

SENATE FILE 2171
BY KETTERING, BOLKCOM,
and STEWART

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the use of credit information for underwriting
2 or rating risks for personal lines of property and casualty
3 insurance and providing an applicability date.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 2171
COMMERCE

1 Section 1. NEW SECTION. 515.109A USE OF CREDIT
2 INFORMATION -- PERSONAL LINES OF PROPERTY AND CASUALTY
3 INSURANCE.

4 1. DEFINITIONS. As used in this section unless the
5 context otherwise requires:

6 a. "Adverse action" means a denial or cancellation of, an
7 increase in any charge for, a reduction or other unfavorable
8 change in the underwriting of, or a reduction or other
9 unfavorable change in the terms or amount of coverage of
10 insurance that is in force or applied for.

11 b. "Affiliated insurer" means an insurance company that
12 controls, is controlled by, or is under common control with
13 another insurance company.

14 c. "Applicant" means a person who has applied for
15 insurance.

16 d. "Casualty insurance" means insurance providing coverage
17 against legal liability, including that for death, injury, or
18 disability, or damage to real or personal property.

19 e. "Consumer reporting agency" means a person that for
20 monetary fees, dues, or on a cooperative nonprofit basis
21 regularly engages in whole or in part in the practice of
22 assembling or evaluating credit information or other
23 information on persons for the purpose of furnishing credit
24 reports to third parties and that uses any means or facility
25 of interstate commerce for the purpose of preparing or
26 furnishing credit reports.

27 f. "Credit information" means any information related to a
28 person's credit that is contained in or derived from a credit
29 report or an application for insurance. Information that is
30 not related to a person's credit shall not be considered
31 "credit information" even if the information is contained in
32 or derived from a credit report or an application for
33 insurance or is used to calculate a credit score.

34 g. "Credit report" means any written, oral, or other
35 communication of any information by a consumer reporting

1 agency that does all of the following:

2 (1) Bears on a person's creditworthiness, credit standing,
3 or credit capacity.

4 (2) Is used or collected or expected to be used or
5 collected in whole or in part to serve as a factor in
6 establishing a person's eligibility for or pricing of
7 insurance.

8 h. "Insurance" means a personal line of property or
9 casualty insurance sold to an individual or family, including
10 but not limited to a landowner who is eligible for the family
11 farm tax credit under chapter 425A, primarily for
12 noncommercial purposes.

13 i. "Insurance score" means a number or rating that is
14 derived in whole or in part by utilizing a person's credit
15 information in an algorithm, computer application, model, or
16 other process that reduces the data to a number or rating for
17 the purpose of predicting the future insurance loss exposure
18 of an applicant or insured.

19 j. "Insured" means a person who is covered by insurance.

20 k. "Insurer" means a property or casualty insurer engaged
21 in the business of insurance who is regulated under this
22 chapter and who uses credit reports or insurance scores for
23 underwriting purposes, including but not limited to
24 acceptance, declinations, cancellations, and nonrenewal of
25 insurance, and tier placement.

26 l. "Property insurance" means insurance providing coverage
27 for direct or consequential loss or damage to property of any
28 kind.

29 m. "Tier" means a category into which insureds with
30 similar risk characteristics are placed for purposes of
31 determining a premium rate, including the application of
32 surcharges and discounts within a single insurer or for
33 placement of an insured from one insurer to another insurer
34 within an affiliated group of insurers.

35 2. DISCLOSURE.

1 a. If an insurer uses credit information for the purpose
2 of underwriting or rating risks, the insurer or the insurer's
3 agent shall disclose in writing, either on the application for
4 insurance or otherwise, at the time that the application is
5 taken, that the insurer may obtain and use credit information
6 in connection with such application. An insurer that uses
7 credit information for the purpose of underwriting or rating
8 risks for a renewal of insurance is not required to provide
9 the written disclosure statement required under this
10 subsection if the insured has previously been provided with
11 such a disclosure statement in connection with the insurance
12 policy.

13 b. An insurer that uses the following statement of
14 disclosure shall be deemed to be in compliance with this
15 subsection:

16 "In connection with this application for insurance, we may
17 review your credit report or obtain or use a credit-based
18 insurance score that is based on the information contained in
19 that credit report. We may use a third party in connection
20 with the development of your insurance score."

