

By: Thompson

H.B. No. 265

A BILL TO BE ENTITLED

AN ACT

relating to the use of credit scoring in the underwriting and rating of personal automobile and residential property insurance.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 5, Insurance Code, is amended by adding Subchapter Q to read as follows:

SUBCHAPTER Q. USE OF CREDIT SCORING FOR CERTAIN

INSURANCE UNDERWRITING OR RATING

Art. 5.201. PURPOSE. The purpose of this subchapter is to specify the conditions under which insurers may use credit information for underwriting or rating personal automobile and residential property insurance.

Art. 5.202. DEFINITIONS. In this subchapter:

(1) "Adverse action" has the meaning assigned in relation to insurance by Section 603, Fair Credit Reporting Act (15 U.S.C. Section 1681a), as amended.

(2) "Affiliate" means an entity classified as an affiliate of an insurer under Section 823.003 of this code.

(3) "Agent" means a person licensed or required to be licensed as a general property and casualty insurance agent under Article 21.14 of this code.

(4) "Applicant" means a consumer who applies for an insurance policy with an insurer.

(5) "Consumer" means an individual.

1 (6) "Consumer report" and "consumer reporting agency"
2 have the meanings assigned by Section 603, Fair Credit Reporting
3 Act (15 U.S.C. Section 1681a), as amended.

4 (7) "Credit score" means a numerical representation of
5 the risk presented by an individual that uses attributes of the
6 individual derived from a consumer report or other consumer or
7 credit information in a formula to assess risk on an actuarial or
8 statistical basis.

9 (8) "Insured" means a consumer who has purchased an
10 insurance policy from an insurer.

11 (9) "Insurer" means an insurer authorized to write
12 property and casualty insurance in this state. The term includes:

13 (A) a domestic or foreign, stock or mutual, fire
14 and casualty insurance company;

15 (B) a Mexican casualty insurance company;

16 (C) a domestic or foreign Lloyd's plan;

17 (D) a domestic or foreign reciprocal or
18 interinsurance exchange;

19 (E) a county mutual insurance company; and

20 (F) a farm mutual insurance company.

21 (10) "Residential property insurance" means insurance
22 covering a dwelling or the contents of a dwelling, including:

23 (A) homeowners insurance;

24 (B) farm and ranch or farm and ranch owners
25 insurance; and

26 (C) residential fire and allied lines insurance.

27 Art. 5.203. APPLICABILITY. This subchapter applies only to

1 an insurer that:

2 (1) writes personal automobile insurance coverage or
3 residential property insurance coverage; and

4 (2) uses information from consumer reports for
5 underwriting or rating that coverage.

6 Art. 5.204. USE OF CREDIT SCORING; DISCLOSURE TO CONSUMERS.

7 (a) An insurer subject to this subchapter may use credit scoring to
8 develop rates, rating classifications, or underwriting criteria
9 regarding lines of insurance subject to this subchapter except as
10 prohibited by Article 21.21-6 of this code, as added by Chapter 415,
11 Acts of the 74th Legislature, Regular Session, 1995.

12 (b) An insurer that uses credit scoring in the underwriting
13 or rating of insurance subject to this subchapter shall disclose to
14 each applicant that the applicant's consumer report may be used in
15 the underwriting or rating of the applicant's policy. The
16 disclosure must be provided at the time of application and may be
17 given orally, in writing, or electronically.

18 (c) If a policy is issued to the applicant, an insurer is not
19 required to make the disclosure required under Subsection (b) of
20 this article on any subsequent renewal of the coverage.

21 (d) An insurer is considered to be in compliance with this
22 article if the insurer provides the disclosure language to its
23 agents and directs the agents to provide the information to
24 consumers.

25 Art. 5.205. INSURER FILING. (a) On written request from
26 the department, an insurer shall file with the department
27 information regarding how the insurer uses consumer reports,

1 including credit information, credit scoring models, or scores
2 derived from consumer reports, in the underwriting or rating of
3 lines of insurance subject to this subchapter.

4 (b) Information submitted to the department under this
5 article is confidential information and may not be released by the
6 department without written authorization by the insurer.

7 Art. 5.206. PROHIBITED ACTS. (a) An insurer subject to this
8 subchapter may not:

9 (1) cancel, nonrenew, or refuse to insure a consumer
10 based solely on information contained in a consumer report;

11 (2) use information contained in a consumer report
12 that has been identified in the consumer report by the consumer
13 reporting agency as disputed by the consumer and coded as such;

14 (3) use information contained in a consumer report
15 that has been identified by the consumer reporting agency as
16 related to insurance inquiries or non-consumer-initiated inquiries
17 and coded as such;

18 (4) use information contained in a consumer report
19 that has been identified in the consumer report by the consumer
20 reporting agency as related to medical trade lines and coded as
21 such; or

22 (5) disclose an applicant's or an insured's personally
23 identifiable consumer report information to any nonaffiliated
24 third party without the written consent of the applicant or
25 insured.

