

By: Eiland

H.B. No. 920

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the use of credit scoring in certain personal lines of  
3 insurance.

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

5 SECTION 1. Subchapter E, Chapter 21, Insurance Code, is  
6 amended by adding Article 21.49-2U to read as follows:

7 Art. 21.49-2U. USE OF CREDIT SCORING IN CERTAIN PERSONAL  
8 LINES OF INSURANCE

9 Sec. 1. DEFINITIONS. In this article:

10 (1) "Adverse action" means an action taken by an  
11 insurer in connection with the underwriting of personal insurance  
12 for a consumer that results in the denial of coverage, cancellation  
13 or nonrenewal of coverage, an increase in any charge for coverage,  
14 or a reduction in the amount of benefits payable or other  
15 unfavorable change in the terms of coverage of a policy of personal  
16 insurance.

17 (2) "Affiliate" has the meaning described by Section  
18 823.003 of this code.

19 (3) "Applicant for insurance coverage" means an  
20 individual who has applied to an insurer for coverage under a  
21 personal insurance policy.

22 (4) "Consumer" means an individual whose credit  
23 information is used or whose insurance score is computed in the  
24 underwriting or rating of a personal insurance policy. The term

1 includes an applicant for insurance coverage.

2 (5) "Consumer reporting agency" means any person  
3 that, for monetary fees or dues or on a cooperative nonprofit basis,  
4 regularly engages in the practice of assembling or evaluating  
5 consumer credit information or other information on consumers for  
6 the purpose of furnishing consumer reports to third parties.

7 (6) "Credit information" means any credit-related  
8 information derived from a credit report, found on a credit report  
9 itself, or provided on an application for personal insurance. The  
10 term does not include information that is not credit-related,  
11 regardless of whether that information is contained in a credit  
12 report or in an application for insurance coverage or is used to  
13 compute an insurance score.

14 (7) "Credit report" means any written, oral, or other  
15 communication of information by a consumer reporting agency that:

16 (A) bears on a consumer's creditworthiness,  
17 credit standing, or credit capacity; and

18 (B) is used or expected to be used or collected in  
19 whole or in part to serve as a factor to determine personal  
20 insurance premiums, eligibility for coverage, or tier placement.

21 (8) "Insurance score" means a number or rating derived  
22 from an algorithm, computer application, model, or other process  
23 that is based on credit information and used to predict the future  
24 insurance loss exposure of a consumer.

25 (9) "Insurer" means an insurer authorized to write  
26 property and casualty insurance in this state, including:

27 (A) a county mutual insurance company;

1           (B) a farm mutual insurance company;

2           (C) a Lloyd's plan; and

3           (D) a reciprocal or interinsurance exchange.

4           (10) "Personal insurance" means:

5           (A) a personal automobile insurance policy;

6           (B) a homeowners or farm and ranch owners  
7 insurance policy;

8           (C) a farm and ranch or residential fire and  
9 allied lines insurance policy; or

10           (D) a noncommercial insurance policy covering a  
11 boat, personal watercraft, snowmobile, or recreational vehicle.

12           Sec. 2. APPLICATION. This article applies to an insurer  
13 that writes personal insurance that is individually underwritten  
14 for personal, family, or household use.

15           Sec. 3. PROHIBITED USE OF CREDIT INFORMATION. (a) An  
16 insurer may not:

17           (1) use an insurance score that is computed using the  
18 income, gender, address, zip code, ethnic group, religion, marital  
19 status, or nationality of the consumer as a factor;

20           (2) deny, cancel, or nonrenew a policy of personal  
21 insurance solely on the basis of credit information without  
22 consideration of any other applicable underwriting factor  
23 independent of credit information;

24           (3) base an insured's renewal rates for personal  
25 insurance on credit information;

26           (4) take an adverse action against a consumer solely  
27 because the consumer does not have a credit card account without

1 consideration of any other applicable factor independent of credit  
2 information; or

3 (5) take an adverse action against a consumer based on  
4 credit information, unless the insurer obtains and uses a credit  
5 report issued, or an insurance score computed, not later than the  
6 90th day before the date on which the policy is first written.

7 (b) An insurer may not consider an absence of credit  
8 information or an inability to compute an insurance score in  
9 underwriting or rating personal insurance, unless the insurer:

10 (1) treats the consumer in a manner otherwise approved  
11 by the commissioner, if the insurer presents information that such  
12 an absence or inability relates to increased risk for the insurer;

13 (2) treats the consumer as if the applicant for  
14 insurance coverage or insured had neutral credit information, as  
15 defined by the insurer; or

16 (3) excludes the use of credit information as a factor  
17 in underwriting and uses only other underwriting criteria.

18 Sec. 4. NEGATIVE FACTORS. (a) An insurer may not use any  
19 of the following as a negative factor in any insurance scoring  
20 methodology or in reviewing credit information to underwrite or  
21 rate a policy of personal insurance:

22 (1) a credit inquiry that is not initiated by the  
23 consumer;

24 (2) an inquiry relating to insurance coverage, if so  
25 identified on a consumer's credit report;

26 (3) a collection account with a medical industry code,  
27 if so identified on the consumer's credit report; or

1           (4) unless only one inquiry is considered, multiple  
2 lender inquiries, if coded by the consumer reporting agency on the  
3 consumer's credit report as:

4                   (A) from the home mortgage industry or the motor  
5 vehicle lending industry; and

6                   (B) made within 30 days of a prior inquiry.

7           (b) The prohibition under Subsection (a)(1) of this section  
8 does not apply to an inquiry initiated at the consumer's request.

