

SENATE BILL No. 176

By Senator Feleciano

2-10

AN ACT concerning insurance; relating to the use of insurance scores.

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

Section 1. This act concerns and may be cited as limitations on the use of credit information for insurance scoring act.

Sec. 2. (a) This act shall apply to all personal insurance coverage in Kansas, including but not limited to, coverage for personal, family, or household purposes such as private passenger automobile; personal inland marine; personal liability; theft; dwelling property; homeowners, including mobile-home owners, manufactured homes, condominium owners, and renters; non-commercial dwelling fire; mechanical breakdown; or earthquake, for personal property or residence.

(b) This act shall apply to all insurance policies and contracts for the coverages listed in subsection (a) entered into or renewed on or after July 1, 2003.

Sec. 3. As used in this act:

(a) "Adverse action" has the same meaning as such term is defined in the fair credit reporting act, 15 U.S.C. § 1681 *et seq.* as in existence on the effective date of this act. Adverse action also includes any denial, cancellation, or non-renewal of, an increase in any charge for, a placement into a higher tier, 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 insurance.

(b) "Affiliate" means an entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another entity, including but not limited to parent, sibling, or subsidiary corporations.

(c) "Applicant" means a natural person who applies for personal insurance coverage.

(d) "Consumer" means a natural person, an insured or an applicant whose credit information is used or whose insurance score is calculated in the underwriting or rating of a personal insurance policy.

(e) "Commissioner" means the commissioner of insurance.

(f) "Consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in

1 whole or in part in the practice of collecting, assembling or evaluating
2 consumer credit information or other information, or both, on consumers
3 for the purpose of furnishing consumer reports to third parties.

4 (g) "Credit information" means any credit-related information
5 whether obtained through a review of credit history, a credit report, con-
6 sumer report, credit scoring, insurance scoring or as otherwise provided
7 on an application and from which insurers make judgments regarding the
8 applicant or insured's character, habits, avocations, finances, occupations,
9 general reputation, credit, health, or any other personal characteristics.

10 (h) "Credit history" or "consumer report" means any written, oral,
11 or other communication of any information by a consumer reporting
12 agency bearing on a consumer's creditworthiness, credit standing, or
13 credit capacity that is used or expected to be used, or collected in whole
14 or in part, for the purpose of serving as a factor in determining personal
15 insurance premiums or eligibility for coverage.

16 (i) "Credit scoring" or "insurance scoring" means the practice of
17 quantifying the insurance risk a person presents using such person's at-
18 tributes derived from credit information in a formula designed to rate
19 objectively insurance risk of loss and excluding all of the factors listed in
20 subsection (a) of section 5.

21 (j) "Insured" means a natural person who has already obtained per-
22 sonal insurance coverage.

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) "Rating" means the process of establishing the base rates, classi-
28 fication factors, modifications to rates or factors, tier placement within
29 the same company, and total premium to be charged.

30 (m) "Tier" means a category within a single insurer into which in-
31 sureds with substantially like insuring, risk, or exposure factors, and ex-
32 pense elements are placed for purposes of determining rate or premium.

33 (n) "Underwriting" means the process of establishing the level of risk
34 that will be assumed by the insurer. Establishing the level of risk can be
35 accomplished by accepting, rejecting, or shifting the risk to another in-
36 surer or another policy type. Underwriting also includes the use of de-
37 ductibles, elimination periods, coinsurance, or coverage reductions.

38 Sec. 4. (a) No insurer writing personal insurance policies in Kansas
39 shall use credit information or insurance scoring that is:

40 (1) Based on race, color, creed, religion, national origin, or solely
41 upon age, sex, residence, marital status, or lawful occupation, including
42 the military service, or physical or mental impairment of the applicant or
43 insured, or based on any arbitrary, capricious, or unfairly discriminatory

1 reason; or

2 (2) used as the sole basis to refuse to insure applicant's, or to cancel
3 existing policyholders, for rating of policies, for tier placement or to re-
4 duce coverage, without consideration of other applicable underwriting
5 and rating factors. So long as other underwriting and rating factors are
6 considered, offering to write a policy by an affiliated insurer with contin-
7 uous coverage shall not constitute a refusal to insure.

