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HOUSE BILL 442

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Daniel R. Foley

AN ACT

RELATING TO INSURANCE; ENACTING THE INSURANCE CREDIT
INFORMATION ACT; REGULATING THE USE OF CREDIT INFORMATION FOR
PERSONAL INSURANCE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Insurance Credit Information Act".

Section 2. APPLICATION OF ACT.--The provisions of the
Insurance Credit Information Act apply to personal insurance
and not to commercial insurance or any other types of
insurance.

Section 3. DEFINITIONS.--As used in the Insurance Credit
Information Act:

A. "adverse action" means a denial or cancellation
of, an increase in any charge for or a reduction or other

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1 adverse or unfavorable change in the terms of coverage or
2 amount of any insurance, existing or applied for, in connection
3 with the underwriting of personal insurance;

4 B. "affiliate" means any company that controls, is
5 controlled by or is under common control with another company;

6 C. "applicant" means an individual who has applied
7 to be covered by a personal insurance policy with an insurer;

8 D. "consumer" means an insured whose credit
9 information is used or whose insurance score is calculated in
10 the underwriting or rating of a personal insurance policy or an
11 applicant for such a policy;

12 E. "consumer reporting agency" means a person that,
13 for monetary fees, dues or on a cooperative nonprofit basis,
14 regularly engages in whole or in part in the practice of
15 assembling or evaluating consumer credit information or other
16 information on consumers for the purpose of furnishing consumer
17 reports to third parties;

18 F. "credit information" means any credit-related
19 information derived from a credit report, found on a credit
20 report itself or provided on an application for personal
21 insurance. Information that is not credit-related shall not be
22 considered credit information, regardless of whether it is
23 contained in a credit report or in an application, or is used
24 to calculate an insurance score;

25 G. "credit report" means a written, oral or other

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1 communication of information by a consumer reporting agency
2 bearing on a consumer's credit worthiness, credit standing or
3 credit capacity that is used or expected to be used or
4 collected in whole or in part for the purpose of serving as a
5 factor to determine personal insurance premiums, eligibility
6 for coverage or tier placement;

7 H. "insurance score" means a number or rating that
8 is derived from an algorithm, computer application, model or
9 other process that is based in whole or in part on credit
10 information for the purposes of predicting the future insurance
11 loss exposure of an individual applicant or insured; and

12 I. "personal insurance" means private passenger
13 automobile, homeowners', motorcycle, mobile-homeowners', boat,
14 personal watercraft, snowmobile, recreational vehicle and
15 noncommercial dwelling fire insurance policies. Such policies
16 must be individually underwritten for personal, family or
17 household use.

18 Section 4. USE OF CREDIT INFORMATION--LIMITS ON USE.--An
19 insurer authorized to do business in New Mexico that uses
20 credit information to underwrite or rate risks shall not:

21 A. use an insurance score that is calculated using
22 income, gender, address, zip code, ethnic group, religion,
23 marital status or nationality of the consumer as a factor;

24 B. deny, cancel or not renew a policy of personal
25 insurance solely on the basis of credit information without

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1 consideration of any other applicable underwriting factor
2 independent of credit information and not expressly prohibited
3 by law;

4 C. base an insured's renewal rates for personal
5 insurance solely upon credit information without consideration
6 of any other applicable factor independent of credit
7 information;

8 D. take an adverse action against a consumer solely
9 because he or she does not have a credit card account without
10 consideration of any other applicable factor independent of
11 credit information;

12 E. consider an absence of credit information or an
13 inability to calculate an insurance score in underwriting or
14 rating personal insurance unless the insurer:

15 (1) treats the consumer as otherwise approved
16 by the superintendent of insurance and the insurer presents
17 information that such an absence or inability relates to the
18 risk for the insurer;

19 (2) treats the consumer as if the applicant or
20 insured had neutral credit information, as defined by the
21 insurer; or

22 (3) excludes the use of credit information as
23 a factor and uses only other underwriting criteria;

24 F. take an adverse action against a consumer based
25 on credit information unless an insurer obtains and uses a

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1 credit report issued or an insurance score calculated within
2 ninety days from the date the policy is first written or
3 renewal is issued;

4 G. use credit information unless the insurer has
5 recalculated the insurance score or obtained an updated credit
6 report in the last thirty-six months; or

7 H. use the following as a negative factor in any
8 insurance scoring methodology or in reviewing credit
9 information for the purpose of underwriting or rating a policy
10 of personal insurance:

11 (1) credit inquiries not initiated by the
12 consumer or inquiries requested by the consumer for the
13 consumer's own credit information;

14 (2) inquiries relating to insurance coverage,
15 if so identified on a consumer's credit report;

16 (3) collection accounts with a medical
17 industry code, if so identified on the consumer's credit
18 report; or

19 (4) multiple lender inquiries, if coded by the
20 consumer reporting agency on the consumer's credit report as
21 being from either the home mortgage industry or the automobile
22 lending industry and made within thirty days of one another,
23 unless only one inquiry is considered.

24 Section 5. USE OF CREDIT INFORMATION--ACCEPTABLE AND
25 REQUIRED USES--EXCEPTIONS. --

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1 A. An insurer shall have the discretion to obtain
2 current credit information upon any renewal if consistent with
3 its underwriting guidelines.

4 B. At annual renewal, upon the request of a
5 consumer or the consumer's agent, the insurer shall
6 re-underwrite and re-rate the policy based upon a current
7 credit report or insurance score; provided, however, that an
8 insurer need not recalculate the insurance score or obtain the
9 updated credit report of a consumer more frequently than once
10 in a twelve-month period or obtain current credit information
11 for an insured if:

12 (1) the insurer is treating the consumer in
13 accordance with rules adopted by the superintendent of
14 insurance;

15 (2) the insured is in the most favorably
16 priced tier of an insurer within a group of affiliated
17 insurers;

18 (3) credit was not used for underwriting or
19 rating the insured when the policy was initially written; or

20 (4) the insurer reevaluates the insured within
21 three years of inception of the policy and thereafter based
22 upon other underwriting or rating factors that exclude credit
23 information.

24 Section 6. DISPUTE RESOLUTION AND ERROR CORRECTION. -- If
25 it is determined through the dispute resolution process set

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1 forth in the federal Fair Credit Reporting Act that the credit
2 information of a current insured was incorrect or incomplete
3 and if the insurer receives notice of the determination from
4 either the consumer reporting agency or from the insured, the
5 insurer shall re-underwrite and re-rate the consumer within
6 thirty days of receiving the notice. After re-underwriting or
7 re-rating the insured, the insurer shall make any adjustments
8 necessary, consistent with its underwriting and rating
9 guidelines. If an insurer determines that the insured has
10 overpaid the premium, the insurer shall refund to the insured
11 the amount of overpayment calculated back to the shorter of
12 either the last twelve months of coverage or the actual policy
13 period.

14 Section 7. INITIAL NOTIFICATION OF USE OF CREDIT
15 INFORMATION. --

16 A. If an insurer writing personal insurance uses
17 credit information in underwriting or rating a consumer, the
18 insurer or its agent shall disclose, either on the insurance
19 application or at the time the insurance application is taken,
20 that it may obtain credit information in connection with the
21 application. The disclosure shall be either written or
22 provided to an applicant in the same medium as the application
23 for insurance. The insurer need not provide the disclosure
24 statement required under this section to any insured on a
25 renewal policy if the consumer has previously been provided a

1 disclosure statement.

2 B. Use of the following example disclosure
3 statement constitutes compliance with this section: "In
4 connection with this application for insurance, we may review
5 your credit report or obtain or use a credit-based insurance
6 score based on the information contained in that credit report.
7 We may use a third party in connection with the development of
8 your insurance score."

9 Section 8. ADVERSE ACTION NOTIFICATION. -- If an insurer
10 takes an adverse action based upon credit information, the
11 insurer shall provide notification to the consumer that an
12 adverse action has been taken in accordance with the
13 requirements of the federal Fair Credit Reporting Act and
14 explain the reasons for the adverse action. The reasons shall
15 be provided in sufficiently clear and specific language so that
16 a person can identify the basis for the insurer's decision to
17 take an adverse action. The notification shall include a
18 description of up to four factors that were the primary
19 influences of the adverse action. The use of generalized terms
20 such as "poor credit history", "poor credit rating" or "poor
21 insurance score" does not meet the explanation requirements of
22 this subsection. Standardized credit explanations provided by
23 consumer reporting agencies or other third party vendors are
24 deemed to comply with this section.

25 Section 9. FILING OF INSURANCE SCORES. --

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1 A. Insurers that use insurance scores to underwrite
2 and rate risks shall file their scoring models or other scoring
3 processes with the insurance division of the public regulation
4 commission. A third party may file scoring models on behalf of
5 insurers. A filing that includes insurance scoring may include
6 loss experience justifying the use of credit information.

7 B. A filing relating to credit information is
8 considered a trade secret pursuant to the Uniform Trade Secrets
9 Act.

10 Section 10. INDEMNIFICATION. --An insurer shall indemnify,
11 defend and hold agents harmless from and against all liability,
12 fees and costs arising out of or relating to the actions,
13 errors or omissions of an agent who obtains or uses credit
14 information or insurance scores for an insurer, provided that
15 the agent follows the instructions of or the procedures
16 established by the insurer and complies with any applicable law
17 or regulation. Nothing in this section shall be construed to
18 provide a consumer or other insured with a cause of action that
19 does not exist in the absence of this section.

20 Section 11. SALE OF POLICY TERM INFORMATION BY CONSUMER
21 REPORTING AGENCY. --

22 A. A consumer reporting agency shall not provide or
23 sell data or lists that include any information that in whole
24 or in part was submitted in conjunction with an insurance
25 inquiry about a consumer's credit information or a request for

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1 a credit report or insurance or information on the expiration
2 dates of an insurance policy, the terms and conditions of the
3 consumer's insurance coverage or any other information that may
4 identify time periods during which a consumer's insurance may
5 expire.

6 B. The restrictions provided in Subsection A of
7 this section do not apply to data or lists that the consumer
8 reporting agency supplies to the insurance agent from whom
9 information was received, the insurer on whose behalf the agent
10 acted or the insurer's affiliates or holding companies.

11 C. Nothing in this section shall be construed to
12 restrict any insurer from being able to obtain a claims history
13 report or a motor vehicle report.

14 Section 12. SEVERABILITY.--If any part or application of
15 the Insurance Credit Information Act is held invalid due to an
16 interpretation of or a future change in the federal Fair Credit
17 Reporting Act, the remainder or its application to other
18 situations or persons shall not be affected.

19 Section 13. APPLICABILITY.--The provisions of this act
20 apply to personal insurance policies written to be effective or
21 renewed on or after January 1, 2005.

22 Section 14. EFFECTIVE DATE.--The effective date of the
23 provisions of this act is July 1, 2004.