

SENATE FILE 2257
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SF 2171)

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 2257 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 on credit information, without
30 consideration of any other applicable underwriting factors
31 independent of credit information that are not otherwise
32 prohibited under this subsection. An insurer that cancels or
33 refuses to renew a policy, rejects an application, or takes
34 other adverse action against an insured or an applicant based
35 in part on credit information shall disclose that fact to the

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

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

15 d. Take adverse action against an applicant or an insured
16 because the applicant or insured does not have a credit card
17 account or credit history or the insurer is unable to
18 calculate an insurance score, without consideration of any
19 other applicable underwriting factors independent of the lack
20 of a credit card account or credit history or the inability of
21 the insurer to calculate an insurance score that are not
22 otherwise prohibited under this subsection. In addition, an
23 insurer shall not give any consideration to an applicant's or
24 insured's lack of a credit card account or credit history or
25 the inability of the insurer to calculate an insurance score
26 for an applicant or insured as a factor unless the insurer
27 considers an applicant's or insured's lack of a credit card
28 account or credit history, or the inability of the insurer to
29 calculate an insurance score as neutral credit information, as
30 defined by the insurer.

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

35 f. Consider credit information as an underwriting or

1 rating factor, unless the insurer obtains current credit
2 information from the insured at least once every thirty-six
3 months and either recalculates the insured's insurance score
4 or obtains a current credit report. In addition, an insurer
5 shall not consider credit information as an underwriting or
6 rating factor unless the insurer does all of the following:

7 (1) Upon the request of the insured or the insured's agent
8 at the annual renewal, the insurer underwrites and rates the
9 insurance policy again based upon a current credit report or
10 insurance score. An insurer shall not be required to obtain a
11 current credit report or recalculate an insurance score of an
12 insured more than once in a twelve-month period. An insurer
13 is not required to obtain a current credit report or credit
14 information or recalculate an insurance score of an insured on
15 an annual basis, if any of the following apply:

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

18 (b) The insured is in the most favorably priced tier of
19 the insurer, within a group of affiliated insurers.

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

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

25 (2) Obtains current credit information, recalculates the
26 insurance score, or obtains a current credit report more
27 frequently if that is consistent with the underwriting
28 guidelines of the insurer. An insurer shall not obtain credit
29 information or a credit report or calculate an insurance score
30 for any arbitrary, capricious, or unfairly discriminatory
31 reason.

32 g. Use a methodology to calculate an insurance score that
33 considers any of the following a negative factor when
34 contained in a credit report or in credit information of an
35 applicant or an insured:

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

4 (2) Inquiries by other insurers relating to the
5 applicant's or insured's insurance coverage or application for
6 insurance coverage that are coded as such by a consumer
7 reporting agency.

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

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

16 (5) Multiple inquiries by lenders relating to an
17 applicant's or insured's automobile loan or application for
18 such a loan, if made within a thirty-day period of time and
19 coded as such by a consumer reporting agency. An insurer may
20 give such multiple inquiries the same weight in calculating a
21 credit score as the insurer would give one such inquiry.

22 4. OVERPAYMENTS OF PREMIUM. If it is determined through
23 the dispute resolution process set forth under the federal
24 Fair Credit Reporting Act, 15 U.S.C. § 1681i(a)(5), that the
25 credit information of an insured was incorrect or incomplete
26 at the time of the issuance or renewal of the insurance policy
27 and the insurer receives notice of such determination from
28 either a consumer reporting agency or from the insured, the
29 insurer shall underwrite and rate the insured again utilizing
30 the correct and complete credit information within thirty days
31 after receiving such notification. After underwriting and
32 rating the insured again, the insurer shall make any
33 adjustments that are necessary, consistent with the insurer's
34 underwriting and rating guidelines. If an insurer determines
35 that the insured has overpaid a premium as a result of

1 incorrect or incomplete credit information supplied to the
2 insurer, the insurer shall refund to the insured the amount of
3 the overpayment for either the last twelve months of coverage
4 or the actual policy period, whichever is less.

5 5. NOTICE OF ADVERSE ACTION. An insurer that takes
6 adverse action against an applicant or an insured that is
7 based in any way on the applicant's or insured's credit
8 information shall notify the applicant or insured, in writing,
9 in accordance with the requirements of the federal Fair Credit
10 Reporting Act, 15 U.S.C. § 1681m(a), that adverse action has
11 been taken by the insurer with respect to an application for
12 insurance or an insurance policy. Such notice shall give
13 reasons for the adverse action taken in language that is
14 sufficiently clear and specific that a layman can identify and
15 understand the basis for the insurer's decision to take
16 adverse action. Such notification shall describe at least
17 four factors that formed the primary basis for the insurer's
18 decision. The use of generalized terms such as "poor credit
19 history", "poor credit rating", or "poor insurance score" does
20 not constitute compliance with the requirements of this
21 subsection. Standardized credit explanations that are
22 provided by consumer reporting agencies or other third-party
23 vendors of credit information are deemed to satisfy the
24 requirements of this subsection. An insurer shall also
25 include a clear and specific explanation of any other
26 underwriting factors that were used by the insurer as a basis
27 for the insurer's decision to take adverse action with respect
28 to the applicant or insured.

29 6. INFORMATION FILED WITH THE COMMISSIONER OF INSURANCE.

30 a. An insurer that uses credit information for the purpose
31 of underwriting or rating risks shall file with the
32 commissioner of insurance specific, written criteria on how
33 credit information is utilized by the insurer in underwriting
34 and rating risks including but not limited to all of the
35 following:

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

4 (2) In the case of insurance scoring, the algorithm,
5 computer program, model, or other process that is used in
6 determining an insurance score, along with the underlying
7 support, including statistical validation, for the development
8 of the algorithm, computer program, model, or other process
9 that is used in determining an insurance score.