8 (b) Each insurer using credit information for underwriting or rating
9 new policies shall:

10 (1) Submit such insurer's underwriting models and rates to the in-
11 surance commissioner for approval. Each such model shall include char-
12 acteristics, factors, and associated criteria used in the underwriting or
13 rating. In addition, each such insurer also shall submit separately such
14 insurer's insurance scoring models and such insurance scoring model shall
15 be approved prior to its use. As part of the required filing for insurance
16 scoring models, insurers shall include statistical validation supporting the
17 use of insurance scores in the rating process. All filings under this para-
18 graph shall be subject to the open records act, K.S.A. 45-215, *et seq.* and
19 amendments thereto.

20 (2) Not use credit information to re-underwrite or re-rate insurance
21 risk at renewal.

22 (3) Not use any of the following as negative factors in the underwrit-
23 ing or rating of new policies:

24 (A) Any credit inquiries that the consumer did not initiate, yet are
25 present in the consumer's credit history;

26 (B) Any collection accounts either actually identifiable by a medical
27 industry code or identified as such by an applicant or insured and verified
28 as a medical account;

29 (C) the fact that an applicant or insured has been the victim of iden-
30 tity theft;

31 (D) the presence of a fraud alert on the applicant's or insured's ac-
32 count with a credit reporting agency;

33 (E) where no insurance score can be generated or no credit infor-
34 mation is available for an insured or applicant, especially for those in-
35 sureds or applicants over age 65, such applicants or insureds should be
36 treated as if they have a neutral credit history or insurance score;

37 (F) any credit information adversely impacted due to dissolution of
38 marriage or the credit information of a former spouse. Such applicants
39 or insureds should be treated as if they have a neutral credit history or
40 insurance score;

41 (4) If lenders make multiple credit inquiries within 30 days of one
42 another on the same subject matter, then only one such inquiry for each
43 subject shall be included in the consumer's credit information or insur-

1 ance score, or both. For the purpose of this paragraph, “the same subject
2 matter” means a consumer’s request for information related to a specific
3 type of loan or an inquiry resulting from a consumer shopping for a loan
4 or major purchase involving a loan transaction.

5 (5) Any insurer who uses credit information shall make available de-
6 tailed information about the manner in which credit information is used,
7 and how it affects the insurer’s decisions. Such detailed information shall
8 include a demonstration that the credit information or the particular man-
9 ner in which the insurer uses consumer reports and insurance scores
10 relates to or predicts the risk of loss.

11 Sec. 5. Each insurer using new or updated credit information in in-
12 surance underwriting or rating shall provide an obvious, simple, and clear
13 notice to each applicant or insured specifically advising such applicant or
14 insured such applicant’s or insured’s credit information will be used for
15 underwriting or rating or both. Where an insurer uses a third party rep-
16 resentative to disclose to the applicant or insured that credit information
17 will be used for underwriting or rating, or both, such insurer shall provide
18 the third party representative with the same obvious, simple, and clear
19 disclosure notice that credit information will be used for underwriting or
20 rating, or both. Such insurer shall use reasonable means to verify that the
21 third party representative provided the notice to the applicant or insured.
22 Upon request by an applicant or insured, insurers or third party repre-
23 sentatives shall provide an explanation of significant characteristics of
24 credit information that impact such applicant’s or insured’s insurance
25 score. This explanation must be in specific terms. General terms, such as
26 “personal habits,” “living conditions,” “poor morale,” or “violations or
27 accident record” will not suffice to meet the requirements of this provi-
28 sion. This information may be included in the disclosure notice form.
29 Each insurer shall be responsible to develop the required disclosure no-
30 tice form and obtain its approval from the commissioner.

31 Sec. 6. (a) If the use of credit information results in an adverse action
32 to an applicant or insured, the insurer must comply with the notice
33 requirements of the fair credit reporting act, 15 U.S.C. § 1681m(a). Such
34 requirements currently include providing the applicant or insured of:

35 (1) The identity, telephone number, and address of any consumer
36 reporting agency from which a credit report was obtained.

37 (2) Notice of the applicant or insured’s right to receive a free credit
38 report from the consumer reporting agency for a period of 60 days if such
39 report resulted in an adverse action; and

40 (3) Notice of the applicant or insured’s right to lodge a dispute with
41 the consumer reporting agency and have any erroneous information cor-
42 rected in accordance with the federal fair credit reporting act.

