

Senate Bill No. 40-A

An act relating to insurance consumer protection; reenacting and amending s. 626.7451(11), F.S., notwithstanding amendments to that subsection by HB 513; providing for retroactive application; providing for construction of the act in pari materia with laws enacted during the Regular Session of the Legislature; creating s. 626.9741, F.S.; specifying that the act's purpose is to regulate and limit the use of credit reports and credit scores by insurers for underwriting and rating purposes; specifying the types of insurance to which the act applies; defining terms; requiring that an insurer identify the items in a credit report which resulted in an adverse decision; prohibiting an insurer from making an adverse decision based solely on a credit report or score or certain other factors; requiring an insurer to provide a means for appeal to an applicant or insured under certain circumstances; prohibiting the use of a credit report or score unless the Office of Insurance Regulation determines, based on a filing by the insurer, that such use is valid and reasonable; authorizing the Office of Insurance Regulation to disapprove such filings; requiring an insurer to adhere to certain laws and rules; requiring an insurer to provide for an adjustment in the premium of an insured to reflect an improvement in credit history; authorizing the Financial Services Commission to adopt rules; providing for application; providing a contingent effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. (1) Notwithstanding the amendment to section 626.7451, Florida Statutes, by HB 513, subsection (11) of section 626.7451, Florida Statutes is not amended as provided by that act, but is reenacted to read:

626.7451 Managing general agents; required contract provisions.—No person acting in the capacity of a managing general agent shall place business with an insurer unless there is in force a written contract between the parties which sets forth the responsibility for a particular function, specifies the division of responsibilities, and contains the following minimum provisions:

(11) A licensed managing general agent, when placing business with an insurer under this code, may charge a per-policy fee not to exceed \$25. In no instance shall the aggregate of per-policy fees for a placement of business authorized under this section, when combined with any other per-policy fee charged by the insurer, result in per-policy fees which exceed the aggregate amount of \$25. The per-policy fee shall be a component of the insurer's rate filing and shall be fully earned.

For the purposes of this section and ss. 626.7453 and 626.7454, the term "controlling person" or "controlling" has the meaning set forth in s. 625.012(5)(b)1., and the term "controlled person" or "controlled" has the meaning set forth in s. 625.012(5)(b)2.

(2) This section shall take effect upon this act becoming a law, except that, if this act does not become a law before HB 513 becomes a law, this section shall operate retroactively to the date that HB 513 becomes a law.

Section 2. If any law that is amended by this act was also amended by a law enacted at the 2003 Regular Session of the Legislature, such laws shall be construed as if they had been enacted during the same session of the Legislature, and full effect should be given to each if that is possible.

Section 3. Section 626.9741, Florida Statutes, is created to read:

626.9741 Use of credit reports and credit scores by insurers.—

(1) The purpose of this section is to regulate and limit the use of credit reports and credit scores by insurers for underwriting and rating purposes. This section applies only to personal lines motor vehicle insurance and personal lines residential insurance, which includes homeowners, mobile homeowners dwelling, tenants, condominium unit owners, cooperative unit owners, and similar types of insurance.

(2) As used in this section, the term:

(a) “Adverse decision” means a decision to refuse to issue or renew a policy of insurance; to issue a policy with exclusions or restrictions; to increase the rates or premium charged for a policy of insurance; to place an insured or applicant in a rating tier that does not have the lowest available rates for which that insured or applicant is otherwise eligible; or to place an applicant or insured with a company operating under common management, control, or ownership which does not offer the lowest rates available, within the affiliate group of insurance companies, for which that insured or applicant is otherwise eligible.

(b) “Credit report” means any written, oral, or other communication of any information by a consumer reporting agency, as defined in the federal Fair Credit Reporting Act, 15 U.S.C. s. 1681, et seq., bearing on a consumer’s credit worthiness, credit standing, or credit capacity, which is used or expected to be used or collected as a factor to establish a person’s eligibility for credit or insurance, or any other purpose authorized pursuant to the applicable provision of such federal act. A credit score alone, as calculated by a credit reporting agency or by or for the insurer, may not be considered a credit report.

(c) “Credit score” means a score, grade, or value that is derived by using any or all data from a credit report in any type of model, method, or program, whether electronically, in an algorithm, computer software or program, or any other process, for the purpose of grading or ranking credit report data.

(d) “Tier” means a category within a single insurer into which insureds with substantially similar risk, exposure, or expense factors are placed for purposes of determining rate or premium.

(3) An insurer must inform an applicant or insured, in the same medium as the application is taken, that a credit report or score is being requested

for underwriting or rating purposes. An insurer that makes an adverse decision based, in whole or in part, upon a credit report must provide at no charge, a copy of the credit report to the applicant or insured or provide the applicant or insured with the name, address, and telephone number of the consumer reporting agency from which the insured or applicant may obtain the credit report. The insurer must provide notification to the consumer explaining the reasons for the adverse decision. The reasons must be provided in sufficiently clear and specific language so that a person can identify the basis for the insurer's adverse decision. Such notification shall include a description of the four primary reasons, or such fewer number as existed, which were the primary influences of the adverse decision. 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. A credit score may not be used in underwriting or rating insurance unless the scoring process produces information in sufficient detail to permit compliance with the requirements of this subsection. It shall not be deemed an adverse decision if, due to the insured's credit report or credit score, the insured continues to receive a less favorable rate or placement in a less favorable tier or company at the time of renewal except for renewals or re-underwriting required by this section.