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

13 b. At the request of the commissioner, an interested party
14 such as a scoring modeler shall file or discuss with the
15 commissioner, under confidentiality protection, the algorithm,
16 computer program, model, or other process that is used in
17 determining an insurance score, along with the underlying
18 support including statistical validation, for the development
19 of the algorithm, computer program, model, or other process
20 that is used in determining an insurance score.

21 c. Information filed with the commissioner pursuant to
22 this subsection shall be considered a confidential record and
23 be recognized and protected as a trade secret pursuant to
24 section 22.7, subsection 3.

25 7. INDEMNIFICATION. An insurer shall indemnify, defend,
26 and hold harmless an agent or producer of the insurer from and
27 against all liability, fees, and costs, arising out of or
28 relating to the action, error, or omission of the agent or
29 producer of the insurer who obtains or uses credit information
30 or insurance scores on behalf of the insurer within the scope
31 of the employment of the agent or producer and in compliance
32 with the instructions or procedures established by the insurer
33 for obtaining or using such information and in compliance with
34 any applicable law or regulation. Nothing in this section
35 shall be construed to create a cause of action for an insured

1 or a third party that does not otherwise exist in the absence
2 of this section.

3 8. CONSUMER REPORTING AGENCY -- SALE OF CREDIT
4 INFORMATION.

5 a. A consumer reporting agency shall not provide or sell
6 any information, in any format, that was submitted or obtained
7 in whole or in part in conjunction with an insurance inquiry
8 about the credit information, credit report, or insurance
9 score of an applicant or an insured. Such information
10 includes, but is not limited to, the expiration date of an
11 insurance policy of an insured or any other information that
12 can be used to identify the expiration date of an insured's
13 insurance policy or the terms and conditions of the insured's
14 insurance coverage.

15 b. This subsection does not apply to the provision of
16 information, including data or lists, by a consumer reporting
17 agency to the agent or producer of the insurer from whom the
18 information was received, the insurer on whose behalf the
19 agent or producer acted, or to an affiliated insurer.

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

23 9. SEVERABILITY. If any section, paragraph, sentence,
24 clause, phrase, or any other provision of this section or its
25 applicability to any person or circumstance is held invalid,
26 including due to an interpretation of or a future change in
27 the federal Fair Credit Reporting Act, the invalidity does not
28 affect other provisions or any application of this section
29 which can be given effect without the invalid provision or
30 application, and to this end the provisions of this section
31 are severable.

32 10. APPLICABILITY DATE. This section applies to insurance
33 contracts or policies delivered, issued for delivery,
34 continued, or renewed in this state on or after October 1,
35 2004.

EXPLANATION

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

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

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

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

The bill also prohibits an insurer from taking adverse action against an applicant or insured because that person does not have a credit card account or credit history or the insurer is unable to calculate an insurance score. In addition, an insurer shall not give any consideration to a person's lack of such credit information unless the insurer considers the lack of credit information as neutral credit information, as defined by the insurer.

The bill also prohibits an insurer from taking adverse

1 action against an applicant or insured based on credit
2 information from a credit report or an insurance score that is
3 not current or has not been updated as required by the bill.

4 The bill prohibits an insurer from using a methodology to
5 calculate an insurance score that considers certain
6 information a negative factor, such as credit inquiries
7 initiated for the personal use of the applicant or insured,
8 inquiries by other insurers relating to insurance applications
9 or coverage, debt collection accounts for medical services,
10 and multiple inquiries by lenders relating to a home mortgage
11 or automobile loan or application that are made within 30
12 days.

13 The bill provides that if an insurer is notified by a
14 consumer reporting agency or the insured that it has been
15 determined through the dispute resolution process of the
16 federal Fair Credit Reporting Act that the credit information
17 of an insured was incorrect or incomplete, the insurer shall
18 underwrite and rate the insured again within 30 days of
19 receiving such notice by utilizing correct and complete credit
20 information. If the insurer determines that the insured has
21 overpaid a premium as a result of the mistake, the insurer is
22 required to refund the amount of the overpayment to the
23 insured for either the last 12 months of coverage or the
24 actual policy period, whichever is less.

25 The bill specifies how an insurer that takes adverse action
26 against an applicant or insured shall give notification of
27 such adverse action in accordance with the requirements of the
28 federal Fair Credit Reporting Act by giving reasons in clear
29 and specific layman's language that include a description of
30 at least four factors that formed the primary basis for the
31 insurer's decision.

32 The bill requires an insurer that uses credit information
33 to file certain information with the insurance commissioner,
34 such as the factors used as credit criteria, the methodology
35 for determining an insurance score, and underwriting

1 guidelines used. The bill also requires an interested party,
2 such as a scoring modeler, to file or discuss methodologies
3 used in determining an insurance score. The bill provides
4 that such information discussed or filed shall be considered
5 confidential and protected as a trade secret under Code
6 section 22.7, subsection 3.

7 The bill requires insurers to indemnify, defend, and hold
8 harmless all agents and producers of the insurer for any
9 liability that arises out of the use of credit information or
10 insurance scores on behalf of the insurer, so long as such use
11 is done within the scope of the employment of the agent or
12 producer and in compliance with the instructions or procedures
13 established by the insurer and with any applicable law or
14 regulation.

15 The bill prohibits a consumer reporting agency from
16 providing or selling information which was obtained or
17 submitted in conjunction with an insurance inquiry about the
18 credit information, credit report, or insurance score of an
19 applicant or insured.

20 The bill provides that if any part of the bill or its
21 applicability to any person is held invalid, including because
22 of an interpretation of or a future change in the federal Fair
23 Credit Reporting Act, the invalidity does not affect other
24 provisions or any applicability that can be given effect
25 without the invalid provision or application.

26 The bill takes effect on July 1, 2004, and applies to
27 insurance contracts or policies delivered, issued for
28 delivery, continued, or renewed in this state on or after
29 October 1, 2004.

