

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

# A Bill

SENATE BILL 846

4  
5 By: Senator Higginbothom  
6  
7

## For An Act To Be Entitled

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

## Subtitle

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

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
22

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24 repealed.

25 ~~23-66-317. Effect of a consumer report on issuance or renewal of~~  
26 ~~coverage.~~

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

36 ~~(b) No insurer shall refuse to issue or renew coverage or limit the~~



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1 amount of coverage on a risk in this state based solely upon the insurer's  
2 knowledge of the insured's or applicant's consumer report, unless:

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

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

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

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

22 (1) File the credit scoring system with the Insurance  
23 Commissioner; and

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

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

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

36 (f) The provisions of this section shall be subject to provisions of

~~the federal Truth in Lending Act and the federal Fair Credit Reporting Act.~~

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

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

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

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

23-67-401. Title.

This subchapter shall be known and may be cited as the "Use of Credit Information in Personal Insurance Act".

23-67-402. Purpose.

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

23-67-403. Scope.

This subchapter applies to personal insurance and not to commercial insurance or any other type of insurance.

23-67-404. Definitions.

For the purposes of this subchapter:

(1) "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;

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

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

(4) "Consumer" means an insured whose credit information is used or whose credit score is calculated in the underwriting or rating of a

1 personal insurance policy or an applicant for the policy;

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

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

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

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

18 (B) Loss history reports and driving history reports are  
 19 not considered to be credit reports;

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

24 (9) "Personal insurance" means private passenger automobile,  
 25 homeowners, motorcycle, mobile homeowners, noncommercial dwelling fire  
 26 insurance, noncommercial farm owners, boat, personal watercraft, snowmobile,  
 27 and recreational vehicle policies.

28  
 29 23-67-405. Use of credit information.

30 An insurer authorized to do business in Arkansas that uses credit  
 31 information to underwrite or rate risks, shall not:

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

35 (2) Deny, cancel, or nonrenew a policy of personal insurance  
 36 solely on the basis of credit information, without consideration of any other

1 applicable underwriting factor independent of credit information and not  
2 expressly prohibited by subsection (1) of this section;

3 (3) Base an insured's renewal rates for personal insurance  
4 solely upon credit information, without consideration of any other applicable  
5 factor independent of credit information;

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

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

12 (A) Treats the consumer as otherwise approved by the  
13 commissioner, if the insurer presents information that such an absence or  
14 inability relates to the risk for the insurer;

15 (B) Treats the consumer as if the applicant or insured had  
16 neutral credit information, as defined by the insurer; or

17 (C) Excludes the use of credit information as a factor and  
18 use only other underwriting criteria;

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

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

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

33 (B) The insurer shall have the discretion to obtain  
34 current credit information prior to any renewal before the end of the thirty-  
35 six (36) months;

36 (C) No insurer need obtain current credit information for

1 an insured, despite the requirements of subdivision (7)(A), if one of the  
2 following applies:

3 (i) The insurer is treating the consumer as  
4 otherwise approved by the commissioner;

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

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

12 (iv) The insurer reevaluates the insured beginning  
13 no later than thirty-six (36) months after inception and thereafter based  
14 upon other underwriting or rating factors, excluding credit information; or

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

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

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

22 (C) Medical collection accounts;

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

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

31  
32 23-67-406. Dispute resolution and error correction.

33 (a) If it is determined through the dispute resolution process set  
34 forth in the federal Fair Credit Reporting Act, 15 USC 1681i(a)(5) that the  
35 credit information of a current insured was incorrect or incomplete and if  
36 the insurer receives written notice of the determination from either the

1 consumer reporting agency or from the insured, the insurer shall reunderwrite  
 2 and rerate the consumer within thirty (30) calendar days of receiving the  
 3 notice.

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

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

9  
 10 23-67-407. Initial notification.

11 (a)(1) If an insurer writing personal insurance uses credit  
 12 information in underwriting or rating a consumer, the insurer or its agent  
 13 shall disclose, either on the insurance application or at the time the  
 14 insurance application is taken, that it may obtain credit information in  
 15 connection with the application.

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

18 (3) The insurer need not provide the disclosure statement  
 19 required under this section to any insured on a renewal policy, if the  
 20 insured has previously been provided a disclosure statement.

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

26  
 27 23-67-408. Adverse action notification.

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

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

34 (2) Provide notification to the consumer that an adverse action  
 35 has been taken, in accordance with the requirements of the federal Fair  
 36 Credit Reporting Act, 15 USC 1681m(a), including:

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

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

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

8                   (3)(A) Provide notification to the consumer explaining the  
 9 reasons for the adverse action.

10                   (B) The reasons shall be provided in sufficiently clear  
 11 and specific language so that a person can identify the basis for the  
 12 insurer's decision to take an adverse action. The notification shall include  
 13 a description of up to four (4) factors that were the primary influences of  
 14 the adverse action.

15                   (C) The use of generalized terms such as "poor credit  
 16 history", "poor credit rating", or "poor credit score" does not meet the  
 17 explanation requirements of this section.

18                   (D) Standardized credit explanations provided by consumer  
 19 reporting agencies or other third party vendors are deemed to comply with  
 20 this section.

21  
 22                   23-67-409. Filing.

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

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

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

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

32  
 33                   23-67-410. Indemnification.

34                   (a) An insurer shall indemnify, defend, and hold agents harmless from  
 35 and against all liability, fees, and costs arising out of or relating to the  
 36 actions, errors, or omissions of a producer who obtains or uses credit



1 information or credit scores, or both, for an insurer, provided the producer  
2 follows the instructions of or procedures established by the insurer and  
3 complies with any applicable law or regulation.

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

7  
8 23-67-411. Sale of policy term information by consumer reporting  
9 organization.

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

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

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

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

24  
25 23-67-412. Fair credit report act.

26 The provisions of this subchapter shall be subject to the federal Fair  
27 Credit Reporting Act.

28  
29 23-67-413. Individual underwriting allowed.

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

33  
34 23-67-414. Regulations.

35 The commissioner may make reasonable rules and regulations necessary  
36 for or as an aid to the effectuation of any provision of this subchapter.