26 (b) For purposes of Subsection (a) of this article, offering
27 to write a policy with substantially identical coverage through an

1 affiliate does not constitute a refusal to insure or a cancellation
2 or nonrenewal of insurance coverage.

3 Art. 5.207. EFFECT OF EXTRAORDINARY EVENTS. (a)

4 Notwithstanding any other law, an insurer may, on written request
5 from an applicant or insured, provide reasonable exceptions to the
6 insurer's rates, rating classifications, or underwriting rules for
7 a consumer whose credit information has been directly influenced by
8 a catastrophic illness or injury, the death of a spouse, or another
9 event of a similar nature. In such a case, the insurer may consider
10 only credit information not affected by the event or shall assign a
11 neutral credit score.

12 (b) An insurer may require reasonable documentation of the
13 event before granting an exception.

14 (c) An insurer is not out of compliance with any law or rule
15 relating to underwriting, rating, or rate filing as a result of
16 granting an exception under this article.

17 Art. 5.208. EFFECT OF ABSENCE OF CREDIT HISTORY. An insurer
18 may not use the absence of a credit history or the inability to
19 determine an applicant's or insured's credit history as a factor in
20 underwriting or rating an insurance policy unless the insurer has
21 statistical, actuarial, or reasonable underwriting information
22 that is reasonably related to actual or anticipated loss experience
23 and that shows that the absence of credit history could result in
24 actual or anticipated loss differences.

25 Art. 5.209. NOTICE OF ADVERSE ACTION. If an insurer takes
26 an adverse action with respect to an applicant or insured based in
27 whole or in part on information contained in a consumer report, the

1 insurer shall provide to the applicant or insured:

2 (1) written or electronic notice of the adverse
3 action;

4 (2) the name, address, and telephone number of the
5 consumer reporting agency, including a toll-free number
6 established by the agency if the agency compiles and maintains
7 files on consumers on a nationwide basis;

8 (3) written or electronic notice that the consumer
9 reporting agency did not make the decision to take the adverse
10 action and will be unable to provide the applicant or insured the
11 specific reasons why the adverse action was taken; and

12 (4) written or electronic notice of the applicant's or
13 insured's right to:

14 (A) obtain a free copy of the consumer report
15 from the consumer reporting agency during the 60-day period after
16 the date of the notice; and

17 (B) dispute with the consumer reporting agency
18 the accuracy or completeness of any information in the consumer
19 report furnished by the agency.

20 Art. 5.210. EXPLANATION OF REASONS FOR ADVERSE ACTION. (a)
21 Not later than the 60th day after the date the notice of adverse
22 action required under Article 5.209 of this code is sent, an
23 applicant or insured may request in writing that the insurer
24 provide a statement of the reasons for the adverse action.

25 (b) On receipt of a written request from an applicant or
26 insured, the insurer shall provide a statement of reasons that
27 identifies the basis for the insurer's decision.

1 (c) An explanation of the most significant characteristics
2 in the consumer report that contributed to the insurer's decision
3 to take the adverse action is sufficient to comply with this
4 article. A standardized credit explanation provided by the
5 consumer reporting agency or another similar explanation is also
6 sufficient to comply with this article.

7 Art. 5.211. RIGHT TO CORRECT CREDIT INFORMATION ON ISSUED
8 POLICIES. (a) Not later than the 180th day after the date a notice
9 of adverse action is sent, an insured may request in writing that
10 the insurer reevaluate the insurer's action based on corrected
11 consumer report information from a consumer reporting agency.

12 (b) On receipt of a written request for reevaluation, an
13 insurer shall review the corrected consumer report information. If
14 the reevaluation results in a lower premium charge to the insured,
15 the insurer shall apply the lower premium retroactively to the
16 effective date of the current policy term and shall either refund or
17 credit the amount due to the insured.

18 (c) The insurer may require reasonable documentation of the
19 correction from the consumer reporting agency before conducting a
20 reevaluation under this article.

21 SECTION 2. Subchapter Q, Chapter 5, Insurance Code, as
22 added by this Act, applies only to an application for insurance
23 coverage made, and an insurance policy delivered, issued for
24 delivery, or renewed, on or after January 1, 2004. An application
25 for insurance coverage made, or an insurance policy delivered,
26 issued for delivery, or renewed, before January 1, 2004, is
27 governed by the law as it existed immediately before the effective

1 date of this Act, and that law is continued in effect for that
2 purpose.

3 SECTION 3. This Act takes effect immediately if it receives
4 a vote of two-thirds of all the members elected to each house, as
5 provided by Section 39, Article III, Texas Constitution. If this
6 Act does not receive the vote necessary for immediate effect, this
7 Act takes effect September 1, 2003.