(4)(a) An insurer may not request a credit report or score based upon the race, color, religion, marital status, age, gender, income, national origin, or place of residence of the applicant or insured.

(b) An insurer may not make an adverse decision solely because of information contained in a credit report or score without consideration of any other underwriting or rating factor.

(c) An insurer may not make an adverse decision or use a credit score that could lead to such a decision if based, in whole or in part, on:

1. The absence of, or an insufficient, credit history, in which instance the insurer shall:

a. Treat the consumer as otherwise approved by the Office of Insurance Regulation if the insurer presents information that such an absence or inability is related to the risk for the insurer;

b. Treat the consumer as if the applicant or insured had neutral credit information, as defined by the insurer;

c. Exclude the use of credit information as a factor and use only other underwriting criteria;

2. Collection accounts with a medical industry code, if so identified on the consumer's credit report;

3. Place of residence; or

4. Any other circumstance that the Financial Services Commission determines, by rule, lacks sufficient statistical correlation and actuarial justification as a predictor of insurance risk.

(d) An insurer may use the number of credit inquiries requested or made regarding the applicant or insured except for:

1. Credit inquiries not initiated by the consumer or inquiries requested by the consumer for his or her 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 the consumer's credit report.

4. Multiple lender inquiries, if coded by the consumer reporting agency on the consumer's credit report as being from the home mortgage industry and made within 30 days of one another, unless only one inquiry is considered.

5. Multiple lender inquiries, if coded by the consumer reporting agency on the consumer's credit report as being from the automobile lending industry and made within 30 days of one another, unless only one inquiry is considered.

(e) An insurer must, upon the request of an applicant or insured, provide a means of appeal for an applicant or insured whose credit report or credit score is unduly influenced by a dissolution of marriage, the death of a spouse, or temporary loss of employment. The insurer must complete its review within 10 business days after the request by the applicant or insured and receipt of reasonable documentation requested by the insurer, and, if the insurer determines that the credit report or credit score was unduly influenced by any of such factors, the insurer shall treat the applicant or insured as if the applicant or insured had neutral credit information or shall exclude the credit information, as defined by the insurer, whichever is more favorable to the applicant or insured. An insurer shall not be considered out of compliance with its underwriting rules or rates or forms filed with the Office of Insurance Regulation or out of compliance with any other state law or rule as a result of granting any exceptions pursuant to this subsection.

(5) A rate filing that uses credit reports or credit scores must comply with the requirements of s. 627.062 or s. 627.0651 to ensure that rates are not excessive, inadequate, or unfairly discriminatory.

(6) An insurer that requests or uses credit reports and credit scoring in its underwriting and rating methods shall maintain and adhere to established written procedures that reflect the restrictions set forth in the federal Fair Credit Reporting Act, this section, and all rules related thereto.

(7)(a) An insurer shall establish procedures to review the credit history of an insured who was adversely affected by the use of the insured's credit history at the initial rating of the policy, or at a subsequent renewal thereof. This review must be performed at a minimum of once every 2 years or at the request of the insured, whichever is sooner, and the insurer shall adjust the premium of the insured to reflect any improvement in the credit history. The procedures must provide that, with respect to existing policyholders, the

review of a credit report will not be used by the insurer to cancel, refuse to renew, or require a change in the method of payment or payment plan.

(b) However, as an alternative to the requirements of paragraph (a), an insurer that used a credit report or credit score for an insured upon inception of a policy, who will not use a credit report or score for re-underwriting, shall reevaluate the insured within the first 3 years after inception, based on other allowable underwriting or rating factors, excluding credit information if the insurer does not increase the rates or premium charged to the insured based on the exclusion of credit reports or credit scores.

(8) The commission may adopt rules to administer this section. The rules may include, but need not be limited to:

(a) Information that must be included in filings to demonstrate compliance with subsection (3).

(b) Statistical detail that insurers using credit reports or scores under subsection (5) must retain and report annually to the Office of Insurance Regulation.

(c) Standards that ensure that rates or premiums associated with the use of a credit report or score are not unfairly discriminatory, based upon race, color, religion, marital status, age, gender, income, national origin, or place of residence.

(d) Standards for review of models, methods, programs, or any other process by which to grade or rank credit report data and which may produce credit scores in order to ensure that the insurer demonstrates that such grading, ranking, or scoring is valid in predicting insurance risk of an applicant or insured.

Section 4. This act shall take effect January 1, 2004, and shall apply to policies issued or renewed on or after that date, except that this act shall not take effect unless SB 42-A or similar legislation is adopted in the same legislative session, or an extension thereof, and becomes law.

Approved by the Governor June 26, 2003.

Filed in Office Secretary of State June 26, 2003.