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SENATE FILE 2257

S-5104

1 Amend Senate File 2257 as follows:
2 1. By striking everything after the enacting
3 clause and inserting the following:
4 "Section 1. NEW SECTION. 515.109A USE OF CREDIT
5 INFORMATION -- PERSONAL INSURANCE.
6 1. DEFINITIONS. As used in this section unless
7 the context otherwise requires:
8 a. "Adverse action" means a denial of issuance,
9 cancellation, or refusal to renew, an increase in any
10 charge for, or a reduction or other unfavorable change
11 in the terms of coverage or amount of any personal
12 insurance existing or applied for, or in connection
13 with the underwriting of personal insurance.
14 b. "Affiliate" means any company that controls, is
15 controlled by, or is under common control with another
16 company.
17 c. "Applicant" means an individual who has applied
18 to be covered by a personal insurance policy with an
19 insurer.
20 d. "Consumer" means an insured whose credit
21 information is used or whose insurance score is
22 calculated in the underwriting or rating of a personal
23 insurance policy or an applicant for such a personal
24 insurance policy.
25 e. "Consumer reporting agency" means any person
26 that, for monetary fees, dues, or on a cooperative
27 nonprofit basis, regularly engages in whole or in part
28 in the practice of assembling or evaluating consumer
29 credit information or other information concerning
30 consumers for the purpose of furnishing consumer
31 credit reports to third parties.
32 f. "Credit information" means any information
33 related to credit that is contained in or derived from
34 a credit report, or provided in an application for
35 personal insurance. Information that is not related
36 to credit shall not be considered "credit information"
37 regardless of whether the information is contained in
38 or derived from a credit report or an application for
39 credit or is used to calculate an insurance score.
40 g. "Credit report" means any written, oral, or
41 other communication of information by a consumer
42 reporting agency that relates to a consumer's
43 creditworthiness, credit standing, or credit capacity
44 and that is used or expected to be used or is
45 collected, in whole or in part, for the purpose of
46 serving as a factor in determining personal insurance
47 premiums, eligibility for personal insurance coverage,
48 or tier placement.
49 h. "Insurance score" means a number or rating that
50 is derived from an algorithm, computer application,

S-5104

S-5104

Page 2

1 model, or other process that is based in whole or in
2 part on credit information for the purposes of
3 predicting the future insurance loss exposure of a
4 consumer.

5 i. "Insured" means an individual who is covered by
6 a personal insurance policy.

7 j. "Personal insurance" means personal insurance
8 and not commercial insurance and is limited to private
9 passenger automobile, homeowners, farm owners,
10 personal farm liability, motorcycle, mobile home
11 owners, noncommercial dwelling fire insurance, boat,
12 personal watercraft, snowmobile, and recreational
13 vehicle policies, that are individually underwritten
14 for personal, family, farm, or household use. No
15 other type of insurance is included as personal
16 insurance for the purposes of this section.

17 2. USE OF CREDIT INFORMATION. An insurer
18 authorized to do business in Iowa that uses credit
19 information to underwrite or rate risks for a policy
20 of personal insurance shall not do any of the
21 following:

22 a. Use an insurance score that is calculated using
23 income, gender, address, zip code, ethnic group,
24 religion, marital status, or nationality of a consumer
25 as a factor.

26 b. Deny issuance, cancel, or refuse to renew a
27 policy of personal insurance solely on the basis of
28 credit information, without consideration of any other
29 applicable underwriting factors independent of credit
30 information that are not otherwise prohibited under
31 paragraph "a".

32 c. Base a consumer's renewal rates for personal
33 insurance solely on the basis of credit information,
34 without consideration of any other applicable
35 underwriting factors independent of credit information
36 that are not otherwise prohibited under paragraph "a".

37 d. Take adverse action against a consumer solely
38 because the consumer does not have a credit card
39 account, without consideration of any other applicable
40 underwriting factors independent of credit information
41 that are not otherwise prohibited under paragraph "a".

42 e. Consider an absence of credit information or an
43 inability to calculate an insurance score in
44 underwriting or rating personal insurance unless the
45 insurer does one of the following:

46 (1) Treats the consumer as if the consumer has
47 neutral credit information, as defined by the insurer.

48 (2) Excludes the use of credit information as an
49 underwriting factor and only uses other underwriting
50 criteria.

S-5104

S-5104

Page 3

1 f. Take adverse action against a consumer based on
2 credit information, unless the insurer obtains and
3 uses a credit report issued or an insurance score
4 calculated within ninety days before the date a
5 personal insurance policy is first written or a
6 renewal is issued.

7 g. Use credit information unless not later than
8 every thirty-six months following the last time that
9 the insurer obtained current credit information for
10 the consumer, the insurer recalculates the insurance
11 score or obtains an updated credit report for the
12 consumer. Regardless of the requirements of this
13 paragraph, an insurer shall do all of the following:

14 (1) At annual renewal, upon the request of the
15 consumer or the consumer's agent, the insurer shall
16 re-underwrite and re-rate the personal insurance
17 policy based upon a current credit report or insurance
18 score. An insurer is not required to recalculate an
19 insurance score or obtain a current credit report more
20 than once in a twelve-month period.

21 (2) The insurer shall have the discretion to
22 obtain current credit information for a consumer more
23 frequently than every thirty-six months, if consistent
24 with the insurer's underwriting guidelines.

25 (3) Notwithstanding subparagraph (1), an insurer
26 is not required to obtain current credit information
27 for a consumer if any of the following applies:

28 (a) The insurer is treating the consumer as
29 otherwise approved by the commissioner of insurance.

30 (b) The consumer is in the most favorably priced
31 tier of the insurer, within a group of affiliated
32 insurers. However, the insurer shall have the
33 discretion to obtain current credit information, if
34 consistent with the insurer's underwriting guidelines.

