

as amended by this Act, the rate of the state assessment shall be fifty cents per head on all cattle sold for any purpose, unless another rate is established by referendum conducted pursuant to section 181.19, as amended by this Act.

Sec. 18. Sections 181.9, 181.10, 181.14, and 181.16, Code 2003, are repealed.

Sec. 19. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

Approved April 7, 2004

CHAPTER 1038

GRAIN REGULATION

S.F. 2224

AN ACT relating to grain regulation.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 203.1, subsection 10, unnumbered paragraph 1, Code Supplement 2003, is amended to read as follows:

“Grain dealer” means a person who ~~buys~~ cumulatively purchases at least one thousand bushels of grain from producers during any calendar month one thousand bushels of grain or more directly from the producers of the grain, if such grain is delivered within or into this state for purposes of resale, milling, or processing in this state. However, “grain dealer” does not include any of the following:

Approved April 7, 2004

CHAPTER 1039

USE OF CREDIT INFORMATION — PERSONAL INSURANCE

S.F. 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, 2005.¹

Approved April 7, 2004

CHAPTER 1040

INDIGENT DEFENSE — APPOINTMENT AND PAYMENT OF LEGAL COUNSEL

H.F. 2138

AN ACT relating to payment of legal expenses for indigent persons by the state public defender.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 13B.4, subsection 2, Code Supplement 2003, is amended to read as follows:

2. The state public defender shall file a notice with the clerk of the district court in each county served by a public defender ~~a designation of which local~~ designating which public defender office shall receive notice of appointment of cases. The state public defender may also designate a nonprofit organization which contracts with the state public defender to provide legal services to eligible indigent persons.¹ Except as otherwise provided, in each county in which the state public defender files ~~such a~~ a designation, the state public defender ~~or its defend-~~ er's designee shall be appointed by the court to represent all eligible indigents, in all of the cases and proceedings specified ~~under subsection 1 in the designation.~~ in the designation. The appointment shall not be made if the state public defender notifies the court that the ~~local~~ public defender ~~desig-~~ nee will not provide legal representation in certain cases as identified in the designation by the state public defender.

Sec. 2. Section 13B.4, subsection 3, Code Supplement 2003, is amended to read as follows:

3. The state public defender may contract with persons admitted to practice law in this state and nonprofit organizations employing persons admitted to practice law in this state for the provision of legal services to indigent persons.

Sec. 3. Section 13B.4, subsection 4, paragraph c, subparagraph (2), subparagraph subdivision (d), Code Supplement 2003, is amended to read as follows:

(d) ~~If the appointment of the claimant was obtained without complying~~ appointed contrary to section 814.11, or the claimant failed to comply with section 814.11, subsection 6, or section 815.10, subsection 5.

¹ See chapter 1175, §341 herein

¹ See chapter 1175, §195 herein