

By: Smithee

H.B. No. 2467

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, cancellation or
13 nonrenewal of coverage, or offer and acceptance by a consumer of a
14 policy form, rate or deductible other than one specifically applied
15 for by a consumer. Adverse does not include:

16 (a) actions by an insurer using credit scoring
17 that affects consumers of the insurer equally or produces a
18 substantially similar result, or

19 (b) multiple price quotes offering policy forms,
20 rates, or deductibles from one or more insurers or agents.

21 (2) "Agents" means a person licensed or required to be
22 licensed as a general property and casualty insurance agent under
23 Article 21.14 of this code.

24 (3) "Applicant for insurance coverage" means an

1 individual who has applied to an insurer for coverage under a
2 personal insurance policy.

3 (4) "Commissioner" means the Commissioner of
4 Insurance.

5 (5) "Consumer" means an individual whose credit
6 information is used or whose insurance score is computed in the
7 underwriting or rating of a personal insurance policy. The term
8 includes an applicant for insurance coverage.

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

14 (7) "Credit information" means any credit-related
15 information derived from a credit report, found on a credit report
16 itself, or provided on an application for personal insurance. The
17 term does not include information that is not credit-related,
18 regardless of whether that information is contained in a credit
19 report or in an application for insurance coverage or is used to
20 compute an insurance score.

21 (8) "Credit report" means any written, oral, or other
22 communication of information by a consumer reporting agency that:

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

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

1 (9) "Credit score" means a number or rating derived
2 from an algorithm, computer application, model, or other process
3 that is based on credit information and used to predict the future
4 insurance loss exposure of a consumer.

5 (10) "Department" means the Texas Department of
6 Insurance.

7 (11) "Insurer" means an insurance company, reciprocal
8 or interinsurance exchange, mutual, capital stock company, county
9 mutual insurance company, association, Lloyd's plan company, or
10 other entity writing residential property insurance in the state.
11 The term includes an affiliate as described by Section 823.003(a)
12 of this code if that affiliate is writing residential property
13 insurance in the state. The term does not include the Texas
14 Windstorm Insurance Association created and operated under Article
15 21.49 of this code or the FAIR Plan Association created and operated
16 under Article 21.49A of this code.

17 (12) "Personal insurance" means:

18 (A) a personal automobile insurance policy;

19 (B) a homeowners or farm and ranch owners
20 insurance policy;

21 (C) residential fire and allied lines insurance
22 policy; or

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

25 Sec. 2. APPLICATION. This article applies to an insurer
26 that writes personal insurance that is individually underwritten
27 for personal, family, or household use.

1 Sec. 3. PROHIBITED USE OF CREDIT INFORMATION. (a) An

2 insurer may not:

3 (1) use a credit score that is computed using unfair
4 discrimination factors prohibited by Article 21.21-6 of this code,
5 as added by Chapter 415, Acts of the 74th Legislature, Regular
6 Session, 1995;

7 (2) deny, cancel, or nonrenew a policy of personal
8 insurance solely on the basis of credit information without
9 consideration of any other applicable underwriting factor
10 independent of credit information;

11 (3) take an adverse action against a consumer solely
12 because the consumer does not have a credit card account without
13 consideration of any other applicable factor independent of credit
14 information.

15 (b) An insurer may not use the absence of a credit history or
16 the inability to determine an applicant's or insured's credit
17 history as a factor in underwriting or rating an insurance policy
18 unless the insurer:

19 (1) has statistical, actuarial, or reasonable
20 underwriting information that is reasonably related to actual or
21 anticipated loss experience and that shows that the absence of
22 credit history could result in actual or anticipated loss
23 differences;

24 (2) treats the consumer as if the applicant for
25 insurance coverage or insured had neutral credit information, as
26 defined by the insurer; or

27 (3) excludes the use of credit information as a factor

1 in underwriting and uses only other underwriting criteria.

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

6 (1) a credit inquiry that is not initiated by the
7 consumer;

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

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

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

15 (A) from the home mortgage industry or the motor
16 vehicle lending industry; and

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

18 Sec. 5. EFFECT OF EXTRAORDINARY EVENTS. (a)
19 Notwithstanding any other law, an insurer shall on written request
20 from an applicant or insured, provide reasonable exceptions to the
21 insurer's rates, rating classifications, or underwriting rules
22 for a consumer whose credit information has been directly
23 influenced by a catastrophic illness or injury, the death of a
24 spouse, or another event of a similar nature. In such a case, the
25 insurer may consider only credit information not affected by the
26 event or shall assign a neutral credit score.

27 (b) An insurer may require reasonable documentation of the

1 event before granting an exception.

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

5 Sec. 6. DISPUTE RESOLUTION; ERROR CORRECTION. (a) If it is
6 determined through the dispute resolution process established
7 under the Fair Credit Reporting Act (15 U.S.C. Section
8 1681i(a)(5)), as amended, that the credit information of a current
9 insured was inaccurate or incomplete or could not be verified and
10 the insurer receives notice of that determination from either the
11 consumer reporting agency or from the insured, the insurer shall
12 re-underwrite and re-rate the insured not later than the 30th day
13 after the date of receipt of the notice.

14 (b) After re-underwriting or re-rating the insured, the
15 insurer shall make any adjustments necessary, consistent with the
16 insurer's underwriting and rating guidelines. If an insurer
17 determines that the insured has overpaid premium, the insurer shall
18 refund the insured the amount of overpayment.

