

1 [As Amended by House Committee of the Whole]

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3 As Amended by House Committee

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5 [As Amended by Senate Committee of the Whole]

6 *Session of 2003*

7  
8 **Substitute for SENATE BILL No. 144**

9  
10 By Committee on Financial Institutions and Insurance

11  
12 2-25

13  
14 AN ACT concerning insurance; relating to the use of credit scores in  
15 issuing certain policies.

16  
17 *Be it enacted by the Legislature of the State of Kansas:*

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

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

24 (b) This act shall apply to all personal insurance policies either written  
25 to be effective or renewed on or after January 1, 2004.

26 Sec. 3. As used in this act:

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

29 (1) A denial or cancellation of coverage;

30 (2) anything other than the best possible rate; or

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

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

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

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

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

43 (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. For the strict purposes of this act, personal  
31 insurance shall also include individually underwritten policies of ~~farm~~  
32 **owners farmowners**.

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

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

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

42 (c) Without consideration of any other applicable factor independent  
43 of credit information, base an insured’s renewal rates for personal insur-

1   ance solely upon credit information.

2   (d) Without consideration of any other applicable factor independent  
3 of credit information, take an adverse action against a consumer solely  
4 because such consumer does not have a credit card account.

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

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

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

12   (f) Take an adverse action against a consumer based on credit infor-  
13 mation, unless an insurer obtains and uses a credit report issued or an  
14 insurance score calculated within 90 days from the date the personal  
15 insurance policy is first written or notice of renewal is issued.

16   (g) (1) Except as provided in paragraphs (2) and (3), use credit in-  
17 formation unless not later than every 36 months following the last time  
18 that the insurer obtained current credit information for the insured, the  
19 insurer recalculates the insurance score or obtains an updated credit  
20 report.

21   (2) The insurer shall:

22   (A) Re-underwrite and re-rate the consumer's personal insurance  
23 policy, at the annual renewal of such policy, based upon a current credit  
24 report or insurance score for such consumer, if requested by the con-  
25 sumer. Such consumer's current credit report or insurance score shall be  
26 used if the result of the re-underwrite and re-rate reduces the consumer's  
27 rate. Such consumer's current credit report or insurance score shall not  
28 be used to increase the consumer's rate. The insurer shall not be found  
29 to be in violation of rate filings by adjusting an insured's rate in accordance  
30 with this subparagraph. Nothing in this subparagraph shall require an  
31 insurer to recalculate a consumer's insurance score or obtain the updated  
32 credit report of a consumer more frequently than once in a twelve-month  
33 period.

34   (B) Have the discretion to obtain current credit information upon  
35 any renewal before the 36 months, if consistent with such insurer's un-  
36 derwriting guidelines.

37   (3) No insurer shall be required to obtain current credit information  
38 for an insured, if:

39   (A) The insured is in the most favorably-priced tier of the insurer,  
40 within a group of affiliated insurers. However, the insurer shall have the  
41 discretion to order such report, if consistent with such insurer's under-  
42 writing guidelines;

43   (B) credit was not used for underwriting or rating such insured when

1 the policy was initially written. However, the insurer shall have the dis-  
2 cretion to use credit for underwriting or rating such insured upon re-  
3 newal, if consistent with such insurer's underwriting guidelines; or

4 (C) The insurer re-evaluates the insured beginning no later than 36  
5 months after inception and thereafter based upon other underwriting or  
6 rating factors, excluding credit information.

7 (h) Use any of the following as a negative factor against a consumer  
8 in any insurance scoring methodology or in reviewing credit information  
9 for the purpose of underwriting or rating a policy of personal insurance:

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

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

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

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

20 Sec. 5. (a) If it is determined through the dispute resolution process  
21 set forth in the federal fair credit reporting act, 15 USC 1681i(a)(5), that  
22 the credit information of a current insured was incorrect or incomplete  
23 and if the insurer receives notice of such determination from either the  
24 consumer reporting agency or from the insured, the insurer shall re-  
25 underwrite and re-rate the consumer within 30 days of receiving the no-  
26 tice. After re-underwriting or re-rating the insured, the insurer shall make  
27 any adjustments necessary, consistent with such insurer's underwriting  
28 and rating guidelines.

29 (b) If an insurer determines that the insured has overpaid the pre-  
30 mium, the insurer shall refund to the insured the amount of overpayment  
31 calculated back to the shorter of either the last 12 months of coverage or  
32 the actual policy period.

