

Regular Session, 2003

# ACT No. 1256

HOUSE BILL NO. 1448

BY REPRESENTATIVES HEBERT, ERDEY, BOWLER, CAPELLA,  
MORRISH, GARY SMITH, BALDONE, GLOVER, SCALISE, AND  
WALSWORTH

## AN ACT

To enact Part XXXI-A of Chapter 1 of Title 22 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 22:1481 through 1494, relative to the use of credit information for personal insurance; to provide for requirements and restrictions; to provide for corrections; to provide for notification; to provide for filings; to provide for indemnification; to provide for applicability; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Part XXXI-A of Chapter 1 of Title 22 of the Louisiana Revised Statutes of 1950, comprised of R.S. 22:1481 through 1494, is hereby enacted to read as follows:

### PART XXXI-A. USE OF CREDIT INFORMATION

#### §1481. Purpose

The purpose of this Part is to regulate the use of credit information for personal insurance so that consumers are afforded certain protections with respect to the use of such information.

#### §1482. Scope

This Part applies to personal insurance and not to commercial insurance. For purposes of this Part, "personal insurance" means private passenger automobile, homeowners, motorcycle, mobile home owners, and noncommercial dwelling fire insurance 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 purposes of this Part.

§1483. Definitions

For the purposes of this Part, the following terms shall have the following meanings:

(1) "Adverse action" means a denial 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 any 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.

§1484. Use of credit information

An insurer authorized to do business in Louisiana 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, or nationality 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 does not have a credit card account or other credit history, without consideration of any other applicable factor independent of credit information.

(5) Consider an absence of credit information or an inability to calculate an insurance score in underwriting or rating personal insurance, unless the insurer does one of the following:

(a) Treats the consumer as otherwise approved by the commissioner, if the insurer presents information that such an absence or inability relates to the risk by the insurer.

(b) Treats the consumer as if the applicant or insured had neutral credit information, as defined by the insurer.

(c) Excludes the use of credit information as a factor and uses only other underwriting criteria.

(6) Takes an adverse action against a consumer based on credit information, unless an insurer obtains and uses a credit report issued or an insurance score calculated within one hundred and eighty days from the date the policy is first written or renewal is issued.

(7) Uses credit information unless not later than every thirty-six 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 Paragraph:

(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 thirty-six months, if consistent with its underwriting guidelines.

(c) No insurer need obtain current credit information for an insured, notwithstanding 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 or group of affiliated insurers; however, the insurer shall have the discretion to order such report, if consistent with its underwriting guidelines.

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

(iv) The insurer reevaluates the insured beginning no later than thirty-six months after inception and thereafter based upon other underwriting or rating factors, excluding credit information.

(v) The insurer provides a documented offer to the insured on an annual basis of the insured's right to voluntarily request that their insurance credit score be rerun and reevaluated based on the current information available at the time of the insured's request.

(d) For personal policies in place prior to the effective date of this Part, the insurer shall begin reevaluating renewal policies in

compliance with this Section no later than thirty-six months from the said effective date, unless otherwise requested in accordance with Subparagraph (a) of this Paragraph or otherwise not required under Subparagraph (c) of this Paragraph.

(8) 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 requested by the consumer for his own credit information, or inquiries not initiated by the consumer, including promotional inquiries, periodic inquiries by existing credit providers, and credit system administration inquiries.

(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 days of one another, unless only one inquiry is considered.

(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 days of one another, unless only one inquiry is considered.

(f) The extension of available credit in excess of what the insurer deems reasonable, when the consumer has an otherwise acceptable credit history and does not present an increased underwriting or rating risk.

(9) Create unreasonable disparities between underwriting tier placement between different lines of personal insurance for the same applicant solely on the basis of credit information unless justified by actuarial or statistical data or sound underwriting criteria, without consideration of any other applicable underwriting factor independent of credit information and not expressly prohibited by Paragraph (1) of this Section.

§1485. Dispute resolution and error correction

If it is determined through the dispute resolution process set forth in the federal Fair Credit Reporting Act, 15 U.S.C. 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 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 months of coverage or the actual policy period.

§1486. Appeals of underwriting or rates

Insurers using credit information to underwrite or rate risks shall provide a process for the consumer to appeal the underwriting or rating of risks for which credit scoring may be an inappropriate factor. 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.

§1487. Exemptions from the use of credit information

Insurers shall provide reasonable exemptions from the use of credit information in underwriting or rating risks if the consumer can clearly demonstrate that his credit history is unduly influenced by a medical crisis, death of a spouse, identity theft, the personal guaranty of a business loan, or a catastrophic event as deemed by the commissioner of insurance. 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.

§1488. Initial notification

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."

§1489. Adverse action notification

If an insurer takes an adverse action based upon credit information, the insurer must meet the notice requirements 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. 1681m(a).

(2) Provide notification to the consumer explaining the reason for the adverse action. The reasons shall 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 up to four factors that were the primary influences of the adverse action. 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 Section. Standardized credit explanations provided by consumer reporting agencies or other third-party vendors are deemed to comply with this Section.

§1490. Filing

A. Insurers that use insurance-related scoring systems to underwrite and rate risks shall 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 a trade secret under R.S. 51:1431.

§1491. Indemnification

A. An insurer shall indemnify, defend, and hold producers harmless from and against all liability, fees, and costs arising out of or relating to the actions, errors, or omissions of a producer who obtains or uses credit information or insurance scores for an insurer, provided the producer follows the instructions of or procedures established by the insurer and complies with any applicable law or regulation.

B. An insurer or credit information provider shall not require a producer to indemnify or hold them harmless, except to the extent of the producer's negligent failure to comply with procedures established by the insurer or credit information provider. An insurer shall not evaluate or compensate a producer based upon the customer credit scores submitted by the producer. An insurer using credit information for underwriting or rating purposes shall provide appropriate training to its producers.

C. Nothing in this Section shall be construed to provide a consumer, agent, or other insured with a cause of action that does not exist in the absence of this Section.

§1492. Sale of policy term information by consumer reporting agency

A. No consumer reporting agency or insurer shall provide or sell dates 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 or insurer supplies to the insurance producer from whom information was received, the insurer on whose behalf such producer acted, or such insurer’s group, 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.

§1493. Severability

If any portion of this Part is declared invalid due to an interpretation of or a future change in the federal Fair Credit Reporting Act, the remaining parts thereof shall be in no manner affected thereby but shall remain in full force and effect.

§1494. Applicability

This Part shall apply to personal insurance policies either written to be effective or renewed on or after nine months from the effective date of this Part.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_