

## LEGISLATIVE BILL 487

Approved by the Governor April 16, 2003

Introduced by Redfield, 12; Combs, 32; Hudkins, 21; McDonald, 41; Price, 26; Schimek, 27; Stuhr, 24; Thompson, 14; Brown, 6; Preister, 5

AN ACT relating to insurance; to adopt the Model Act Regarding Use of Credit Information in Personal Insurance; and to provide severability.  
Be it enacted by the people of the State of Nebraska,

Section 1. This act shall be known and may be cited as the Model Act Regarding Use of Credit Information in Personal Insurance.

Sec. 2. The purpose of the Model Act Regarding Use of Credit Information in Personal Insurance is to regulate the use of credit information for personal insurance, so that consumers are afforded certain protections with respect to the use of such information.

Sec. 3. The Model Act Regarding Use of Credit Information in Personal Insurance applies to personal insurance and not to commercial insurance. For purposes of the act, personal insurance means private passenger automobile, homeowners, motorcycle, mobile homeowners, noncommercial dwelling fire, and boat, personal watercraft, snowmobile, and recreational vehicle insurance 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 purposes of the act.

Sec. 4. For purposes of the Model Act Regarding Use of Credit Information in Personal Insurance:

(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 insurance score is calculated in the underwriting or rating of a personal insurance policy or an applicant for such a policy;

(5) Consumer reporting agency means any person which, for monetary fees, for 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;

(6) 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;

(7) 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 which 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; and

(8) 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.

Sec. 5. An insurer authorized to do business in Nebraska that uses credit information to underwrite or rate risks shall not:

(1) Use an insurance score that is calculated using income, gender, address, zip code, 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 subdivision (1) of this section;

(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;

(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) Treat the consumer as otherwise approved by the Director of Insurance, if the insurer presents information that such an absence or inability relates to the risk for the insurer;

(b) Treat the consumer as if the applicant or insured had neutral credit information, as defined by the insurer; or

(c) Exclude the use of credit information as a factor and use 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 ninety days prior to the date the policy is first written or renewal is issued;

(7) Use credit information, unless not later than every thirty-six 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 requirements of this subdivision:

(a) At annual renewal, upon the request of a consumer or the consumer's agent, the insurer shall reunderwrite and rerate 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 twelve-month period;

(b) The insurer shall have the discretion to obtain current credit information upon any renewal before the thirty-six months, if consistent with its underwriting guidelines; and

(c) No insurer need obtain current credit information for an insured, despite the requirements of subdivision (7)(a) of this section, if one of the following applies:

(i) The insurer is treating the consumer as otherwise approved by the director;

(ii) 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 such report if consistent with its underwriting guidelines;

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

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

(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 thirty days of one another, unless only one inquiry is considered; or

(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 thirty days of one another, unless only one inquiry is considered.

Sec. 6. If it is determined through the dispute resolution process set forth in the federal Fair Credit Reporting Act, as such act existed on January 1, 2003, 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 such determination either from the consumer reporting agency or from the insured, the insurer shall reunderwrite and rerate the consumer within thirty days after receiving the notice. After reunderwriting or rerating 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 a premium, the insurer shall refund to the insured the amount of overpayment calculated back to the shorter of either the last twelve months of coverage or the actual policy period.

Sec. 7. (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 such application. Such 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 such consumer has previously been provided a disclosure statement.

(2) 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."

Sec. 8. If an insurer takes an adverse action based upon credit information, the insurer must meet the notice requirements of both subdivisions (1) and (2) of this section. Such 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, as such act existed on January 1, 2003, 15 U.S.C. 1681m(a); and

(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. Such notification shall include a description of up to four 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 subdivision. Standardized credit explanations provided by consumer reporting agencies or other third-party vendors are deemed to comply with this section.

Sec. 9. Insurers that use insurance scores to underwrite and rate risks shall file their scoring models or other scoring processes with the Department of Insurance. 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. Any filing relating to credit information is considered a trade secret.

Sec. 10. An insurer shall indemnify, defend, and hold agents harmless from and against all liability, fees, and costs arising out of or relating to the actions, errors, or omissions of an insurance producer who obtains or uses credit information or insurance scores for an insurer if the insurance producer follows the instructions of or procedures established by the insurer and complies with any applicable law or regulation. Nothing in this section shall be construed to provide a consumer or other insured with a cause of action that does not exist in the absence of this section.

Sec. 11. (1) 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.

(2) The restrictions provided in subsection (1) of this section do not apply to data or lists the consumer reporting agency supplies to the insurance producer from whom information was received, the insurer on whose behalf such insurance producer acted, or such insurer's affiliates or holding companies.

(3) 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.

Sec. 12. The Model Act Regarding Use of Credit Information in Personal Insurance applies to personal insurance policies either written to be effective or renewed on or after nine months after the effective date of this act.

Sec. 13. If any section in this act or any part of any section is declared invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions.