

## SENATE BILL No. 144

By Committee on Financial Institutions and Insurance

2-5

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AN ACT concerning insurance; relating to the use of credit scores in issuing certain policies.

*Be it enacted by the Legislature of the State of Kansas:*

Section 1. This act shall be known as the Kansas insurance score act.

Sec. 2. (a) This act shall apply only to personal insurance and not to commercial insurance. A personal insurance policy must be individually underwritten for personal, family or household use. No other type of insurance shall be included as personal insurance for the purpose of this act.

(b) This act shall apply to all personal insurance policies either written to be effective or renewed on or after nine months from the effective date of this act.

Sec. 3. As used in this act:

(a) "Adverse action" means any of the following in connection with the underwriting of personal insurance:

(1) A denial or cancellation of coverage;

(2) any change in the charge for anything other than the best possible rate;

(3) a reduction or other adverse or unfavorable change in the terms of coverage of any insurance regardless of whether such insurance is in existence or has been applied for;

(4) a reduction or other adverse or unfavorable change in the terms of the amount of any insurance regardless of whether such insurance is in existence or has been applied for.

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

(c) "Agent" shall have the meaning ascribed to it in subsection (k) of K.S.A. 2002 Supp. 40-4902, and amendments thereto unless the context requires otherwise.

(d) "Applicant" means an individual who has applied to an insurer to be covered by a personal insurance policy.

(e) "Commissioner" means the commissioner of insurance and any authorized designee of the commissioner.

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

1 or whose insurance score is calculated in the underwriting or rating of a  
2 personal insurance policy. "Consumer" also includes an applicant for a  
3 personal insurance policy.

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

9 (h) "Credit information" means any credit-related information de-  
10 rived from a credit report, found on a credit report itself, or provided on  
11 an application for personal insurance. Credit information shall not include  
12 any information which is not credit-related, regardless of whether such  
13 information is contained in a credit report or in an application or is used  
14 to calculate an insurance score.

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

21 (j) "Department" means the insurance department established by  
22 K.S.A. 40-102 and amendments thereto.

23 (k) "Insurance score" means a number or rating that is derived from  
24 an algorithm, computer application, model, or other process that is based,  
25 in whole or in part, on credit information for the purposes of predicting  
26 the future insurance loss exposure of an individual applicant or insured.

27 (l) "Personal insurance" means private passenger automobile, hom-  
28 eowners, motorcycle, mobile homeowners and non-commercial dwelling  
29 fire insurance policies and boat, personal water craft, snowmobile and  
30 recreational vehicle policies.

31 Sec. 4. No insurer authorized to do business in the state of Kansas  
32 which uses credit information to underwrite or rate risks, shall:

33 (a) Use an insurance score that is calculated using income, address,  
34 zip code, race, religion, color, sex, disability, national origin, ancestry or  
35 marital status of the consumer as a factor.

36 (b) Without consideration of any other applicable underwriting factor  
37 independent of credit information and not expressly prohibited by sub-  
38 section (a), deny, cancel or refuse to renew any policy of personal insur-  
39 ance solely on the basis of credit information.

40 (c) Without consideration of any other applicable factor independent  
41 of credit information, base an insured's renewal rates for personal insur-  
42 ance solely upon credit information.

43 (d) Without consideration of any other applicable factor independent

1 of credit information, take an adverse action against a consumer solely  
2 because such consumer does not have a credit card account or has an  
3 inadequate credit history.

4 (e) Consider an absence of credit information or an inability to cal-  
5 culate an insurance score in underwriting or rating personal insurance,  
6 unless the insurer does one of the following:

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

9 (2) exclude the use of credit information as a factor and use only other  
10 underwriting criteria.

11 (f) Take an allowed adverse action against a consumer based on credit  
12 information, unless an insurer obtains and uses a credit report issued or  
13 an insurance score calculated within 90 days from the date the personal  
14 insurance policy is first written or renewed.

15 (g) Use credit information unless not later than every 36 months fol-  
16 lowing the last time that the insurer obtained current credit information  
17 for the insured, the insurer recalculates the insurance score or obtains an  
18 updated credit report.

19 (h) Use any of the following as a negative factor in any insurance  
20 scoring methodology or in reviewing credit information for the purpose  
21 of underwriting or rating a policy of personal insurance:

22 (1) Any credit inquiry not initiated by the consumer or any inquiry  
23 requested by the consumer for such consumer's own credit information;

24 (2) any inquiry relating to insurance coverage, if so identified on a  
25 consumer's credit report;

26 (3) any collection account with a medical industry code, if so identi-  
27 fied on the consumer's credit report;

28 (4) any additional lender inquiry beyond the first such inquiry related  
29 to the same loan purpose, if coded by the consumer reporting agency on  
30 the consumer's credit report as being from the given loan industry and  
31 made within 30 days of one another.

32 (i) Regardless of the requirements of subsection (g):

33 (A) At annual renewal the insurer shall re-underwrite and rerate the  
34 consumer's personal insurance policy based upon a current credit report  
35 or insurance score for such consumer. An insurer need not recalculate  
36 the insurance score or obtain the updated credit report of a consumer  
37 more frequently than once in a twelve-month period.

38 (B) The insurer shall have the discretion to obtain current credit in-  
39 formation upon any renewal before the 36 months, if consistent with such  
40 insurer's underwriting guidelines.

