

SESSION OF 2003

**SUPPLEMENTAL NOTE ON
SUBSTITUTE FOR SENATE BILL NO. 144**

As Amended by House Committee on Insurance

Brief*

Sub. for SB 144, as amended, enacts the Kansas Insurance Score Act. The bill:

- ! Applies only to personal insurance individually underwritten for personal, family, or household purposes written to be effective or renewed on or after January 1, 2004;
- ! Defines numerous terms, including:
 - " insurance score as 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;
 - " personal insurance as private passenger auto, homeowners, motorcycle, mobile home owners, and non-commercial dwelling fire insurance policies and boat, personal water craft, snowmobile, and recreational vehicle policies (personal insurance also includes individually underwritten policies of farmowners);
- ! Requires any insurer, or its agent, using credit information in underwriting or rating a consumer, to disclose that it may obtain information in connection with the application, and, further, to give the consumer notice that an internal appeal process exists to contest the use of such information;

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org/klrd>

- ! Prohibits insurers that use credit information to underwrite or rate risks from:
 - " using an insurance score that is calculated using income, address, zip code, race, religion, color, sex, disability, national origin, ancestry, or marital status of the consumer;
 - " refusing to quote, deny, cancel, or refuse to renew any policy on the basis of credit information;
 - " basing an insured's renewal rate solely upon credit information;
 - " taking an adverse action against a consumer solely because such consumer does not have a credit card;
 - " considering an absence of credit information in underwriting or rating personal insurance;
 - " using credit information, except as provided, unless not later than every 36 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 (at the annual renewal of a policy, the insurer shall, if requested by the insured, re-underwrite and re-rate based on the insured's current credit report or insurance score but may use the result of the re-underwriting or re-rating only if it reduces the consumer's rate);
 - " using any of the following negative factors against a consumer in any insurance scoring methodology or in reviewing credit information for the purpose of underwriting or rating a policy: a credit inquiry not initiated by the consumer, any inquiry related to insurance coverage, any collection account with a medical industry code, or any lender inquiry beyond the first such inquiry related to the same loan purpose.

- ! Requires the insurer, following the consumer's successful dispute of the consumer's credit information as provided in the federal Fair Credit Reporting Act, to re-underwrite and re-rate a consumer

within 30 days of receiving a notice that the credit information of a current insured was incorrect or incomplete (the insurer must make any necessary adjustments, including refunding any overpaid premium);

- ! Provides that, if the insurer takes an adverse action based upon credit information, the insurer must provide written notification to the consumer that the action was taken in accordance with the Fair Credit Reporting Act and also explain the reason for the adverse action (each reason must be clear and in specific language, *e.g.*, use of general terms such as “poor credit history,” “poor credit rating,” or “poor insurance score,” do not comply with the requirement);
- ! Requires insurers to inform persons receiving an adverse action that the consumer may review the adverse action based on credit information, and the insurer must have the procedure for such a review on file with the Insurance Department along with the insurer’s insurance scoring models or other insurance scoring processes (insurance scoring models or other insurance scoring processes shall be considered to be trade secrets and confidential under the Kansas Open Records Act);
- ! Holds agents harmless and specifies that insurers must indemnify and defend agents from and against all liability, fees, and costs arising out of or relating to the actions, errors, or omissions of an agent who obtains or uses credit information or insurance scores, or both, for an insurer;
- ! Directs that violations of the act will be handled under existing insurance law that includes civil penalties, cease and desist orders, and possible revocation of authority to do business;
- ! Requires, by January 26, 2005, the Insurance Commissioner to report to the President and Minority Leader of the Senate and the Speaker and Minority Leader of the House of Representatives on issues relating to the use of credit history in the underwriting and rating of personal insurance and the implementation of this act; and

! Authorizes the Insurance Commissioner to adopt rules and regulations as may be necessary to carry out the provisions of the act.

The Senate Committee of the Whole amendment prohibits a consumer reporting agency from providing or selling data or lists that include any information which was submitted in conjunction with an insurance inquiry about a consumer's credit information or a request for a credit report or insurance score. The restriction does not apply to data or lists that the consumer reporting agency supplies to the insurance agent from whom information was received; an insurer for whom the agent acted; or the insurer's affiliates or holding companies. Insurers are not prohibited or restricted from obtaining a claims history report or a motor vehicle report.

The House Committee amendments correct the spelling of "farmowners" in the definition of "personal insurance," and add a specific reporting requirement for the Commissioner of Insurance to complete by the 2005 Session of the Legislature.

Background

SB 144 was recommended by the Insurance Commissioner on behalf of the Task Force on Credit Scoring created by the 2002 Legislature. Following hearings on the bill, the interested parties made further suggestions for changes that are reflected in Sub. for SB 144.

The substitute bill is supported by the Kansas Association of Realtors, State Farm, Farmers Alliance, Kansas Association of Insurance Agents, Farmers Insurance Company, and the American Insurance Association.

Insurance credit scoring is opposed by the Kansas Building Industry Association, Kansas Dairy Association, Kansas Agricultural Aviation Association, Kansas Seed Industry Association, Kansas Trial Lawyers Association, Kansas Manufactured Housing Association, Housing and Credit Counseling, Inc.–Topeka, Kansas Assistive Technology Cooperative, Kansas Association of Centers for Independent Living, and AARP-Kansas.

The fiscal note prepared by the Division of the Budget indicates that passage of the bill will create additional regulatory duties for the Insurance Department which can be absorbed by current staff and within existing resources.