35 (c) Credit information was not used for
36 underwriting or rating the insured when the personal
37 insurance policy was initially written. However, the
38 insurer shall have the discretion to obtain current
39 credit information, if consistent with the insurer's
40 underwriting guidelines.

41 (d) The insurer reevaluates the insured beginning
42 no later than thirty-six months after the personal
43 insurance policy was initially written and thereafter,
44 based on other underwriting or rating factors,
45 excluding credit information.

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

50 (1) Credit inquiries not initiated by the consumer

S-5104

S-5104

Page 4

1 or inquiries requested by the consumer for the
2 consumer's own credit information.

3 (2) Inquiries relating to insurance coverage, if
4 so identified on a consumer's credit report.

5 (3) Collection accounts with a medical industry
6 code, if so identified on a consumer's credit report.

7 (4) Multiple lender inquiries, if coded by a
8 consumer reporting agency on the consumer's credit
9 report as being from the home mortgage industry and
10 made within thirty days of one another, unless only
11 one inquiry is considered.

12 (5) Multiple lender inquiries, if coded by a
13 consumer reporting agency on the consumer's credit
14 report as being from the automobile lending industry
15 and made within thirty days of one another, unless
16 only one inquiry is considered:

17 3. DISPUTE RESOLUTION AND ERROR CORRECTION. If it
18 is determined through the dispute resolution process
19 set forth under the federal Fair Credit Reporting Act,
20 15 U.S.C. § 1681i(a)(5), that the credit information
21 of a current insured is incorrect or incomplete and
22 the insurer receives notice of such determination from
23 either the consumer reporting agency or from the
24 insured, the insurer shall re-underwrite and re-rate
25 the insured within thirty days of receiving the
26 notice. After re-underwriting or re-rating the
27 insured, the insurer shall make any adjustments
28 necessary, consistent with the insurer's underwriting
29 and rating guidelines. If an insurer determines that
30 an insured has overpaid premium on a personal
31 insurance policy, the insurer shall refund the amount
32 of the overpayment to the insured, calculated for
33 either the last twelve months of coverage or the
34 actual policy period, whichever is shorter.

35 4. INITIAL NOTIFICATION.

36 a. If an insurer writing personal insurance uses
37 credit information in underwriting or rating a
38 consumer, the insurer or the insurer's agent shall
39 disclose, either on the insurance application or at
40 the time that the insurance application is taken that
41 the insurer may obtain credit information of the
42 consumer in connection with the application. Such
43 disclosure to a consumer shall either be written or
44 provided in the same medium as the application for
45 insurance. An insurer is not required to provide the
46 disclosure statement required under this subsection to
47 a consumer in connection with the renewal of a
48 personal insurance policy if the consumer has
49 previously been provided with such a disclosure
50 statement.

S-5104

S-5104

Page 5

1 b. An insurer that uses the following statement of
2 disclosure shall be deemed to be in compliance with
3 this subsection:

4 "In connection with this application for insurance,
5 we may review your credit report or use a credit-based
6 insurance score based on the information contained in
7 that credit report. We may use a third party in
8 connection with the development of your insurance
9 score."

10 5. NOTIFICATION OF ADVERSE ACTION. If an insurer
11 takes adverse action against a consumer based on
12 credit information, the insurer shall do all of the
13 following:

14 a. Provide notification to the consumer that
15 adverse action has been taken, in accordance with the
16 requirements of the federal Fair Credit Reporting Act,
17 15 U.S.C. § 1681m(a).

18 b. Provide notification to the consumer explaining
19 the reasons for the adverse action taken. Such notice
20 shall give reasons for the adverse action taken in
21 language that is sufficiently clear and specific so
22 that a person can identify the basis for the insurer's
23 decision to take adverse action. Such notification
24 shall include a description of up to four factors that
25 were the primary influences for the adverse action
26 taken. The use of generalized terms such as "poor
27 credit history", "poor credit rating", or "poor
28 insurance score" does not meet the explanation
29 requirements of this paragraph. Standardized credit
30 explanations that are provided by consumer reporting
31 agencies or other third-party vendors are deemed to
32 comply with this paragraph.

33 6. INFORMATION FILED WITH THE COMMISSIONER OF
34 INSURANCE.

35 a. An insurer that uses insurance scores to
36 underwrite and rate risks for personal insurance shall
37 file the insurer's scoring models or other scoring
38 processes with the commissioner of insurance. A third
39 party may file scoring models on behalf of an insurer.
40 Information filed with the commissioner that includes
41 insurance scoring models may include information
42 including loss experience that justifies the insurer's
43 use of credit information.

44 b. Information filed with the commissioner of
45 insurance pursuant to this subsection shall be
46 considered a confidential record and be recognized and
47 protected as a trade secret pursuant to section 22.7,
48 subsection 3.

49 7. INDEMNIFICATION. An insurer shall indemnify,
50 defend, and hold harmless agents or producers of the

S-5104

S-5104

Page 6

1 insurer from and against all liability, fees, and
2 costs, arising out of or relating to the actions,
3 errors, or omissions of an agent or producer who
4 obtains or uses credit information or insurance scores
5 on behalf of an insurer, provided that the agent or
6 producer follows the instructions or procedures
7 established by the insurer and complies with any
8 applicable law or regulation. This subsection shall
9 not be construed to provide a consumer or other
10 insured with a cause of action that does not exist in
11 the absence of this subsection.

12 8. CONSUMER REPORTING AGENCY -- SALE OF CREDIT
13 INFORMATION.

14 a. A consumer reporting agency shall not provide
15 or sell data or lists that include any information
16 that was submitted, in whole or in part, in
17 conjunction with an insurance inquiry about a
18 consumer's credit information or a request for a
19 credit report or insurance score. Such information
20 includes, but is not limited to, the expiration dates
21 of an insurance policy or any other information that
22 can be used to identify the expiration date of a
23 consumer's insurance policy or the terms and
24 conditions of the consumer's insurance coverage.

