending Act and the federal Fair Credit Reporting Act.~~

4 ~~(g) No insurer may condition the issuance of an insurance policy in~~
5 ~~this state upon the fact that an applicant or insured does not possess a~~
6 ~~credit card.~~

7 ~~(h) Any proprietary consumer report scoring system or model filed with~~
8 ~~the commissioner under this section shall remain confidential.~~

9 ~~(i) This section shall only apply to personal lines of property and~~
10 ~~casualty insurance.~~

11
12 SECTION 2. Effective January 1, 2004, Arkansas Code, Title 23, Chapter
13 67, is amended to add an additional subchapter to read as follows:

14 23-67-401. Title.

15 This subchapter may be cited as the "Use of Credit Information in
16 Personal Insurance Act".

17
18 23-67-402. Purpose.

19 The purpose of this bill is to restrict the use of credit information
20 to, and regulate its use for, those specific lines of personal insurance as
21 defined, so that consumers are afforded certain protections with respect to
22 the use of credit information.

23
24 23-67-403. Scope.

25 This subchapter shall not apply to commercial insurance.

26
27 23-67-404. Definitions.

28 For the purposes of this subchapter:

29 (1) "Adverse action" means a denial or cancellation of, an increase in
30 any charge for, or a reduction or other adverse or unfavorable change in the
31 terms of coverage or amount of any insurance, existing or applied for, in
32 connection with the underwriting of personal insurance;

33 (2) "Affiliate" means any company that controls, is controlled by, or
34 is under common control with another company;

35 (3) "Applicant" means an individual who has applied to be covered by a
36 personal insurance policy with an insurer;

1 (4) "Consumer" means an insured whose credit information is used or
 2 whose credit score is calculated in the underwriting or rating of a personal
 3 insurance policy or an applicant for the policy;

4 (5) "Consumer reporting agency" means any person who, for monetary
 5 fees, dues, or on a cooperative nonprofit basis, regularly engages in whole
 6 or in part in the practice of assembling or evaluating consumer credit
 7 information or other information on consumers for the purpose of furnishing
 8 consumer reports to third parties;

9 (6)(A) "Credit information" means any credit related information
 10 derived from a credit report or found on a credit report itself.

11 (B) Information that is not credit related shall not be
 12 considered "credit information" regardless of whether it is contained in a
 13 credit report or in an application, or is used to calculate a credit score;

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

20 (B) Loss history reports and driving history reports are not
 21 considered to be credit reports;

22 (8) "Credit score" means a number or rating that is derived from an
 23 algorithm, computer application, model, or other process that is based solely
 24 on credit information for the purposes of predicting the future insurance
 25 loss exposure of an individual applicant or insured; and

26 (9) "Personal insurance" means only homeowners, mobile homeowners,
 27 noncommercial dwelling fire insurance and noncommercial farm owners policies.

28
 29 23-67-405. Personal passenger automobile insurance.

30 Consumer credit information shall not be used to determine premiums,
 31 whether or not to provide coverage, to cancel or nonrenew, or to determine
 32 what coverage will be provided for personal passenger automobile, boat,
 33 personal watercraft, snowmobile and recreational vehicle insurance.

34
 35 23-67-406. Use of credit information.

36 An insurer authorized to do business in Arkansas that uses credit

1 information to underwrite or rate a risk, shall not:

2 (1)(A) Use a credit score that is calculated using income, gender,
 3 address, zip code, ethnic group, religion, marital status, nationality of the
 4 consumer as a factor; or

5 (B) That serves as a proxy for any of those characteristics
 6 listed in subdivision (1)(A) of this section;

7 (2) Deny, cancel, or nonrenew a policy of personal insurance on the
 8 basis of credit information without application of normal underwriting
 9 criteria;

10 (3) Base an insured's renewal rates for personal insurance upon credit
 11 information without application of normal underwriting criteria;

12 (4) Take an adverse action against a consumer because he or she does
 13 not have a credit card;

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

17 (A) Treats the consumer as if the applicant or insured had
 18 neutral credit information, as defined by the insurer; or

