

Using Credit Information when Issuing Personal Insurance

The purpose of this draft legislation is to protect consumers from underwriting and rating decisions, including denial or nonrenewal of insurance coverage, rate increases, and coverage reductions, that are based solely on consumer credit reports. The Act requires an insurer to notify a consumer who is adversely affected by his or her credit report what the reasons for the adverse decision were, what the specific credit-based causes were, and what contact information would be necessary to appeal the underwriting decision. Insurers, under the Act, are prohibited from considering an absence of credit history, or an inability to determine a credit history, as a negative indicator on an insurance score. Ultimately, the Act recognizes an insurance company's right, under the Federal Fair Credit Reporting Act (FCRA) of 1970, to use credit experience in insurance underwriting and rating.

Submitted as:

National Conference of Insurance Legislators' (NCOIL) Proposed Model Act Regarding Use of Consumer Credit Reports in Insurance Underwriting

Status: As adopted on November 22, 2002 by the NCOIL Property-Casualty Insurance Committee and the NCOIL Executive Committee

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act may be cited as “An Act Regarding Use of Credit
2 Information in Personal Insurance.”

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4 Section 2. [*Purpose.*] The purpose of this Act is to regulate the use of credit information
5 for personal insurance, so that consumers are afforded certain protections with respect to the use
6 of such information.

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8 Section 3. [*Scope.*] This Act applies to personal insurance and not to commercial
9 insurance. For purposes of this Act, “personal insurance” means private passenger automobile,
10 homeowners, motorcycle, mobile-homeowners and non-commercial dwelling fire insurance
11 policies [and boat, personal watercraft, snowmobile and recreational vehicle policies]. Such
12 policies must be individually underwritten for personal, family or household use. No other type
13 of insurance shall be included as personal insurance for the purpose of this Act.

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15 Section 4. [*Definitions.*] For the purposes of this Act, these defined words have the
16 following meaning:

17 A. Adverse Action—A denial or cancellation of, an increase in any charge for, or a
18 reduction or other adverse or unfavorable change in the terms of coverage or amount of, any
19 insurance, existing or applied for, in connection with the underwriting of personal insurance.

20 B. Affiliate—Any company that controls, is controlled by, or is under common control
21 with another company.

22 C. Applicant—An individual who has applied to be covered by a personal insurance
23 policy with an insurer.

24 D. Consumer—An insured whose credit information is used or whose insurance score is
25 calculated in the underwriting or rating of a personal insurance policy or an applicant for such a
26 policy.

27 E. Consumer Reporting Agency—Any person which, for monetary fees, dues, or on a
28 cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling
29 or evaluating consumer credit information or other information on consumers for the purpose of
30 furnishing consumer reports to third parties.

31 F. Credit Information—Any credit-related information derived from a credit report,
32 found on a credit report itself, or provided on an application for personal insurance. Information
33 that is not credit-related shall not be considered “credit information,” regardless of whether it is
34 contained in a credit report or in an application, or is used to calculate an insurance score.

35 G. Credit Report—Any written, oral, or other communication of information by a
36 consumer reporting agency bearing on a consumer’s creditworthiness, credit standing or credit
37 capacity which is used or expected to be used or collected in whole or in part for the purpose of
38 serving as a factor to determine personal insurance premiums, eligibility for coverage, or tier
39 placement.

40 H. Insurance Score—A number or rating that is derived from an algorithm, computer
41 application, model, or other process that is based in whole or in part on credit information for
42 the purposes of predicting the future insurance loss exposure of an individual applicant or
43 insured.

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45 Section 5. [*Use of Credit Information.*] An insurer authorized to do business in [insert
46 state] that uses credit information to underwrite or rate risks, shall not:

47 A. Use an insurance score that is calculated using income, gender, address, zip code,
48 ethnic group, religion, marital status, or nationality of the consumer as a factor.

49 B. Deny, cancel or nonrenew a policy of personal insurance solely on the basis of credit
50 information, without consideration of any other applicable underwriting factor independent of
51 credit information and not expressly prohibited by Section 5(A).