21 3. PROHIBITED CONDUCT. An insurer that uses credit
22 information for the purpose of underwriting or rating risks
23 shall not do any of the following:

24 a. Use an insurance score that is calculated based wholly
25 or in part on income, gender, address, zip code, race, ethnic
26 origin, religion, marital status, or nationality of an
27 applicant or an insured.

28 b. Cancel or refuse to renew a policy, or reject an
29 application for insurance based solely on credit information,
30 without consideration of any other applicable underwriting
31 factors independent of credit information that are not
32 otherwise prohibited under this subsection. An insurer that
33 cancels or refuses to renew a policy, rejects an application,
34 or takes other adverse action against an insured or an
35 applicant based in part on credit information shall disclose

1 that fact to the insured or applicant and shall explain why
2 credit information was a factor and what other underwriting
3 factors were also considered by the insurer as provided in
4 subsection 5.

5 c. Base an applicant's or an insured's new or renewal rate
6 for insurance solely upon credit information, without
7 consideration of any other applicable underwriting factors
8 independent of credit information that are not otherwise
9 prohibited under this subsection. An insurer that increases
10 the rate or takes other adverse action with respect to an
11 applicant's or an insured's new or renewal rate for insurance,
12 based in part on credit information, shall disclose that fact
13 to the applicant or insured and shall explain why credit
14 information was a factor, and what other underwriting factors
15 were also considered as provided in subsection 5.

16 d. Take adverse action against an applicant or an insured
17 solely because the applicant or insured does not have a credit
18 card account or credit history or the insurer is unable to
19 calculate an insurance score, without consideration of any
20 other applicable underwriting factors independent of the lack
21 of a credit card account or credit history or the inability of
22 the insurer to calculate an insurance score that are not
23 otherwise prohibited under this subsection. An insurer that
24 takes adverse action against an applicant or insured, based in
25 part on lack of a credit card account or credit history or the
26 inability of the insurer to calculate an insurance score,
27 shall disclose that fact to the applicant or insured and shall
28 explain why lack of a credit card account or credit
29 information or the inability of the insurer to calculate an
30 insurance score was a factor and what other underwriting
31 factors were also considered by the insurer as provided in
32 subsection 5. In addition, an insurer shall not give any
33 consideration to an applicant's or insured's lack of a credit
34 card account or credit history or the inability of the insurer
35 to calculate an insurance score for an applicant or insured as

1 a factor unless the insurer does one of the following:

2 (1) Obtains permission from the commissioner of insurance,
3 as provided by rule, to consider an applicant's or insured's
4 lack of a credit card account or credit history, or the
5 inability of the insurer to calculate an insurance score as an
6 underwriting factor, upon a showing by the insurer that this
7 factor is reasonably related to a calculation of the insurer's
8 risk.

9 (2) Considers an applicant's or insured's lack of a credit
10 card account or credit history, or the inability of the
11 insurer to calculate an insurance score as neutral credit
12 information, as defined by the insurer.

13 e. Take adverse action against an applicant or an insured
14 based on credit information that is contained in or derived
15 from a credit report issued or an insurance score calculated
16 more than ninety days before the adverse action is taken.

17 f. Consider credit information as an underwriting or
18 rating factor, unless the insurer obtains current credit
19 information from the insured at least once every thirty-six
20 months and either recalculates the insured's insurance score
21 or obtains a current credit report. In addition, an insurer
22 shall not consider credit information as an underwriting or
23 rating factor unless the insurer does all of the following:

24 (1) Upon the request of the insured or the insured's agent
25 at the annual renewal, the insurer underwrites and rates the
26 insurance policy again based upon a current credit report or
27 insurance score. An insurer shall not be required to obtain a
28 current credit report or recalculate an insurance score of an
29 insured more than once in a twelve-month period. An insurer
30 is not required to obtain a current credit report or credit
31 information or recalculate an insurance score of an insured on
32 an annual basis, if any of the following apply:

33 (a) The commissioner of insurance provides by rule that
34 the insurer is not required to do so.