25 b. This subsection does not apply to the provision
26 of information, including data or lists, by a consumer
27 reporting agency to the agent or producer from whom
28 the information was received, to the insurer on whose
29 behalf the agent or producer acted, or to the
30 insurer's affiliates or holding companies.

31 c. This subsection shall not be construed to
32 restrict an insurer from obtaining a claims history
33 report or a motor vehicle report of a consumer.

34 9. SEVERABILITY. If any subsection, paragraph,
35 sentence, clause, phrase, or any other part of this
36 section is declared invalid due to an interpretation
37 of or a future change in the federal Fair Credit
38 Reporting Act, the remaining subsections, paragraphs,
39 sentences, clauses, phrases, or parts thereof shall be
40 in no manner affected thereby but shall remain in full
41 force and effect.

42 10. APPLICABILITY DATE. This section applies to
43 personal insurance contracts or policies delivered,
44 issued for delivery, continued, or renewed in this
45 state on or after April 1, 2005."

46 2. Title page, line 2, by striking the words
47 "lines of property and casualty".

By STEVE KETTERING
JOE BOLKCOM

S-5104 FILED MARCH 16, 2004

SENATE FILE 2257**S-5107**

1 Amend the amendment, S-5104, to Senate File 2257 as
2 follows:
3 1. Page 3, line 10, by striking the word
4 "consumer" and inserting the following: "insured".
5 2. Page 3, line 12, by striking the word
6 "consumer" and inserting the following: "insured".
7 3. Page 3, line 13, by striking the words ", an
8 insurer shall do all of the following".
9 4. Page 3, line 38, by striking the word "obtain"
10 and inserting the following: "use".
11 5. Page 3, line 39, by inserting after the word
12 "information" the following: "for underwriting or
13 rating the insured upon renewal of the policy".
14 6. Page 5, line 5, by inserting after the word
15 "report" the following: "or obtain".

By STEVE KETTERING

S-5107 FILED MARCH 16, 2004

SENATE FILE 2257**S-5110**

1 Amend the amendment, S-5104, to Senate File 2257,
2 as follows:
3 1. Page 2, by inserting after line 45 the
4 following:
5 "(1) Receives prior approval from the commissioner
6 that the absence of credit information or the
7 inability to calculate an insurance score relates to
8 the risk for the insurer."
9 2. By renumbering as necessary.

By STEVE KETTERING

S-5110 FILED MARCH 16, 2004

SENATE FILE 2257**S-5113**

1 Amend the amendment, S-5104, to Senate File 2257 as
2 follows:
3 1. Page 2, line 24, by inserting after the word
4 "status," the following: "race,".

**By STEVEN H. WARNSTADT
STEVE KETTERING**

S-5113 FILED MARCH 17, 2004
ADOPTED

SENATE FILE **2257**
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SF 2171)

(AS AMENDED AND PASSED BY THE SENATE MARCH 17, 2004)

ALL New Language by the Senate

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 insurance and providing an
3 applicability date.

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

SF. 2257

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1 Section 1. NEW SECTION. 515.109A USE OF CREDIT
2 INFORMATION -- PERSONAL INSURANCE.

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

5 a. "Adverse action" means a denial of issuance,
6 cancellation, or refusal to renew, an increase in any charge
7 for, or a reduction or other unfavorable change in the terms
8 of coverage or amount of any personal insurance existing or
9 applied for, or in connection with the underwriting of
10 personal insurance.

11 b. "Affiliate" means any company that controls, is
12 controlled by, or is under common control with another
13 company.

14 c. "Applicant" means an individual who has applied to be
15 covered by a personal insurance policy with an insurer.

16 d. "Consumer" means an insured whose credit information is
17 used or whose insurance score is calculated in the
18 underwriting or rating of a personal insurance policy or an
19 applicant for such a personal insurance policy.

20 e. "Consumer reporting agency" means any person that, for
21 monetary fees, dues, or on a cooperative nonprofit basis,
22 regularly engages in whole or in part in the practice of
23 assembling or evaluating consumer credit information or other
24 information concerning consumers for the purpose of furnishing
25 consumer credit reports to third parties.

26 f. "Credit information" means any information related to
27 credit that is contained in or derived from a credit report,
28 or provided in an application for personal insurance.
29 Information that is not related to credit shall not be
30 considered "credit information" regardless of whether the
31 information is contained in or derived from a credit report or
32 an application for credit or is used to calculate an insurance
33 score.

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

1 that relates to a consumer's creditworthiness, credit
2 standing, or credit capacity and that is used or expected to
3 be used or is collected, in whole or in part, for the purpose
4 of serving as a factor in determining personal insurance
5 premiums, eligibility for personal insurance coverage, or tier
6 placement.

7 h. "Insurance score" means a number or rating that is
8 derived from an algorithm, computer application, model, or
9 other process that is based in whole or in part on credit
10 information for the purposes of predicting the future
11 insurance loss exposure of a consumer.

12 i. "Insured" means an individual who is covered by a
13 personal insurance policy.

14 j. "Personal insurance" means personal insurance and not
15 commercial insurance and is limited to private passenger
16 automobile, homeowners, farm owners, personal farm liability,
17 motorcycle, mobile home owners, noncommercial dwelling fire
18 insurance, boat, personal watercraft, snowmobile, and
19 recreational vehicle policies, that are individually
20 underwritten for personal, family, farm, or household use. No
21 other type of insurance is included as personal insurance for
22 the purposes of this section.

23 2. USE OF CREDIT INFORMATION. An insurer authorized to do
24 business in Iowa that uses credit information to underwrite or
25 rate risks for a policy of personal insurance shall not do any
26 of the following:

27 a. Use an insurance score that is calculated using income,
28 gender, address, zip code, ethnic group, religion, marital
29 status, race, or nationality of a consumer as a factor.