52 C. Base an insured’s renewal rates for personal insurance solely upon credit information,
53 without consideration of any other applicable factor independent of credit information.

54 D. Take an adverse action against a consumer solely because he or she does not have a
55 credit card account, without consideration of any other applicable factor independent of credit
56 information.

57 E. Consider an absence of credit information or an inability to calculate an insurance
58 score in underwriting or rating personal insurance, unless the insurer does one of the following:

59 1. Treat the consumer as otherwise approved by the Insurance
60 Commissioner/Supervisor/Director, if the insurer presents information that such an absence or
61 inability relates to the risk for the insurer.

62 2. Treat the consumer as if the applicant or insured had neutral credit
63 information, as defined by the insurer.

64 3. Exclude the use of credit information as a factor and use only other
65 underwriting criteria.

66 F. Take an adverse action against a consumer based on credit information, unless an
67 insurer obtains and uses a credit report issued or an insurance score calculated within [90 days]
68 from the date the policy is first written or renewal is issued.

69 G. Use credit information unless not later than [every 36 months] following the last time
70 that the insurer obtained current credit information for the insured, the insurer recalculates the
71 insurance score or obtains an updated credit report. Regardless of the requirements of this
72 subsection:

73 1. At annual renewal, upon the request of a consumer or the consumer's agent,
74 the insurer shall re-underwrite and re-rate the policy based upon a current credit report or
75 insurance score. An insurer need not recalculate the insurance score or obtain the updated credit
76 report of a consumer more frequently than [once in a twelve-month period].

77 2. The insurer shall have the discretion to obtain current credit information upon
78 any renewal before [36 months], if consistent with its underwriting guidelines.

79 3. No insurer need obtain current credit information for an insured, despite the
80 requirements of subsection (G)(1), if one of the following applies:

81 (a) The insurer is treating the consumer as otherwise approved by the
82 Commissioner.

83 (b) The insured is in the most favorably-priced tier of the insurer, within
84 a group of affiliated insurers. However, the insurer shall have the discretion to order such report,
85 if consistent with its underwriting guidelines.

86 (c) Credit was not used for underwriting or rating such insured when the
87 policy was initially written. However, the insurer shall have the discretion to use credit for
88 underwriting or rating such insured upon renewal, if consistent with its underwriting guidelines.

89 (d) The insurer re-evaluates the insured beginning no later than [36
90 months] after inception and thereafter based upon other underwriting or rating factors, excluding
91 credit information.

92 H. Use the following as a negative factor in any insurance scoring methodology or in
93 reviewing credit information for the purpose of underwriting or rating a policy of personal
94 insurance:

95 1. Credit inquiries not initiated by the consumer or inquiries requested by the
96 consumer for his or her own credit information.

97 2. Inquiries relating to insurance coverage, if so identified on a consumer's credit
98 report.

99 3. Collection accounts with a medical industry code, if so identified on the
100 consumer's credit report.

101 4. Multiple lender inquiries, if coded by the consumer reporting agency on the
102 consumer's credit report as being from the home mortgage industry and made within [30 days]
103 of one another, unless only one inquiry is considered.

104 5. Multiple lender inquiries, if coded by the consumer reporting agency on the
105 consumer's credit report as being from the automobile lending industry and made within [30
106 days] of one another, unless only one inquiry is considered.

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108 Section 6. [*Dispute Resolution and Error Correction*] If it is determined through the
109 dispute resolution process set forth in the federal Fair Credit Reporting Act, 15 USC
110 1681i(a)(5), that the credit information of a current insured was incorrect or incomplete and if
111 the insurer receives notice of such determination from either the consumer reporting agency or
112 from the insured, the insurer shall re-underwrite and re-rate the consumer within [30 days] of
113 receiving the notice. After re-underwriting or re-rating the insured, the insurer shall make any
114 adjustments necessary, consistent with its underwriting and rating guidelines. If an insurer
115 determines that the insured has overpaid premium, the insurer shall refund to the insured the
116 amount of overpayment calculated back to the shorter of either the last [12 months] of coverage
117 or the actual policy period.