35 (b) The insured is in the most favorably priced tier of

1 the insurer, within a group of affiliated insurers.

2 (c) Credit information was not used as an underwriting or
3 rating factor when the insurance policy was initially written.

4 (d) The insurer underwrites and rates the insured at least
5 once every thirty-six months after issuance of the insurance
6 policy and does not use credit information.

7 (2) Obtains current credit information, recalculates the
8 insurance score, or obtains a current credit report more
9 frequently if that is consistent with the underwriting
10 guidelines of the insurer. An insurer shall not obtain credit
11 information or a credit report or calculate an insurance score
12 for any arbitrary, capricious, or unfairly discriminatory
13 reason.

14 g. Use a methodology to calculate an insurance score that
15 considers any of the following a negative factor when
16 contained in a credit report or in credit information of an
17 applicant or an insured:

18 (1) Credit inquiries not initiated by the applicant or the
19 insured or credit inquiries initiated by the applicant or the
20 insured for the applicant's or insured's own personal use.

21 (2) Inquiries by other insurers relating to the
22 applicant's or insured's insurance coverage or application for
23 insurance coverage that are coded as such by a consumer
24 reporting agency.

25 (3) Debt collection accounts for medical services that are
26 coded as such by a consumer reporting agency.

27 (4) Multiple inquiries by lenders relating to an
28 applicant's or insured's home mortgage loan or application for
29 such a loan, if made within a thirty-day period of time and
30 coded as such by a consumer reporting agency. An insurer may
31 give such multiple inquiries the same weight in calculating a
32 credit score as the insurer would give one such inquiry.

33 (5) Multiple inquiries by lenders relating to an
34 applicant's or insured's automobile loan or application for
35 such a loan, if made within a thirty-day period of time and

1 coded as such by a consumer reporting agency. An insurer may
2 give such multiple inquiries the same weight in calculating a
3 credit score as the insurer would give one such inquiry.

4 4. OVERPAYMENTS OF PREMIUM. If it is determined through
5 the dispute resolution process set forth under the federal
6 Fair Credit Reporting Act, 15 U.S.C. § 1681i(a)(5), that the
7 credit information of an insured was incorrect or incomplete
8 at the time of the issuance or renewal of the insurance policy
9 and the insurer receives notice of such determination from
10 either a consumer reporting agency or from the insured, the
11 insurer shall underwrite and rate the insured again utilizing
12 the correct and complete credit information within thirty days
13 after receiving such notification. After underwriting and
14 rating the insured again, the insurer shall make any
15 adjustments that are necessary, consistent with the insurer's
16 underwriting and rating guidelines. If an insurer determines
17 that the insured has overpaid a premium as a result of
18 incorrect or incomplete credit information supplied to the
19 insurer, the insurer shall refund to the insured the amount of
20 the overpayment for either the last twelve months of coverage
21 or the actual policy period, whichever is less.

22 5. NOTICE OF ADVERSE ACTION. An insurer that takes
23 adverse action against an applicant or an insured that is
24 based in any way on the applicant's or insured's credit
25 information shall notify the applicant or insured, in writing,
26 in accordance with the requirements of the federal Fair Credit
27 Reporting Act, 15 U.S.C. § 1681m(a), that adverse action has
28 been taken by the insurer with respect to an application for
29 insurance or an insurance policy. Such notice shall give
30 reasons for the adverse action taken in language that is
31 sufficiently clear and specific that a layman can identify and
32 understand the basis for the insurer's decision to take
33 adverse action. Such notification shall describe at least
34 four factors that formed the primary basis for the insurer's
35 decision. The use of generalized terms such as "poor credit

1 history", "poor credit rating", or "poor insurance score" does
2 not constitute compliance with the requirements of this
3 subsection. Standardized credit explanations that are
4 provided by consumer reporting agencies or other third-party
5 vendors of credit information are deemed to satisfy the
6 requirements of this subsection. An insurer shall also
7 include a clear and specific explanation of any other
8 underwriting factors that were used by the insurer as a basis
9 for the insurer's decision to take adverse action with respect
10 to the applicant or insured.

11 6. INFORMATION FILED WITH THE COMMISSIONER OF INSURANCE.