30 b. Deny issuance, cancel, or refuse to renew a policy of
31 personal insurance solely on the basis of credit information,
32 without consideration of any other applicable underwriting
33 factors independent of credit information that are not
34 otherwise prohibited under paragraph "a".

35 c. Base a consumer's renewal rates for personal insurance

1 solely on the basis of credit information, without
2 consideration of any other applicable underwriting factors
3 independent of credit information that are not otherwise
4 prohibited under paragraph "a".

5 d. Take adverse action against a consumer solely because
6 the consumer does not have a credit card account, without
7 consideration of any other applicable underwriting factors
8 independent of credit information that are not otherwise
9 prohibited under paragraph "a".

10 e. Consider an absence of credit information or an
11 inability to calculate an insurance score in underwriting or
12 rating personal insurance unless the insurer does one of the
13 following:

14 (1) Treats the consumer as if the consumer has neutral
15 credit information, as defined by the insurer.

16 (2) Excludes the use of credit information as an
17 underwriting factor and only uses other underwriting criteria.

18 f. Take adverse action against a consumer based on credit
19 information, unless the insurer obtains and uses a credit
20 report issued or an insurance score calculated within ninety
21 days before the date a personal insurance policy is first
22 written or a renewal is issued.

23 g. Use credit information unless not later than every
24 thirty-six months following the last time that the insurer
25 obtained current credit information for the insured, the
26 insurer recalculates the insurance score or obtains an updated
27 credit report for the insured. Regardless of the requirements
28 of this paragraph:

29 (1) At annual renewal, upon the request of the consumer or
30 the consumer's agent, the insurer shall re-underwrite and re-
31 rate the personal insurance policy based upon a current credit
32 report or insurance score. An insurer is not required to
33 recalculate an insurance score or obtain a current credit
34 report more than once in a twelve-month period.

35 (2) The insurer shall have the discretion to obtain

1 current credit information for a consumer more frequently than
2 every thirty-six months, if consistent with the insurer's
3 underwriting guidelines.

4 (3) Notwithstanding subparagraph (1), an insurer is not
5 required to obtain current credit information for a consumer
6 if any of the following applies:

7 (a) The insurer is treating the consumer as otherwise
8 approved by the commissioner of insurance.

9 (b) The consumer is in the most favorably priced tier of
10 the insurer, within a group of affiliated insurers. However,
11 the insurer shall have the discretion to obtain current credit
12 information, if consistent with the insurer's underwriting
13 guidelines.

14 (c) Credit information was not used for underwriting or
15 rating the insured when the personal insurance policy was
16 initially written. However, the insurer shall have the
17 discretion to use current credit information for underwriting
18 or rating the insured upon renewal of the policy, if
19 consistent with the insurer's underwriting guidelines.

20 (d) The insurer reevaluates the insured beginning no later
21 than thirty-six months after the personal insurance policy was
22 initially written and thereafter, based on other underwriting
23 or rating factors, excluding credit information.

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

28 (1) Credit inquiries not initiated by the consumer or
29 inquiries requested by the consumer for the consumer's own
30 credit information.

31 (2) Inquiries relating to insurance coverage, if so
32 identified on a consumer's credit report.

33 (3) Collection accounts with a medical industry code, if
34 so identified on a consumer's credit report.

35 (4) Multiple lender inquiries, if coded by a consumer

1 reporting agency on the consumer's credit report as being from
2 the home mortgage industry and made within thirty days of one
3 another, unless only one inquiry is considered.

4 (5) Multiple lender inquiries, if coded by a consumer
5 reporting agency on the consumer's credit report as being from
6 the automobile lending industry and made within thirty days of
7 one another, unless only one inquiry is considered.

8 3. DISPUTE RESOLUTION AND ERROR CORRECTION. If it is
9 determined through the dispute resolution process set forth
10 under the federal Fair Credit Reporting Act, 15 U.S.C. §
11 1681i(a)(5), that the credit information of a current insured
12 is incorrect or incomplete and the insurer receives notice of
13 such determination from either the consumer reporting agency
14 or from the insured, the insurer shall re-underwrite and re-
15 rate the insured within thirty days of receiving the notice.
16 After re-underwriting or re-rating the insured, the insurer
17 shall make any adjustments necessary, consistent with the
18 insurer's underwriting and rating guidelines. If an insurer
19 determines that an insured has overpaid premium on a personal
20 insurance policy, the insurer shall refund the amount of the
21 overpayment to the insured, calculated for either the last
22 twelve months of coverage or the actual policy period,
23 whichever is shorter.

24 4. INITIAL NOTIFICATION.

25 a. If an insurer writing personal insurance uses credit
26 information in underwriting or rating a consumer, the insurer
27 or the insurer's agent shall disclose, either on the insurance
28 application or at the time that the insurance application is
29 taken that the insurer may obtain credit information of the
30 consumer in connection with the application. Such disclosure
31 to a consumer shall either be written or provided in the same
32 medium as the application for insurance. An insurer is not
33 required to provide the disclosure statement required under
34 this subsection to a consumer in connection with the renewal
35 of a personal insurance policy if the consumer has previously

1 been provided with such a disclosure statement.

2 b. An insurer that uses the following statement of
3 disclosure shall be deemed to be in compliance with this
4 subsection:

5 "In connection with this application for insurance, we may
6 review your credit report or obtain or use a credit-based
7 insurance score based on the information contained in that
8 credit report. We may use a third party in connection with
9 the development of your insurance score."