19 Sec. 7. DISCLOSURE TO CONSUMERS FOR THE USE OF CREDIT
20 SCORING; (a) An insurer subject to this subchapter may use credit
21 scoring to develop rates, rating classifications, or underwriting
22 criteria regarding lines of insurance subject to this subchapter
23 except as prohibited by Article 21.21-6 of this code, as added by
24 Chapter 415, Acts of the 74th Legislature, Regular Session, 1995.

25 (b) An insurer that uses credit scoring in the underwriting
26 or rating of insurance subject to this subchapter shall disclose to
27 each applicant that the applicant's consumer report may be used in

1 the underwriting or rating of the applicant's policy. The
2 disclosure must be provided at the time of application by the
3 insurer or agent and may be given orally, in writing, or
4 electronically.

5 (c) If a policy is issued to the applicant, an insurer or
6 agent is not required to make the disclosure required under
7 Subsection (b) of this article on any subsequent renewal of the
8 coverage.

9 (d) 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 Sec. 8. NOTICE OF ADVERSE ACTION. (a) If an insurer takes
16 an adverse action with respect to an applicant or insured based in
17 whole or in part on information contained in a consumer report, the
18 insurer shall provide to the applicant or insured:

19 (1) written or electronic notice of the adverse action
20 and reasons for the adverse action;

21 (2) the name, address, and telephone number of the
22 consumer reporting agency, including a toll-free number
23 established by the agency if the agency compiles and maintains
24 files on consumers on a nationwide basis;

25 (3) written or electronic notice that the consumer
26 reporting agency did not make the decision to take the adverse
27 action and will be unable to provide the applicant or insured the

1 specific reasons why the adverse action was taken; and

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

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

7 (B) dispute with the consumer reporting agency
8 the accuracy or completeness of any information in the consumer
9 report furnished by the agency.

10 (b) The use by the insurer of generalized terms such as
11 "poor credit history," "poor credit rating," or "poor insurance
12 score" as the reason for adverse action shall not be sufficient
13 notice of adverse action under this section.

14 Sec. 9. MANDATED FILING WITH DEPARTMENT. (a) An insurer
15 that uses insurance scores to underwrite and rate risks shall file
16 the insurer's scoring models or other scoring processes with the
17 department. Another entity may file scoring models on behalf of an
18 insurer. A filing that includes insurance scoring must include
19 loss experience justifying the use of credit information.

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

23 Sec. 10. INDEMNIFICATION. (a) An insurer shall indemnify,
24 defend, and hold its agent harmless from and against all liability,
25 fees, and costs that arise out of or relate to the actions, errors,
26 or omissions of an agent who obtains or uses credit information or
27 insurance scores for the insurer if the agent follows the

1 instructions of or procedures established by the insurer and
2 complies with any applicable law or rule.

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

5 Sec. 11. SALE OF POLICY TERM INFORMATION BY CONSUMER
6 REPORTING AGENCY PROHIBITED. (a) A consumer reporting agency may
7 not provide or sell data or lists that include any information that,
8 in whole or in part, was submitted in conjunction with an insurance
9 inquiry about a consumer's credit information or a request for a
10 credit report or credit score, including:

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

14 (2) the terms and conditions of the consumer's
15 insurance coverage.

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

19 (1) the insurance agent from whom information was
20 received;

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

22 (3) that insurer's affiliates.

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

26 Sec. 12. RULES. The commissioner may adopt rules as
27 necessary to implement this article.

1 Sec. 13. REPORT. (a) The commissioner shall submit a
2 report to the governor, the lieutenant governor, the speaker of the
3 house of representatives, and the members of the 79th Legislature
4 on the information collected from the filings required under this
5 article and other information obtained by the Department on the use
6 of credit by insurers. The report shall be submitted before January
7 1, 2005.

8 (b) The report required under this section shall provide the
9 following information:

10 (1) a summary regarding the use of credit information,
11 credit reports, and credit scores by insurers, presented in a
12 manner that protects the identity of individual insurers and
13 consumers;

14 (2) practices and the effect of different credit
15 models presented in a manner that protects the identity of
16 individual insurers and consumers;

17 (3) number of consumer complaints submitted to the
18 Department regarding the use of credit or adverse action against a
19 consumer based on the use of credit.

20 (4) favorable or adverse effects on consumers based on
21 the use of credit scoring including the number of consumers
22 receiving lower or higher premiums;

23 (5) any disproportionate or adverse impact on any
24 class of individuals including but not limited to income, race, or
25 ethnicity resulting from the use of credit;

26 (6) recommendations from the Department to the
27 Legislature regarding the use of credit, and

1 (7) other information deemed necessary by the
2 Commissioner to include in the report.

3 Sec. 14. SEVERABILITY. If any section, paragraph,
4 sentence, clause, phrase, or any part of this Act passed is declared
5 invalid due to an interpretation of or a future change in the
6 federal Fair Credit Reporting Act, the remaining sections,
7 paragraphs, sentences, clauses, phrases, or parts thereof shall be
8 in no manner affected thereby but shall remain in full force and
9 effect.

10 SECTION 2. Article 21.49-2U, Insurance Code, as added by
11 this act, applies only to an insurance policy delivered, issued for
12 delivery, or renewed on or after January 1, 2004. A policy
13 delivered, issued for delivery, or renewed before January 1, 2004,
14 is governed by the law as it existed immediately before the
15 effective date of this Act, and that law is continued in effect for
16 that purpose.

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