12 a. An insurer that uses credit information for the purpose
13 of underwriting or rating risks shall file with the
14 commissioner of insurance specific, written criteria on how
15 credit information is utilized by the insurer in underwriting
16 and rating risks including but not limited to all of the
17 following:

18 (1) The characteristics or factors from a credit report
19 that are used as credit criteria or used in determining an
20 insurance score.

21 (2) In the case of insurance scoring, the algorithm,
22 computer program, model, or other process that is used in
23 determining an insurance score, along with the underlying
24 support, including statistical validation, for the development
25 of the algorithm, computer program, model, or other process
26 that is used in determining an insurance score.

27 (3) Any underwriting guidelines relating to the use of the
28 credit criteria or insurance scores, along with all
29 appropriate supporting material for the use of the guidelines.

30 b. At the request of the commissioner, an interested party
31 such as a scoring modeler shall file or discuss with the
32 commissioner, under confidentiality protection, the algorithm,
33 computer program, model, or other process that is used in
34 determining an insurance score, along with the underlying
35 support including statistical validation, for the development

1 of the algorithm, computer program, model, or other process
2 that is used in determining an insurance score.

3 c. Information filed with the commissioner pursuant to
4 this subsection shall be considered a confidential record and
5 be recognized and protected as a trade secret pursuant to
6 section 22.7, subsection 3.

7 7. INDEMNIFICATION. An insurer shall indemnify, defend,
8 and hold harmless an agent or producer of the insurer from and
9 against all liability, fees, and costs, arising out of or
10 relating to the action, error, or omission of the agent or
11 producer of the insurer who obtains or uses credit information
12 or insurance scores on behalf of the insurer within the scope
13 of the employment of the agent or producer and in compliance
14 with the instructions or procedures established by the insurer
15 for obtaining or using such information and in compliance with
16 any applicable law or regulation. Nothing in this section
17 shall be construed to create a cause of action for an insured
18 or a third party that does not otherwise exist in the absence
19 of this section.

20 8. CONSUMER REPORTING AGENCY -- SALE OF CREDIT
21 INFORMATION.

22 a. A consumer reporting agency shall not provide or sell
23 any information, in any format, that was submitted or obtained
24 in whole or in part in conjunction with an insurance inquiry
25 about the credit information, credit report, or insurance
26 score of an applicant or an insured. Such information
27 includes, but is not limited to, the expiration date of an
28 insurance policy of an insured or any other information that
29 can be used to identify the expiration date of an insured's
30 insurance policy or the terms and conditions of the insured's
31 insurance coverage.

32 b. This subsection does not apply to the provision of
33 information, including data or lists, by a consumer reporting
34 agency to the agent or producer of the insurer from whom the
35 information was received, the insurer on whose behalf the

1 agent or producer acted, or to an affiliated insurer.

2 c. This section shall not be construed to restrict an
3 insurer from obtaining a claims history report or a motor
4 vehicle report of an applicant or an insured.

5 9. SEVERABILITY. If any section, paragraph, sentence,
6 clause, phrase, or any other provision of this section or its
7 applicability to any person or circumstance is held invalid,
8 including due to an interpretation of or a future change in
9 the federal Fair Credit Reporting Act, the invalidity does not
10 affect other provisions or any application of this section
11 which can be given effect without the invalid provision or
12 application, and to this end the provisions of this section
13 are severable.

14 10. APPLICABILITY DATE. This section applies to insurance
15 contracts or policies delivered, issued for delivery,
16 continued, or renewed in this state on or after October 1,
17 2004.

18 EXPLANATION

19 This bill relates to the use of credit information by
20 property or casualty insurers regulated under Code chapter 515
21 for the purpose of underwriting or rating risks for personal
22 lines of property and casualty insurance. The bill applies to
23 insurance that is sold to individuals and families, including
24 but not limited to landowners who are eligible for the family
25 farm tax credit under Code chapter 452A, primarily for
26 noncommercial purposes.

27 The bill defines "credit information", "credit report",
28 "insurance score", and related terms for purposes of the bill.