10 5. NOTIFICATION OF ADVERSE ACTION. If an insurer takes
11 adverse action against a consumer based on credit information,
12 the insurer shall do all of the following:

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

16 b. Provide notification to the consumer explaining the
17 reasons for the adverse action taken. Such notice shall give
18 reasons for the adverse action taken in language that is
19 sufficiently clear and specific so that a person can identify
20 the basis for the insurer's decision to take adverse action.
21 Such notification shall include a description of up to four
22 factors that were the primary influences for the adverse
23 action taken. The use of generalized terms such as "poor
24 credit history", "poor credit rating", or "poor insurance
25 score" does not meet the explanation requirements of this
26 paragraph. Standardized credit explanations that are provided
27 by consumer reporting agencies or other third-party vendors
28 are deemed to comply with this paragraph.

29 6. INFORMATION FILED WITH THE COMMISSIONER OF INSURANCE.

30 a. An insurer that uses insurance scores to underwrite and
31 rate risks for personal insurance shall file the insurer's
32 scoring models or other scoring processes with the
33 commissioner of insurance. A third party may file scoring
34 models on behalf of an insurer. Information filed with the
35 commissioner that includes insurance scoring models may

1 include information including loss experience that justifies
2 the insurer's use of credit information.

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

7 7. INDEMNIFICATION. An insurer shall indemnify, defend,
8 and hold harmless agents or producers of the insurer from and
9 against all liability, fees, and costs, arising out of or
10 relating to the actions, errors, or omissions of an agent or
11 producer who obtains or uses credit information or insurance
12 scores on behalf of an insurer, provided that the agent or
13 producer follows the instructions or procedures established by
14 the insurer and complies with any applicable law or
15 regulation. This subsection shall not be construed to provide
16 a consumer or other insured with a cause of action that does
17 not exist in the absence of this subsection.

18 8. CONSUMER REPORTING AGENCY -- SALE OF CREDIT
19 INFORMATION.

20 a. A consumer reporting agency shall not provide or sell
21 data or lists that include any information that was submitted,
22 in whole or in part, in conjunction with an insurance inquiry
23 about a consumer's credit information or a request for a
24 credit report or insurance score. Such information includes,
25 but is not limited to, the expiration dates of an insurance
26 policy or any other information that can be used to identify
27 the expiration date of a consumer's insurance policy or the
28 terms and conditions of the consumer's insurance coverage.

29 b. This subsection does not apply to the provision of
30 information, including data or lists, by a consumer reporting
31 agency to the agent or producer from whom the information was
32 received, to the insurer on whose behalf the agent or producer
33 acted, or to the insurer's affiliates or holding companies.

34 c. This subsection shall not be construed to restrict an
35 insurer from obtaining a claims history report or a motor

1 vehicle report of a consumer.

2 9. SEVERABILITY. If any subsection, paragraph, sentence,
3 clause, phrase, or any other part of this section is declared
4 invalid due to an interpretation of or a future change in the
5 federal Fair Credit Reporting Act, the remaining subsections,
6 paragraphs, sentences, clauses, phrases, or parts thereof
7 shall be in no manner affected thereby but shall remain in
8 full force and effect.

9 10. APPLICABILITY DATE. This section applies to personal
10 insurance contracts or policies delivered, issued for
11 delivery, continued, or renewed in this state on or after
12 April 1, 2005.

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SENATE FILE 2257

AN ACT

RELATING TO THE USE OF CREDIT INFORMATION FOR UNDERWRITING
OR RATING RISKS FOR PERSONAL INSURANCE AND PROVIDING AN
APPLICABILITY DATE.

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

Section 1. NEW SECTION. 515.109A USE OF CREDIT
INFORMATION -- PERSONAL INSURANCE.

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

a. "Adverse action" means a denial of issuance,
cancellation, or refusal to renew, an increase in any charge
for, or a reduction or other unfavorable change in the terms
of coverage or amount of any personal insurance existing or
applied for, or in connection with the underwriting of
personal insurance.

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

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

d. "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 personal insurance policy.

e. "Consumer reporting agency" means any person that, 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 concerning consumers for the purpose of furnishing
consumer credit reports to third parties.

f. "Credit information" means any information related to
credit that is contained in or derived from a credit report,
or provided in an application for personal insurance.
Information that is not related to credit shall not be
considered "credit information" regardless of whether the
information is contained in or derived from a credit report or
an application for credit or is used to calculate an insurance
score.

g. "Credit report" means any written, oral, or other
communication of information by a consumer reporting agency
that relates to a consumer's creditworthiness, credit
standing, or credit capacity and that is used or expected to
be used or is collected, in whole or in part, for the purpose
of serving as a factor in determining personal insurance
premiums, eligibility for personal insurance coverage, or tier
placement.

h. "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 a consumer.

i. "Insured" means an individual who is covered by a
personal insurance policy.

j. "Personal insurance" means personal insurance and not
commercial insurance and is limited to private passenger
automobile, homeowners, farm owners, personal farm liability,
motorcycle, mobile home owners, noncommercial dwelling fire
insurance, boat, personal watercraft, snowmobile, and
recreational vehicle policies, that are individually
underwritten for personal, family, farm, or household use. No
other type of insurance is included as personal insurance for
the purposes of this section.

2. USE OF CREDIT INFORMATION. An insurer authorized to do
business in Iowa that uses credit information to underwrite or
rate risks for a policy of personal insurance shall not do any
of the following:

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

b. Deny issuance, cancel, or refuse to renew a policy of personal insurance solely on the basis of credit information, without consideration of any other applicable underwriting factors independent of credit information that are not otherwise prohibited under paragraph "a".

c. Base a consumer's renewal rates for personal insurance solely on the basis of credit information, without consideration of any other applicable underwriting factors independent of credit information that are not otherwise prohibited under paragraph "a".

d. Take adverse action against a consumer solely because the consumer does not have a credit card account, without consideration of any other applicable underwriting factors independent of credit information that are not otherwise prohibited under paragraph "a".

e. 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:

(1) Treats the consumer as if the consumer has neutral credit information, as defined by the insurer.