41 (C) Notwithstanding the requirements of paragraph (1) of subsection  
42 (g), no insurer shall be required to obtain current credit information for  
43 an insured, if:

1 (i) The insured is in the most favorably-priced tier of the insurer,  
2 within a group of affiliated insurers. However, the insurer shall have the  
3 discretion to order such report, if consistent with such insurer's under-  
4 writing guidelines;

5 (ii) credit was not used for underwriting or rating such insured when  
6 the policy was initially written. However, the insurer shall have the dis-  
7 cretion to use credit for underwriting or rating such insured upon re-  
8 newal, if consistent with such insurer's underwriting guidelines; or

9 (iii) The insurer re-evaluates the insured beginning no later than 36  
10 months after inception and thereafter based upon other underwriting or  
11 rating factors, excluding credit information.

12 Sec. 5. (a) If it is determined through the dispute resolution process  
13 set forth in the federal fair credit reporting act, 15 USC 1681i(a)(5), as  
14 in existence on the effective date of this act, that the credit information  
15 of a current insured was incorrect or incomplete and if the insurer re-  
16 ceives notice of such determination from either the consumer reporting  
17 agency or from the insured, the insurer shall re-underwrite and rerate  
18 the consumer within 30 days of receiving the notice. After re-underwrit-  
19 ing or rerating the insured, the insurer shall make any adjustments nec-  
20 essary, consistent with such insurer's underwriting and rating guidelines.

21 (b) If an insurer determines that the insured has overpaid premium,  
22 the insurer shall refund to the insured the amount of overpayment cal-  
23 culated back to the shorter of either the last 12 months of coverage or  
24 the actual policy period.

25 Sec. 6. If an insurer writing personal insurance uses credit informa-  
26 tion in underwriting or rating a consumer, the insurer or its agent shall  
27 disclose that it may obtain credit information in connection with such  
28 application. The disclosure shall be made either on the insurance appli-  
29 cation or at the time the insurance application is taken. Such disclosure  
30 shall be either written or provided to an applicant in the same medium  
31 as the application for insurance.

32 Sec. 7. (a) If an insurer takes an adverse action based upon credit  
33 information, the insurer shall provide written notification to the consumer  
34 a notice that:

35 (1) An adverse action has been taken, in accordance with the require-  
36 ments of the federal fair credit reporting act as set forth in, 15 USC  
37 1681m(a) as in existence on the effective date of this act; and

38 (2) explains the reason for the such adverse action.

39 (b) Each reason must be provided in sufficiently clear and specific  
40 language so that a person can identify the basis for the insurer's decision  
41 to take such adverse action.

42 (c) The notification required by this section shall include a descrip-  
43 tion of up to four factors that were the primary influences of the adverse

1 action. The use of generalized terms such as “poor credit history,” “poor  
2 credit rating,” or “poor insurance score” shall be deemed not to comply  
3 with requirements of this section.

4 Sec. 8. Each insurer that uses insurance scores to underwrite and  
5 rate risks shall file such insurer’s scoring models or other scoring pro-  
6 cesses with the insurance department. A third party may file such third  
7 party’s scoring models or other scoring processes used on behalf of an  
8 insurer with the insurance department. Any filing that includes insurance  
9 scoring may include loss experience justifying the use of credit informa-  
10 tion. Any filing relating to credit information shall be considered to be a  
11 trade secret under the open record act.

12 Sec. 9. (a) An insurer shall indemnify, defend, and hold agents harm-  
13 less from and against all liability, fees, and costs arising out of or relating  
14 to the actions, errors, or omissions of an agent who obtains or uses credit  
15 information or insurance scores, or both, for an insurer.

16 (b) The provisions of subsection (a) shall not be available whenever  
17 the agent fails to:

18 (1) Follow the instructions of or procedures established by the in-  
19 surer; and

20 (2) comply with any applicable law or regulation.

21 (c) Nothing in this section shall be construed to provide a consumer  
22 or other insured with a cause of action that does not exist in the absence  
23 of this section.

24 Sec. 10. (a) No consumer reporting agency shall provide or sell data  
25 or lists that include any information, in whole or in part, which was sub-  
26 mitted in conjunction with an insurance inquiry about a consumer’s credit  
27 information or a request for a credit report or insurance score. Such  
28 information includes, but is not limited to:

29 (1) The expiration date of an insurance policy or any other informa-  
30 tion that may identify any time period during which a consumer’s insur-  
31 ance may expire; and

32 (2) the terms and conditions of the consumer’s insurance coverage.

33 (b) The restrictions provided in subsection (a) of this section do not  
34 apply to:

35 (1) Any data or list the consumer reporting agency supplies to the  
36 insurance agent from whom information was received;

37 (2) the insurer for whom such agent acted; or

38 (3) such insurer’s affiliates or holding companies.

39 (c) Nothing in this section shall be construed to prohibit or restrict  
40 any insurer from obtaining a claims history report or a motor vehicle  
41 report.

42 Sec. 11. (a) If any provision of this act is declared invalid due to an  
43 interpretation of or a future change in the federal fair credit reporting

1 act, the remaining portions of the act shall be deemed to be severable  
2 and shall remain in full force and effect.

3 (b) If any provision of this act or the application thereof to any person  
4 or circumstance is held invalid, the invalidity does not affect other pro-  
5 visions or applications of the act which can be given effect without the  
6 invalid provision or application, and to this end the provisions of this act  
7 are severable.

8 Sec. 12. This act shall take effect and be in force from and after its  
9 publication in the statute book.

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