29 The bill provides that if an insurer uses credit
30 information for the purpose of underwriting or rating risk,
31 the insurer or the insurer's agent shall disclose that fact in
32 writing, either on the application for insurance or at the
33 time that the application is taken or at the time of a renewal
34 of insurance, if such notice has not been previously given.

35 The bill prohibits an insurer that uses credit information

1 from using an insurance score that is based wholly or in part
2 on income, gender, address, zip code, race, ethnic origin,
3 religion, marital status, or nationality of an applicant or
4 insured. The bill also prohibits an insurer from canceling,
5 refusing to renew, or rejecting an application for insurance,
6 basing a new or renewal rate for insurance, or taking any
7 other adverse action against an insured or an applicant solely
8 on the basis of credit information.

9 The bill also prohibits an insurer from taking adverse
10 action against an applicant or insured solely because that
11 person does not have a credit card account or credit history
12 or the insurer is unable to calculate an insurance score. In
13 addition, an insurer shall not give any consideration to a
14 person's lack of such credit information unless the insurer
15 either obtains permission from the insurance commissioner, as
16 provided by rule, to consider such information, upon a showing
17 by the insurer that this factor is reasonably related to a
18 calculation of the insurer's risk or the insurer considers the
19 lack of credit information as neutral credit information, as
20 defined by the insurer.

21 The bill also prohibits an insurer from taking adverse
22 action against an applicant or insured based on credit
23 information from a credit report or an insurance score that is
24 not current or has not been updated as required by the bill.

25 The bill prohibits an insurer from using a methodology to
26 calculate an insurance score that considers certain
27 information a negative factor, such as credit inquiries
28 initiated for the personal use of the applicant or insured,
29 inquiries by other insurers relating to insurance applications
30 or coverage, debt collection accounts for medical services,
31 and multiple inquiries by lenders relating to a home mortgage
32 or automobile loan or application that are made within 30
33 days.

34 The bill provides that if an insurer is notified by a
35 consumer reporting agency or the insured that it has been

1 determined through the dispute resolution process of the
2 federal Fair Credit Reporting Act that the credit information
3 of an insured was incorrect or incomplete, the insurer shall
4 underwrite and rate the insured again within 30 days of
5 receiving such notice by utilizing correct and complete credit
6 information. If the insurer determines that the insured has
7 overpaid a premium as a result of the mistake, the insurer is
8 required to refund the amount of the overpayment to the
9 insured for either the last 12 months of coverage or the
10 actual policy period, whichever is less.

11 The bill specifies how an insurer that takes adverse action
12 against an applicant or insured shall give notification of
13 such adverse action in accordance with the requirements of the
14 federal Fair Credit Reporting Act by giving reasons in clear
15 and specific layman's language that include a description of
16 at least four factors that formed the primary basis for the
17 insurer's decision.

18 The bill requires an insurer that uses credit information
19 to file certain information with the insurance commissioner,
20 such as the factors used as credit criteria, the methodology
21 for determining an insurance score, and underwriting
22 guidelines used. The bill also requires an interested party,
23 such as a scoring modeler, to file or discuss methodologies
24 used in determining an insurance score. The bill provides
25 that such information discussed or filed shall be considered
26 confidential and protected as a trade secret under Code
27 section 22.7, subsection 3.

28 The bill requires insurers to indemnify, defend, and hold
29 harmless all agents and producers of the insurer for any
30 liability that arises out of the use of credit information or
31 insurance scores on behalf of the insurer, so long as such use
32 is done within the scope of the employment of the agent or
33 producer and in compliance with the instructions or procedures
34 established by the insurer and with any applicable law or
35 regulation.

1 The bill prohibits a consumer reporting agency from
2 providing or selling information which was obtained or
3 submitted in conjunction with an insurance inquiry about the
4 credit information, credit report, or insurance score of an
5 applicant or insured.

6 The bill provides that if any part of the bill or its
7 applicability to any person is held invalid, including because
8 of an interpretation of or a future change in the federal Fair
9 Credit Reporting Act, the invalidity does not affect other
10 provisions or any applicability that can be given effect
11 without the invalid provision or application.

12 The bill takes effect on July 1, 2004, and applies to
13 insurance contracts or policies delivered, issued for
14 delivery, continued, or renewed in this state on or after
15 October 1, 2004.

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