19 (B) Excludes the use of credit information as a factor and uses
 20 only other underwriting criteria;

21 (6) Take an adverse action against a consumer based on credit
 22 information, unless an insurer obtains and uses a credit report issued or a
 23 credit score calculated within ninety (90) days prior to the date the policy
 24 is first written or renewal is issued;

25 (7) Use credit information unless not later than twenty-four (24)
 26 months following the last time that the insurer obtained current credit
 27 information for the insured, the insurer recalculates the credit score or
 28 obtains an updated credit report. Regardless of the requirements of this
 29 subdivision (7):

30 (A) Upon the documented request of a consumer, the insurer shall
 31 reunderwrite and rerate the policy based upon a current credit report or
 32 credit score. An insurer need not recalculate the credit score or obtain the
 33 updated credit report of a consumer or reunderwrite or rerate a policy more
 34 frequently than once in a twelve-month period;

35 (B) The insurer shall have the discretion to obtain current
 36 credit information prior to any renewal before the end of the twenty-four

1 (24) months;

2 (C) No insurer need obtain current credit information for an
3 insured, despite the requirements of subdivision (7)(A), if one of the
4 following applies:

5 (i) The insurer is treating the consumer as otherwise
6 approved by the commissioner;

7 (ii) The insured is in the most favorably priced rating
8 tier of the insurer, within a group of affiliated insurers. However, the
9 insurer shall have the discretion to order an updated credit report;

10 (iii) Credit was not used for underwriting or rating the
11 insured when the policy was initially written. However, the insurer shall
12 have the discretion to use credit information for underwriting or rating the
13 insured upon renewal; or

14 (iv) The insurer reevaluates the insured beginning no
15 later than twenty-four (24) months after inception and thereafter based upon
16 other underwriting or rating factors, excluding credit information; or

17 (8) Use the following as a negative factor in any credit scoring
18 methodology for the purpose of underwriting or rating:

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

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

23 (C) Medical collection accounts;

24 (D) Debts or negative public records related to a death in the
25 immediate family;

26 (E) Debts or negative public records related to the temporary
27 loss of employment;

28 (F) Business Debts;

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

33 (H) Multiple lender inquiries, if coded by the consumer
34 reporting agency on the consumer's credit report as being from the automobile
35 lending industry and made within thirty (30) days of one another, unless only
36 one inquiry is considered.

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23-67-407. Dispute resolution and error correction.

(a) 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 written notice of the determination from either the consumer reporting agency or from the insured, the insurer shall reunderwrite and rerate the consumer within thirty (30) calendar days of receiving the notice.

(b) After reunderwriting or rerating the insured, the insurer shall make any adjustments necessary, consistent with its underwriting and rating guidelines.

(c) If an insurer determines that the insured has overpaid a premium, the insurer shall refund to the insured the amount of overpayment.

23-67-408. Initial notification.

(a)(1) 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.

(2) The disclosure shall be either written or provided to an applicant in the same medium as the application for insurance.

(3) The insurer need not provide the disclosure statement required under this section to any insured on a renewal policy, if the insured 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 score based on the information contained in that credit report. We may use a third party in provide the consumer the name, address, and phone number of nnection with the development of your credit score.”

23-67-409. Adverse action notification.

If an insurer takes an adverse action based upon credit information, the insurer shall:

1 (1) Provide the consumer the name, address, and phone number of the
 2 person or division at the insurance company responsible for handling
 3 applicant or policyholder questions concerning credit-based underwriting
 4 decisions;

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

8 (A) The name, address, and toll-free telephone number of the
 9 credit bureau that provided the insurer with the credit-based information;

10 (B) The fact that the consumer has the right to obtain a free
 11 copy of his or her credit report from the appropriate credit bureau; and

12 (C) The fact that the consumer has the right to challenge
 13 information contained in his or her credit report; and

14 (3)(A) Provide notification to the consumer explaining the reasons for
 15 the adverse action including:

16 (1) The specific reason for the adverse underwriting
 17 decision;

18 (ii) The consumer's specific credit information that was
 19 considered to support the decision;

20 (iii) For each item of credit information that was
 21 considered, demonstrate how that consumer's credit information compared to
 22 the best possible results from the use of the scoring model or other scoring
 23 process; and

24 (iv) Any other reason independent of credit information
 25 that may have contributed to the action taken.