43 (b) Any insurer who intends to take an action subject to the provisions

1 of this section shall send, on or before 30 days prior to the proposed
2 effective date of such action, written notice by first-class mail of such
3 insurer's intended action to the applicant or insured at the last known
4 address of such applicant or insured. The notice shall be in triplicate and
5 shall state the following in clear and specific terms:

6 (1) The proposed action to be taken, including but not limited to, if
7 the action is an increase in premium or reduction in coverage, the amount
8 of increase and the type of coverage to which the increase is applicable,
9 or the type of coverage reduced and the extent of the reduction;

10 (2) the proposed effective date of such action;

11 (3) the insurer's actual reasons for proposing to take such action. The
12 statement of reasons must be sufficiently clear and specific so that a per-
13 son of average intelligence can identify the basis for the insurer's decision
14 without making further inquiry. Generalized terms such as "personal hab-
15 its," "living conditions," "poor morale," or "violation or accident record"
16 will not suffice to meet the requirements of this paragraph;

17 (4) the right of the insured to replace the insurance through an as-
18 signed risk plan;

19 (5) the right of the insured to protest the proposed action and request
20 a hearing thereon before the commissioner by signing two copies of the
21 notice and sending them to the commissioner within ten days after receipt
22 of the notice. The commissioner's current address must be obvious on
23 the notice;

24 (6) that, if the insured files a protest and pays any lawful premium
25 due or becoming due prior to a determination of the protest, then the
26 current insurance coverage will not lapse until the commissioner makes
27 a decision;

28 (7) the commissioner may award reasonable counsel fees to the in-
29 sured for services rendered to the insured in connection with any such
30 hearing if the commissioner finds that the proposed action of the insurer
31 is unjustified.

32 (c) Insurers who rely on credit information provided by non-affiliated
33 entities shall advise the non-affiliated entities of the requirements of this
34 act, obtain reasonable written assurance from the non-affiliated entities
35 that the entity is providing credit information in a manner so that insurers
36 comply with this act, and file those written assurances with the commis-
37 sioner. These filings are subject to the open records act, K.S.A. 45-215,
38 et seq. and amendments thereto.

39 Sec. 7. (a) If an applicant or insured disputes the insurer's under-
40 writing or rating decision, the applicant or insured shall have the right to
41 appeal the insurer's decision in a hearing before the commissioner pur-
42 suant to K.S.A. 77-501 *et seq.* Accordingly:

43 (1) An applicant or insured shall have the right to protest the pro-

1 posed action of the insurer by signing two copies of the notice and sending
2 them to the commissioner within 10 days after receipt of the notice. The
3 commissioner shall, upon receipt of a protest, notify the insurer of the
4 filing of the protest.

5 (2) A protest duly filed shall stay the insurer's proposed action pend-
6 ing the commissioner's final determination of the protest. The insurer
7 shall keep in full force and effect the same coverage and premium in
8 effect on the day the notice or proposed change was sent until the com-
9 missioner makes a final determination, if any lawful premium due or
10 becoming due prior to the determination is paid.

11 (3) If the commissioner finds from the notice and other evidence that
12 the protest is with or without merit, the commissioner may grant or dis-
13 miss the protest without a hearing and must, in that event, promptly notify
14 the insurer and the applicant or insured in writing of this action. If the
15 commissioner dismisses the protest without a hearing, the insurer's pro-
16 posed action becomes effective on its effective date or 15 days after the
17 commissioner gives the applicant or insured written notice of the action,
18 whichever is later. If the notice does not comply with Kansas law, the
19 commissioner shall disallow the action. In all other cases, the commis-
20 sioner shall hold a hearing on the protest within 30 days after receipt of
21 the protest and shall give written notice of the time and place of the
22 hearing to the insurer and applicant or insured at least 10 days prior to
23 the scheduled date of the hearing. The insurer shall have the burden of
24 proving its proposed action to be justified and may do so by relying upon
25 the reasons set forth in its notice to the applicant or insured.