33 Sec. 6. If an insurer writing personal insurance uses credit informa-  
34 tion in underwriting or rating a consumer, the insurer or its agent shall  
35 disclose that it may obtain credit information in connection with such  
36 application. The insurer shall further notify such consumer that an inter-  
37 nal appeal process exists as provided by paragraph (b) of section 7 and  
38 amendments thereto. The disclosure shall be made either on the insur-  
39 ance application or at the time the insurance application is taken. Such  
40 disclosure shall be either written or provided to an applicant in the same  
41 medium as the application for insurance. The insurer need not provide  
42 the disclosure statement required under this section to any insured on a  
43 renewal policy if such consumer has previously been provided a disclosure

1 statement.

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

5 (1) An adverse action has been taken, in accordance with the require-  
6 ments of the federal fair credit reporting act as set forth in, 15 USC  
7 1681m(a); and

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

9 (b) Each reason must be provided in sufficiently clear and specific  
10 language so that a person can identify the basis for the insurer's decision  
11 to take such adverse action. An insurer shall provide a procedure whereby  
12 a consumer may review an adverse action based on credit information.  
13 Such procedure shall be consistent with the provisions of K.S.A. 40-2,112  
14 and amendments thereto. The insurer and the insurer's agent shall be  
15 immune from any action arising from information provided to the insured  
16 through such process. The insurer shall not be found in violation of rate  
17 filings by adjusting an insured's rate in such a manner.

18 (c) The use of generalized terms such as "poor credit history," "poor  
19 credit rating," or "poor insurance score" shall be deemed not to comply  
20 with requirements of this section.

21 Sec. 8. (a) Each insurer that uses insurance scores to underwrite and  
22 rate risks shall file the procedure required by paragraph (b) of section 7,  
23 and amendments thereto, and such insurer's insurance scoring models or  
24 other insurance scoring processes with the insurance department. A third  
25 party may file with the insurance department such third party's scoring  
26 models or other scoring processes used on behalf of an insurer. Any filing  
27 that includes insurance scoring may include loss experience justifying the  
28 use of credit information.

29 (b) Except for the procedure required by paragraph (b) of section 7,  
30 and amendments thereto, any filing relating to insurance scoring models  
31 or other insurance scoring processes shall be considered to be a trade  
32 secret and confidential under the open records act.

33 Sec. 9. (a) The commissioner of insurance ~~may conduct research~~  
34 **shall gather data**, hold public hearings, make inquiries and publish stud-  
35 ies relating to the purpose of this act.

36 **[(b) Any insurance company using insurance scores pursuant**  
37 **to this act shall no later than January 31, 2005, provide the com-**  
38 **missioner with the following information:**

39 **[(1) An analysis of how this act has been implemented; and**

40 **[(2) a review and analysis of the insurance company's use of**  
41 **credit information and insurance scores, which shall include all**  
42 **data and information on:**

43 **[(A) The relationship between credit information and insur-**

1 **ance scores on insurance risk of loss;**

2 **[(B) demographic information on consumers who are ad-**  
3 **versely affected by and benefit from the use of credit information**  
4 **and insurance scores on personal insurance purchases including**  
5 **the consumer's age, sex, city, insurance score, insurance rate, num-**  
6 **ber of claims filed, and amounts paid on claims;**

7 **[(C) the extent to which the use of credit information and in-**  
8 **surance scores affects rates charged to consumers; and**

9 **[(D) such additional information as the commissioner may**  
10 **require.]**

11 ~~(b)~~ **[(c)] The commissioner shall report to the president and**  
12 **minority leader of the senate and the speaker and minority leader**  
13 **of the house of representatives by ~~January 26~~ [July 31], 2005, on**  
14 **issues relating to the use of credit history in the underwriting and**  
15 **rating of personal insurance and the implementation of this act.**  
16 **[The report shall include a summary of the information provided**  
17 **by insurance companies and an independent analysis of the impact**  
18 **the use of credit information and insurance scores had on rates**  
19 **charged to consumers, whether there is a relationship between a**  
20 **consumers credit information and insurance score and the insur-**  
21 **ance risk of loss, and whether the use of credit information and**  
22 **insurance scores resulted in discrimination against minorities,**  
23 **women, adults under the age of 25, adults over the age of 50, or**  
24 **the poor. The cost of such report shall be borne proportionately**  
25 **by those insurance companies utilizing credit information and in-**  
26 **surance scores on personal insurance based upon the number of**  
27 **consumers each insurance company has requested credit infor-**  
28 **mation. The commissioner of insurance shall assess the cost of**  
29 **such report on such insurance companies and shall collect such**  
30 **assessment in the same manner as other assessments. All moneys**  
31 **received for such assessment shall be remitted to the state trea-**  
32 **surer in accordance with the provisions of K.S.A. 75-4215, and**  
33 **amendments thereto. The entire amount of each such remittance,**  
34 **the state treasurer shall deposit the entire amount in the state**  
35 **treasury to the credit of the insurance department service regu-**  
36 **lation fund.]**

