

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

HOUSE BILL HB1751

By: Winchester

AS INTRODUCED

An Act relating to insurance; creating the Use of Credit Information in Personal Insurance Act; providing purpose of act; providing for applicability of act; defining terms; restricting use of credit information in underwriting; providing for dispute resolution; requiring notification of use of credit information; requiring notification if insurer takes adverse action based on credit information; requiring filing of scoring models by insurers; requiring indemnification by insurers for agents and producers; restricting sale of policy term information; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6901 of Title 36, unless there is created a duplication in numbering, reads as follows:

This act may be cited and shall be known as the "Use of Credit Information in Personal Insurance Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6902 of Title 36, unless there is created a duplication in numbering, reads as follows:

The purpose of this act is to specify the conditions under which insurers may use credit information for underwriting or rating information.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6903 of Title 36, unless there is created a duplication in numbering, reads as follows:

This act applies to personal insurance and not to commercial insurance. For purposes of this act, "personal insurance" means

private passenger automobile, homeowners, motorcycle, mobile-homeowners and noncommercial dwelling fire insurance policies, personal excess or personal umbrella policies and boat, personal watercraft, snowmobile and recreational vehicle policies. Such policies 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.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6904 of Title 36, unless there is created a duplication in numbering, reads as follows:

For the purposes of this act:

1. "Adverse action" means a denial, nonrenewal or cancellation of, an increase in any charge for, 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 personal insurance;

2. "Affiliate" means any company that controls, is controlled by, or is under common control with another company;

3. "Applicant" means an individual who has applied to be covered by a personal insurance policy with an insurer;

4. "Consumer" means an insured whose credit information is used or whose insurance score is calculated in the underwriting or rating of a personal insurance policy or an applicant for such a policy;

5. "Consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties;

6. "Credit information" means any credit-related information derived from a credit report, found on a credit report itself, or provided on an application for personal insurance. Information that

is not credit-related shall not be considered credit information, regardless of whether it is contained in a credit report or in an application, or is used to calculate an insurance score;

7. "Credit report" means any written, oral, or other communication of information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing or credit capacity which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor to determine personal insurance premiums, eligibility for coverage, or tier placement;

8. "Insurance score" means 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;

9. "Insured" means a consumer who has purchased an insurance policy from an insurer; and

10. "Producer" means a person or business entity licensed under the laws of this state as an insurance agent or broker.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6905 of Title 36, unless there is created a duplication in numbering, reads as follows:

An insurer authorized to do business in Oklahoma that uses credit information to underwrite or rate risks, shall not:

1. Use an insurance score that is calculated using income, gender, address, zip code, ethnic group, religion, marital status, nationality, occupation, or disabilities and physical handicaps of the consumer as a factor;

2. Deny, cancel or nonrenew a policy of personal insurance solely on the basis of credit information, without consideration of any other applicable underwriting factor independent of credit

information and not expressly prohibited by paragraph 1 of this section;

3. Base an insured's renewal rates for personal insurance solely upon credit information, without consideration of any other applicable factor independent of credit information;

4. Take an adverse action against a consumer solely because he or she does not have existing credit accounts without consideration of any other applicable factor independent of credit information;

5. Use credit information unless not later than every thirty-six (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. Regardless of the requirements of this subsection:

- a. at annual renewal, upon the request of a consumer or the consumer's agent, the insurer shall re-underwrite and re-rate the policy based upon a current credit report or insurance score. An insurer need not recalculate the insurance score or obtain the updated credit report of a consumer more frequently than once in a twelve-month period,
- b. the insurer shall have the discretion to obtain current credit information upon any renewal before the thirty-six (36) months, if consistent with its underwriting guidelines, and
- c. no insurer need obtain current credit information for an insured, despite the requirements of subparagraph a of this paragraph, if one of the following applies:
  - (i) the insurer is treating the consumer as otherwise approved by the Commissioner,
  - (ii) the insured is in the most favorably-priced tier of the insurer, within a group of affiliated insurers. However, the insurer shall have the

discretion to order such report, if consistent with its underwriting guidelines, or

- (iii) the insurer re-evaluates the insured beginning no later than thirty-six (36) months after inception and thereafter based upon other underwriting or rating factors, excluding credit information; and

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

- a. credit inquiries not initiated by the consumer or inquiries requested by the consumer for his or her own credit information,
- b. inquiries relating to insurance coverage, if so identified on a consumer's credit report,
- c. collection accounts with a medical industry code, if so identified on the consumer's credit report,
- d. multiple lender inquiries, if coded by the consumer reporting agency on the consumer's credit report as being from the home mortgage industry and made within thirty (30) days of one another, unless only one inquiry is considered, or
- e. multiple lender inquiries, if coded by the consumer reporting agency on the consumer's credit report as being from the automobile lending industry and made within thirty (30) days of one another, unless only one inquiry is considered.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6906 of Title 36, unless there is created a duplication in numbering, reads as follows:

If it is determined through the dispute resolution process set forth in the federal Fair Credit Reporting Act, 15 U.S.C., Section 1681i(a)(5), that the credit information of a current insured was

incorrect or incomplete and if the insurer receives notice of such determination from either the consumer reporting agency or from the insured, the insurer shall re-underwrite and re-rate the consumer within thirty (30) days of receiving the notice. After re-underwriting or re-rating the insured, the insurer shall make any adjustments necessary, consistent with its underwriting and rating guidelines. If an insurer determines that the insured has overpaid premium, the insurer shall refund to the insured the amount of overpayment calculated back to the shorter of either the last twelve (12) months of coverage or the actual policy period.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6907 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. If an insurer writing personal insurance uses credit information in underwriting or rating a consumer, the insurer or its agent shall disclose, either on the insurance application or at the time the insurance application is taken, that it may obtain credit information in connection with such application. Such disclosure shall be either written or provided to an applicant in the same medium as the application for insurance. The insurer need not provide the disclosure statement required under this section to any insured on a renewal policy, if such consumer has previously been provided a disclosure statement.

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

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6908 of Title 36, unless there is created a duplication in numbering, reads as follows:

If an insurer takes an adverse action based upon credit information, the insurer must meet the notice requirements of both paragraphs 1 and 2 of this section. Such insurer shall:

1. Provide notification to the consumer that an adverse action has been taken, in accordance with the requirements of the federal Fair Credit Reporting Act, 15 U.S.C., Section 1681m(a); and

2. Provide notification to the consumer explaining the reason for the adverse action. The reasons must be provided in sufficiently clear and specific language so that a person can identify the basis for the insurer's decision to take an adverse action. Such notification shall include a description of at least four factors that were the primary influence of the adverse action. If there were not four factors, notification shall include all of the factors that were used as the basis for the decision. The use of generalized terms such as "poor credit history," "poor credit rating," or "poor insurance score" does not meet the explanation requirements of this subsection. Standardized credit explanations provided by consumer reporting agencies or other third party vendors are deemed to comply with this section.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6909 of Title 36, unless there is created a duplication in numbering, reads as follows:

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

B. Any filing relating to credit information is considered trade secret under the Uniform Trade Secrets Act, Section 85 et seq. of Title 78 of the Oklahoma Statutes.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6910 of Title 36, unless there is created a duplication in numbering, reads as follows:

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

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6911 of Title 36, unless there is created a duplication in numbering, reads as follows:

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

B. The restrictions provided in subsection A of this section do not apply to data or lists the consumer reporting agency supplies to the insurance agent or producer from whom information was received, the insurer on whose behalf such agent or producer acted, or such insurer's affiliates or holding companies.

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

SECTION 12. This act shall become effective November 1, 2003.

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