26 (4) If the commissioner finds the proposed action to be justified, the
27 commissioner shall dismiss the protest and allow the proposed action to
28 take place on its proposed effective date or 20 days after the date that
29 the commissioner's determination is announced, whichever is later.

30 (5) If the commissioner finds the proposed action to be unjustified,
31 the commissioner shall disallow the action and may, in addition, order
32 the insurer to pay such reasonable counsel fees incurred by the applicant
33 or insured for representation at the hearing as the commissioner deems
34 appropriate. The commissioner may delegate the duties and powers con-
35 ferred in this section as allowed by law.

36 (6) The applicant or insured may seek judicial review of any final
37 determination by the commissioner in the District Court, pursuant to The
38 Act for Judicial Review and Civil Enforcement of Agency Actions, K.S.A
39 77-601 *et seq.*

40 (7) This section shall not apply to any insurance policy or coverage
41 which has been in effect less than 60 days at the time the insurer mails
42 or delivers the notice of cancellation, non-renewal, or reclassification.
43 This section does apply to renewal policies in effect less than 60 days at

1 the time the insurer mails or delivers the notice of cancellation, non-
2 renewal, or reclassification.

3 (b) In the event that an insurer uses disputed credit history to deter-
4 mine whether to provide coverage or at what rate to provide coverage,
5 paragraphs (1) and (2) shall apply if and only if the consumer resolves the
6 credit dispute under the process set forth in the federal fair credit re-
7 porting act, 15 U.S.C. 1681 *et seq.*, as that act exists on the effective date
8 of this act, and notifies the insurer in writing that the dispute has been
9 resolved:

10 (1) If an insurer uses disputed credit history to underwrite or rate
11 personal insurance and places a consumer with an affiliate that charges
12 higher premiums or offers less favorable policy terms:

13 (A) That insurer shall reissue or re-rate the policy retroactive to the
14 effective date of the current policy term; and

15 (B) the policy, as reissued or re-rated, shall provide the premiums
16 and policy terms for which the consumer would have been eligible had
17 the insurer used accurate credit history in determining to provide cov-
18 erage or at what rate to provide coverage.

19 (2) If an insurer charges higher premiums due to disputed credit
20 history, the insurer shall re-rate the policy retroactive to the effective date
21 of the current policy term. Pursuant to that re-rate, the insurer shall
22 charge the consumer the same premiums that the consumer would have
23 paid had the insurer used accurate credit history in determining to pro-
24 vide coverage or at what rate to provide coverage.

25 Sec. 8. The applicant, insured, attorney general, or commissioner
26 may bring suit to enforce this act, consistent with the Kansas consumer
27 protection act, K.S.A. 50-623 *et seq.* Noncompliance with this may result
28 in the imposition of equitable and legal relief allowed by law, including
29 without limitation, any of the following: Damages, civil penalties, fines,
30 license suspension, license revocation, or appropriate injunctive relief.
31 The relief in this act is cumulative to other relief allowed by law.

32 Sec. 9. The commissioner shall report to the president and the mi-
33 nority leader of the senate and the speaker and the minority leader of the
34 house of representatives, and the proponent of this bill by January 25,
35 2004, on issues related to the use of credit history in personal insurance
36 underwriting and rating and the implementation of this act. The report
37 shall include a:

38 (a) Review of how this act has been implemented and how this act
39 has impacted consumers; and

40 (b) review and analysis of insurance scoring, which shall include spe-
41 cific facts and data including, but is not limited to:

42 (1) The relevance of credit history on insurance risk of loss;

43 (2) which types of consumers, based on demographic factors, benefit

1 from the use of credit history in personal insurance rating and
2 underwriting;

3 (3) which types of consumers, based on demographic factors, are
4 harmed by the use of credit history in personal insurance rating and
5 underwriting;

6 (4) the extent to which the use of credit history affects rates charged
7 to the consumer;

8 (5) whether insurance scoring results in discrimination against a pro-
9 tected class of people or the poor; and

10 (6) such other issues as the commissioner may require.

11 Sec. 10. If any provision of this act or the application of it to any
12 person or circumstance is for any reason held to be invalid, the remainder
13 of the act will not be affected.

14 Sec. 11. This act shall take effect and be in force from and after its
15 publication in the statute book.

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