9           Sec. 5. DISPUTE RESOLUTION; ERROR CORRECTION. (a) If it  
10 is determined through the dispute resolution process established  
11 under the Fair Credit Reporting Act (15 U.S.C. Section  
12 1681i(a)(5)), as amended, that the credit information of a current  
13 insured was inaccurate or incomplete or could not be verified and  
14 the insurer receives notice of that determination from either the  
15 consumer reporting agency or from the insured, the insurer shall  
16 re-underwrite and re-rate the insured not later than the 30th day  
17 after the date of receipt of the notice.

18           (b) After re-underwriting or re-rating the insured, the  
19 insurer shall make any adjustments necessary, consistent with the  
20 insurer's underwriting and rating guidelines. If an insurer  
21 determines that the insured has overpaid premium, the insurer shall  
22 refund to the insured the amount of overpayment computed  
23 retroactively to the shorter of:

24                   (1) the last 12 months of coverage; or

25                   (2) the actual policy period.

26           Sec. 6. INITIAL DISCLOSURE. (a) If an insurer uses credit  
27 information in underwriting or rating a policy of personal

1 insurance, the insurer or the insurer's agent shall disclose,  
2 either on the insurance application or at the time the insurance  
3 application is taken, that the insurer may obtain credit  
4 information in connection with the application.

5 (b) The required disclosure must be substantially similar  
6 to the sample provided by Subsection (c) of this section and must be  
7 provided to the applicant for insurance coverage in writing or in  
8 the same medium used by the insurer for the insurance application.

9 (c) Use of the following sample disclosure statement  
10 constitutes compliance with this section: "In connection with this  
11 application for insurance, we may review your credit report or  
12 obtain or use a credit-based insurance score based on the  
13 information contained in that credit report. We may use a third  
14 party in connection with the development of your insurance score."

15 (d) The disclosure statement must contain a checkoff box or  
16 other analogous provision:

17 (1) through which the applicant indicates that the  
18 applicant has received and read the disclosure statement; and

19 (2) that the applicant is required to return to the  
20 insurer before the insurance application is processed.

21 (e) The insurer is not required to provide the disclosure  
22 statement to an insured if the insurer has previously provided a  
23 disclosure statement to that insured.

24 Sec. 7. ADVERSE ACTION NOTIFICATION. (a) If an insurer  
25 takes an adverse action based on credit information, the insurer  
26 must:

27 (1) notify the consumer in accordance with the

1 requirements of the Fair Credit Reporting Act (15 U.S.C. Section  
2 1681m(a)), as amended, that an adverse action has been taken; and

3 (2) include in the notification to the consumer an  
4 explanation of the reasons for the adverse action in clear and  
5 specific language sufficient to identify the basis for the  
6 insurer's decision to take the adverse action.

7 (b) The notice required under this section must include a  
8 description of up to four factors that constitute the primary bases  
9 of the adverse action. The use by the insurer of generalized terms  
10 such as "poor credit history," "poor credit rating," or "poor  
11 insurance score" does not meet the requirements of this section.

12 Sec. 8. MANDATED FILING WITH DEPARTMENT. (a) An insurer  
13 that uses insurance scores to underwrite and rate risks shall file  
14 the insurer's scoring models or other scoring processes with the  
15 department. Another entity may file scoring models on behalf of an  
16 insurer. A filing that includes insurance scoring must include  
17 loss experience justifying the use of credit information.

18 (b) A filing relating to credit information is a trade  
19 secret and is confidential for purposes of Chapter 552, Government  
20 Code.

21 Sec. 9. INDEMNIFICATION. (a) An insurer shall indemnify,  
22 defend, and hold its agent harmless from and against all liability,  
23 fees, and costs that arise out of or relate to the actions, errors,  
24 or omissions of an agent who obtains or uses credit information or  
25 insurance scores for the insurer if the agent follows the  
26 instructions of or procedures established by the insurer and  
27 complies with any applicable law or rule.

1        (b) This section may not be construed to establish a cause  
2 of action that does not exist in the absence of this section.

3        Sec. 10. SALE OF POLICY TERM INFORMATION BY CONSUMER  
4 REPORTING AGENCY PROHIBITED. (a) A consumer reporting agency may  
5 not provide or sell data or lists that include any information  
6 that, in whole or in part, was submitted in conjunction with an  
7 insurance inquiry about a consumer's credit information or a  
8 request for a credit report or insurance score, including:

9            (1) the expiration dates of an insurance policy or any  
10 other information that may identify periods during which a  
11 consumer's insurance may expire; and

12            (2) the terms and conditions of the consumer's  
13 insurance coverage.

14        (b) The restriction under Subsection (a) of this section  
15 does not apply to data or lists that the consumer reporting agency  
16 provides to:

17            (1) the insurance agent from whom information was  
18 received;

19            (2) the insurer on whose behalf the agent acted; or

20            (3) that insurer's affiliates.

21        (c) This section may not be construed to restrict the  
22 ability of an insurer to obtain a claims history report or a report  
23 regarding a motor vehicle.

24        Sec. 11. RULES. The commissioner may adopt rules as  
25 necessary to implement this article.

26        SECTION 2. Article 21.49-2U, Insurance Code, as added by  
27 this Act, applies only to an insurance policy delivered, issued for

1 delivery, or renewed on or after January 1, 2004. A policy  
2 delivered, issued for delivery, or renewed before January 1, 2004,  
3 is governed by the law as it existed immediately before the  
4 effective date of this Act, and that law is continued in effect for  
5 that purpose.

6 SECTION 3. This Act takes effect September 1, 2003.