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

f. Take adverse action against a consumer based on credit information, unless the insurer obtains and uses a credit report issued or an insurance score calculated within ninety days before the date a personal insurance policy is first written or a renewal is issued.

g. Use 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 for the insured. Regardless of the requirements of this paragraph:

(1) At annual renewal, upon the request of the consumer or the consumer's agent, the insurer shall re-underwrite and re-rate the personal insurance policy based upon a current credit report or insurance score. An insurer is not required to recalculate an insurance score or obtain a current credit report more than once in a twelve-month period.

(2) The insurer shall have the discretion to obtain current credit information for a consumer more frequently than every thirty-six months, if consistent with the insurer's underwriting guidelines.

(3) Notwithstanding subparagraph (1), an insurer is not required to obtain current credit information for a consumer if any of the following applies:

(a) The insurer is treating the consumer as otherwise approved by the commissioner of insurance.

(b) The consumer is in the most favorably priced tier of the insurer, within a group of affiliated insurers. However, the insurer shall have the discretion to obtain current credit information, if consistent with the insurer's underwriting guidelines.

(c) Credit information was not used for underwriting or rating the insured when the personal insurance policy was initially written. However, the insurer shall have the discretion to use current credit information for underwriting or rating the insured upon renewal of the policy, if consistent with the insurer's underwriting guidelines.

(d) The insurer reevaluates the insured beginning no later than thirty-six months after the personal insurance policy was initially written and thereafter, based on other underwriting or rating factors, excluding credit information.

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

(1) Credit inquiries not initiated by the consumer or inquiries requested by the consumer for the consumer's own credit information.

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

(3) Collection accounts with a medical industry code, if so identified on a consumer's credit report.

(4) Multiple lender inquiries, if coded by a 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.

(5) Multiple lender inquiries, if coded by a 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.

3. DISPUTE RESOLUTION AND ERROR CORRECTION. If it is determined through the dispute resolution process set forth under the federal Fair Credit Reporting Act, 15 U.S.C. § 1681i(a)(5), that the credit information of a current insured is incorrect or incomplete and 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 insured within thirty days of receiving the notice. After re-underwriting or re-rating the insured, the insurer shall make any adjustments necessary, consistent with the insurer's underwriting and rating guidelines. If an insurer determines that an insured has overpaid premium on a personal insurance policy, the insurer shall refund the amount of the overpayment to the insured, calculated for either the last twelve months of coverage or the actual policy period, whichever is shorter.

4. INITIAL NOTIFICATION.

a. If an insurer writing personal insurance uses credit information in underwriting or rating a consumer, the insurer or the insurer's agent shall disclose, either on the insurance application or at the time that the insurance application is taken that the insurer may obtain credit information of the consumer in connection with the application. Such disclosure to a consumer shall either be written or provided in the same medium as the application for insurance. An insurer is not

required to provide the disclosure statement required under this subsection to a consumer in connection with the renewal of a personal insurance policy if the consumer has previously been provided with such a disclosure statement.

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

"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."

5. NOTIFICATION OF ADVERSE ACTION. If an insurer takes adverse action against a consumer based on credit information, the insurer shall do all of the following:

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

b. Provide notification to the consumer explaining the reasons for the adverse action taken. Such notice shall give reasons for the adverse action taken in language that is sufficiently clear and specific so that a person can identify the basis for the insurer's decision to take adverse action. Such notification shall include a description of up to four factors that were the primary influences for the adverse action taken. 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 paragraph. Standardized credit explanations that are provided by consumer reporting agencies or other third-party vendors are deemed to comply with this paragraph.

6. INFORMATION FILED WITH THE COMMISSIONER OF INSURANCE.

a. An insurer that uses insurance scores to underwrite and rate risks for personal insurance shall file the insurer's scoring models or other scoring processes with the commissioner of insurance. A third party may file scoring models on behalf of an insurer. Information filed with the

commissioner that includes insurance scoring models may include information including loss experience that justifies the insurer's use of credit information.

b. Information filed with the commissioner of insurance pursuant to this subsection shall be considered a confidential record and be recognized and protected as a trade secret pursuant to section 22.7, subsection 3.

7. INDEMNIFICATION. An insurer shall indemnify, defend, and hold harmless agents or producers of the insurer from and against all liability, fees, and costs, arising out of or relating to the actions, errors, or omissions of an agent or producer who obtains or uses credit information or insurance scores on behalf of an insurer, provided that the agent or producer follows the instructions or procedures established by the insurer and complies with any applicable law or regulation. This subsection shall not be construed to provide a consumer or other insured with a cause of action that does not exist in the absence of this subsection.

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

a. A consumer reporting agency shall not provide or sell data or lists that include any information that was submitted, in whole or in part, 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 can be used to identify the expiration date of a consumer's insurance policy or the terms and conditions of the consumer's insurance coverage.

b. This subsection does not apply to the provision of information, including data or lists, by a consumer reporting agency to the agent or producer from whom the information was received, to the insurer on whose behalf the agent or producer acted, or to the insurer's affiliates or holding companies.

c. This subsection shall not be construed to restrict an insurer from obtaining a claims history report or a motor vehicle report of a consumer.

9. SEVERABILITY. If any subsection, paragraph, sentence, clause, phrase, or any other part of this section is declared invalid due to an interpretation of or a future change in the federal Fair Credit Reporting Act, the remaining subsections, paragraphs, sentences, clauses, phrases, or parts thereof shall be in no manner affected thereby but shall remain in full force and effect.

10. APPLICABILITY DATE. This section applies to personal insurance contracts or policies delivered, issued for delivery, continued, or renewed in this state on or after April 1, 2005.

JEFFREY M. LAMBERTI
President of the Senate

CHRISTOPHER C. RANTS
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2257, Eightieth General Assembly.

MICHAEL E. MARSHALL
Secretary of the Senate

Approved _____, 2004

THOMAS J. VILSACK
Governor