26 (B) The reasons shall be provided in sufficiently clear and
 27 specific language so that a person can identify the basis for the insurer's
 28 decision to take an adverse action.

29 (C)(i) The use of generalized terms such as "poor credit
 30 history", "poor credit rating", or "poor credit score" does not meet the
 31 explanation requirements of this section.

32 (ii) Standardized credit explanations provided by consumer
 33 reporting agencies or other third party vendors do not meet the explanation
 34 requirements of this section.

35
 36 23-67-410. Filing.

1 (a)(1) Insurers that use credit scores to underwrite or rate risks
2 shall file their scoring models, or other scoring processes, with the State
3 Insurance Department.

4 (2) A third party may file scoring models on behalf of insurers.

5 (3) A filing that includes credit scoring shall include loss
6 experience justifying the use of credit information.

7 (b) Any proprietary consumer report scoring system or model filed with
8 the commissioner under this subchapter shall remain confidential unless
9 otherwise directed by a court order.

10
11 23-67-411. Indemnification.

12 (a) An insurer shall indemnify, defend, and hold agents harmless from
13 and against all liability, fees, and costs arising out of or relating to the
14 actions, errors, or omissions of a producer who obtains or uses credit
15 information or credit scores, or both, for an insurer, provided the producer
16 follows the instructions of or procedures established by the insurer and
17 complies with any applicable law or regulation.

18 (b) Nothing in this section shall be construed to provide a consumer
19 or other insured with a cause of action that does not exist in the absence of
20 this section.

21
22 23-67-412. Sale of policy term information by consumer reporting
23 organization.

24 (a)(1) No consumer reporting agency shall provide or sell data or
25 lists that include any information that, in whole or in part, was submitted
26 in conjunction with an insurance inquiry about a consumer's credit
27 information or a request for a credit report or credit score.

28 (2) The information includes, but is not limited to, the
29 expiration dates of an insurance policy or any other information that may
30 identify time periods during which a consumer's insurance may expire and the
31 terms and conditions of the consumer's insurance coverage.

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

36 (c) Nothing in this section shall be construed to restrict any insurer

1 from being able to obtain a claims history report or a motor vehicle report.

2
3 23-67-413. Fair Credit Report Act.

4 The provisions of this subchapter shall be subject to the federal Fair
5 Credit Reporting Act, 15 U.S.C. § 1681.

6
7 23-67-414. Individual underwriting allowed.

8 Nothing in this subchapter is intended to prevent an insurer from
9 considering each risk on an individual basis, looking at individual risk
10 characteristics and other factors predictive of future loss.

11
12 23-67-415. Data reporting.

13 (1) No later than December 31st of each year every insurance company
14 writing any personal insurance that uses consumer credit information shall
15 report to the commissioner the number of consumers that received:

- 16 (A) a premium decrease of more than 20%;
- 17 (B) a premium decrease greater than 10%, but not more than 20%;
- 18 (C) a premium decrease of up to 10%;
- 19 (D) neither an increased nor decreased premium;
- 20 (E) a premium increase of up to 10%;
- 21 (F) a premium increase greater than 10%, but not more than 20%;

22 and

- 23 (G) a premium increase greater than 20%.

24 (2) The information reported under subsection (1) of this section
25 shall be reported on forms promulgated by the commissioner.

26 (3) The commissioner shall report to the Legislative Council on or
27 before June 30th of each year the information, in the aggregate, received
28 under subsection (1) of this section.

29 (4) All information reported pursuant to subsection (1) of this
30 section shall remain confidential unless otherwise directed by court order.

31
32 23-67-416. Modal payment prohibition.

33 No consumer credit information shall be used by an insurer in
34 determining whether a modal payment plan will be offered to the consumer.

35
36 23-67-417. Regulations.

1 The commissioner may make reasonable rules and regulations as necessary
2 to administer or enforce any provision of this subchapter.

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