118
119 Section 7. [*Initial Notification.*]

120 A. If an insurer writing personal insurance uses credit information in underwriting or
121 rating a consumer, the insurer or its agent shall disclose, either on the insurance application or at

122 the time the insurance application is taken, that it may obtain credit information in connection
123 with such application. Such disclosure shall be either written or provided to an applicant in the
124 same medium as the application for insurance. The insurer need not provide the disclosure
125 statement required under this section to any insured on a renewal policy, if such consumer has
126 previously been provided a disclosure statement.

127 B. Use of the following example disclosure statement constitutes compliance with this
128 section: “In connection with this application for insurance, we may review your credit report or
129 obtain or use a credit-based insurance score based on the information contained in that credit
130 report. We may use a third party in connection with the development of your insurance score.”

131
132 Section 8. [*Adverse Action Notification.*] If an insurer takes an adverse action based upon
133 credit information, the insurer must meet the notice requirements of both (A) and (B) of this
134 subsection. Such insurer shall:

135 A. Provide notification to the consumer that an adverse action has been taken, in
136 accordance with the requirements of the federal Fair Credit Reporting Act, 15 USC 1681m(a).

137 B. Provide notification to the consumer explaining the reason for the adverse action.
138 The reasons must be provided in sufficiently clear and specific language so that a person can
139 identify the basis for the insurer’s decision to take an adverse action. Such notification shall
140 include a description of up to four factors that were the primary influences of the adverse action.
141 The use of generalized terms such as “poor credit history,” “poor credit rating,” or “poor
142 insurance score” does not meet the explanation requirements of this subsection. Standardized
143 credit explanations provided by consumer reporting agencies or other third party vendors are
144 deemed to comply with this section.

145
146 Section 9. [*Filing.*]

147 A. Insurers that use insurance scores to underwrite and rate risks must file their scoring
148 models (or other scoring processes) with the Department of Insurance. A third party may file
149 scoring models on behalf of insurers. A filing that includes insurance scoring may include loss
150 experience justifying the use of credit information.

151 B. Any filing relating to credit information is considered trade secret under [cite to the
152 appropriate state law].

153
154 Section 10. [*Indemnification.*] An insurer shall indemnify, defend, and hold agents
155 harmless from and against all liability, fees, and costs arising out of or relating to the actions,
156 errors, or omissions of [an agent / a producer] who obtains or uses credit information and/or
157 insurance scores for an insurer, provided the [agent / producer] follows the instructions of or
158 procedures established by the insurer and complies with any applicable law or
159 regulation. Nothing in this section shall be construed to provide a consumer or other insured
160 with a cause of action that does not exist in the absence of this section.

161
162 Section 11. [*Sale of Policy Term Information by Consumer Reporting Agency.*]

163 A. No consumer reporting agency shall provide or sell data or lists that include any
164 information that in whole or in part was submitted in conjunction with an insurance inquiry
165 about a consumer’s credit information or a request for a credit report or insurance score. Such
166 information includes, but is not limited to, the expiration dates of an insurance policy or any
167 other information that may identify time periods during which a consumer’s insurance may
168 expire and the terms and conditions of the consumer’s insurance coverage.

169 B. The restrictions provided in subsection (A) of this section do not apply to data or lists
170 the consumer reporting agency supplies to the insurance [agent / producer] from whom

171 information was received, the insurer on whose behalf such [agent / producer] acted, or such
172 insurer's affiliates or holding companies.

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

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176 Section 12. [*Severability.*] If any section, paragraph, sentence, clause, phrase, or any part
177 of this Act passed is declared invalid due to an interpretation of or a future change in the federal
178 Fair Credit Reporting Act, the remaining sections, paragraphs, sentences, clauses, phrases, or
179 parts thereof shall be in no manner affected thereby but shall remain in full force and effect.

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181 Section 13. [*Effective Date.*] This Act shall take effect on [insert date], applying to
182 personal insurance policies either written to be effective or renewed on or after [9 months] from
183 the effective date of the bill.