

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
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4

As Engrossed: S3/19/03 H4/10/03

A Bill

SENATE BILL 846

5 By: Senators Higginbotham, Holt, B. Johnson, Horn, Bryles
6 By: Representatives Matayo, Edwards, Harris, Penix, *Napper*
7

For An Act To Be Entitled

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

Subtitle

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

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

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25 repealed.

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

10
11 SECTION 2. Effective January 1, 2004, Arkansas Code, Title 23, Chapter
12 67, is amended to add an additional subchapter to read as follows:

13 23-67-401. Title.

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

16
17 23-67-402. Purpose.

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

21
22 23-67-403. Scope.

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

25
26 23-67-404. Definitions.

27 For the purposes of this subchapter:

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

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

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

36 (4) "Consumer" means an insured whose credit information is used

1 or whose credit score is calculated in the underwriting or rating of a
2 personal insurance policy or an applicant for the policy;

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

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

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

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

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

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

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

29
30 23-67-405. Use of credit information.

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

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

36 (2) Deny, cancel, or nonrenew a policy of personal insurance

1 solely on the basis of credit information, without consideration of any other
2 applicable underwriting factor independent of credit information and not
3 expressly prohibited by subsection (1) of this section;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (v) If credit scoring is not used at renewal.

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

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

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

24 (C) Medical collection accounts;

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

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

33
34 23-67-406. Dispute resolution and error correction.

35 (a) If it is determined through the dispute resolution process set
36 forth in the federal Fair Credit Reporting Act, 15 USC 1681i(a)(5) that the

1 credit information of a current insured was incorrect or incomplete and if
2 the insurer receives written notice of the determination from either the
3 consumer reporting agency or from the insured, the insurer shall reunderwrite
4 and rerate the consumer within thirty (30) calendar days of receiving the
5 notice.

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

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

11
12 23-67-407. Initial notification.

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

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

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

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

28
29 23-67-408. Adverse action notification.

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

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

36 (2) Provide notification to the consumer that an adverse action

1 has been taken, in accordance with the requirements of the federal Fair
2 Credit Reporting Act, 15 USC 1681m(a), including:

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

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

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

10 (3)(A) Provide notification to the consumer explaining the
11 reasons for the adverse action.

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

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

20
21 23-67-409. Filing.

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

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

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

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

31
32 23-67-410. Indemnification.

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

1 follows the instructions of or procedures established by the insurer and
2 complies with any applicable law or regulation.

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

6
7 23-67-411. Sale of policy term information by consumer reporting
8 organization.

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

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

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

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

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

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

27
28 23-67-413. Individual underwriting allowed.

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

32
33 23-67-414. Regulations.

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

36

1 23-67-415. Annual report regarding personal insurance.

2 (a) No later than March 31 of each year, each insurance company
3 writing any personal insurance that uses credit scoring information shall
4 report to the Insurance Commissioner for each personal insurance type listed
5 in § 23-67-404(9) the number of:

6 (1) Policies written during the preceding year;

7 (2) Policies that received a premium increase due to credit
8 scoring during the preceding year; and

9 (3) Policies that received a premium decrease due to credit
10 scoring during the preceding year.

11 (b) Information filed with the commissioner under this section by an
12 insurance company shall be treated as proprietary information and is exempt
13 from public disclosure.

14 /s/ Higginbothom, et al

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