37 **[(d) Any insurance company failing to provide the information**  
38 **required by this section or failing to pay its proportionate share of**  
39 **the commissioner's report shall forfeit its privilege to utilize in-**  
40 **surance scores on personal insurance lines.]**

41 **Sec. 10. (a) An insurer shall indemnify, defend, and hold agents**  
42 **harmless from and against all liability, fees, and costs arising out of or**  
43 **relating to the actions, errors, or omissions of an agent who obtains or**

1 uses credit information or insurance scores, or both, for an insurer.

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

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

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

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

10 ~~Sec. 11. No credit scoring entity shall provide or sell to any party,  
11 other than the insurer, its insurance company affiliates or holding com-  
12 panies, and the insurance agent from whom the inquiry was generated,  
13 data or lists that include any information that in whole or in part is sub-  
14 mitted in conjunction with credit inquiries about consumers. Such infor-  
15 mation includes, but is not limited to, expiration dates, information that  
16 may identify time periods during which a consumer's insurance may ex-  
17 pire, or other nonpublic personal information as defined under the  
18 Gramm-Leach-Bliley act, 15 U.S.C. sections 6801 to 6800. The provision  
19 of this section shall not preclude the exchange of information specifically  
20 authorized under the federal fair credit reporting act, 15 U.S.C. section  
21 1681, *et seq.*, the Gramm-Leach-Bliley act, 15 U.S.C. sections 6801 to  
22 6800 and other applicable federal law. The provisions of this section shall  
23 not apply to data disclosed in connection with a proposed or actual sale,  
24 merger, transfer or exchange of all or a portion of an insurer's or pro-  
25 ducer's business or operating unit, including, but not limited to, the sale  
26 of a portfolio of contacts, if such disclosure concerns solely consumers of  
27 the business or unit and such disclosure is not the primary reason for the  
28 sale, merger, transfer or exchange.~~

29 ~~**[Sec. 11. (a) No consumer reporting agency shall provide or  
30 sell data or lists that include any information, in whole or in part,  
31 which was submitted in conjunction with an insurance inquiry  
32 about a consumer's credit information or a request for a credit re-  
33 port or insurance score. Such information includes, but is not lim-  
34 ited to:**~~

35 ~~**[(1) The expiration date of an insurance policy or any other  
36 information that may identify any time period during which a con-  
37 sumer's insurance may expire; and**~~

38 ~~**[(2) the terms and conditions of the consumer's insurance  
39 coverage.**~~

40 ~~**[(b) The restrictions provided in subsection (a) of this section  
41 do not apply to:**~~

42 ~~**[(1) Any data or list the consumer reporting agency supplies to  
43 the insurance agent from whom information was received;**~~

1     **[(2) the insurer for whom such agent acted; or**  
2     **[(3) such insurer's affiliates or holding companies.**  
3     **[(c) Nothing in this section shall be construed to prohibit or**  
4     **restrict any insurer from obtaining a claims history report or a mo-**  
5     **tor vehicle report.]**

6     Sec. 12. Whenever an insurer is found to be in violation of any pro-  
7     vision of this act, the commissioner shall proceed under K.S.A. 40-2,125  
8     and amendments thereto.

9     Sec. 13. The commissioner of insurance is hereby authorized to  
10    adopt such rules and regulations as may be necessary to carry out the  
11    provisions of this act.

12    Sec. 14. (a) If any provision of this act is declared invalid due to an  
13    interpretation of or a future change in the federal fair credit reporting  
14    act, the remaining portions of the act shall be deemed to be severable  
15    and shall remain in full force and effect.

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

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

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