

CHAPTER 397

INSURANCE

SENATE BILL 04-216

BY SENATOR(S) Lamborn, Keller, Tupa, and Veiga;
also REPRESENTATIVE(S) Cloer and Harvey.

AN ACT

CONCERNING LIMITATIONS ON THE USE OF CREDIT INFORMATION FOR THE PURPOSES OF PERSONAL LINES OF PROPERTY AND CASUALTY INSURANCE RATING, AND, IN CONNECTION THEREWITH, SUBSTANTIALLY ADOPTING THE PROVISIONS OF THE NATIONAL CONFERENCE OF INSURANCE LEGISLATORS MODEL FOR USES OF CREDIT INFORMATION FOR PERSONAL LINES OF PROPERTY AND CASUALTY INSURANCE.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Part 1 of article 4 of title 10, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

10-4-116. Use of credit information. (1) AN INSURER THAT OFFERS PERSONAL LINES OF PROPERTY AND CASUALTY INSURANCE SHALL NOT:

(a) USE AN INSURANCE SCORE THAT IS CALCULATED USING INCOME, GENDER, ADDRESS, UNITED STATES POSTAL ZIP CODE, ETHNIC GROUP, RELIGION, MARITAL STATUS, OR NATIONALITY OF THE CONSUMER;

(b) DENY, CANCEL, OR FAIL TO RENEW A POLICY OF PERSONAL LINES OF PROPERTY AND CASUALTY INSURANCE ON THE BASIS OF CREDIT INFORMATION, WITHOUT CONSIDERATION OF ANY OTHER APPLICABLE UNDERWRITING FACTOR THAT IS INDEPENDENT OF CREDIT INFORMATION PROHIBITED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (1);

(c) BASE AN INSURED'S RENEWAL RATES FOR PERSONAL LINES OF PROPERTY AND CASUALTY INSURANCE UPON CREDIT INFORMATION, WITHOUT CONSIDERATION OF ANY OTHER APPLICABLE FACTOR INDEPENDENT OF CREDIT INFORMATION;

(d) TAKE AN ADVERSE ACTION AGAINST A CONSUMER BECAUSE HE OR SHE DOES

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

NOT HAVE A CREDIT CARD ACCOUNT, WITHOUT CONSIDERATION OF ANY OTHER APPLICABLE FACTOR INDEPENDENT OF CREDIT INFORMATION;

(e) CONSIDER AN ABSENCE OF CREDIT INFORMATION OR AN INABILITY TO CALCULATE AN INSURANCE SCORE IN UNDERWRITING OR RATING PERSONAL LINES OF PROPERTY AND CASUALTY INSURANCE ISSUED IN THIS STATE, UNLESS THE INSURER DOES ONE OF THE FOLLOWING:

(I) TREATS THE CONSUMER IN A MANNER OTHERWISE APPROVED BY THE COMMISSIONER, IF THE INSURER PRESENTS INFORMATION THAT SUCH AN ABSENCE OR INABILITY RELATES TO THE RISK FOR THE INSURER;

(II) TREATS THE CONSUMER AS IF HE OR SHE HAD NEUTRAL CREDIT INFORMATION, AS DEFINED BY THE INSURER; OR

(III) EXCLUDES THE USE OF CREDIT INFORMATION AS A FACTOR AND USES ONLY OTHER UNDERWRITING CRITERIA;

(f) TAKE AN 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 THE POLICY IS FIRST WRITTEN OR RENEWAL IS ISSUED;

(g) USE CREDIT INFORMATION UNLESS, NOT LATER THAN EVERY THIRTY-SIX MONTHS FOLLOWING THE LAST TIME THAT THE INSURER OBTAINED CURRENT INFORMATION FOR THE CONSUMER, THE INSURER RECALCULATES THE CONSUMER'S INSURANCE SCORE OR OBTAINS AN UPDATED CREDIT REPORT. NOTWITHSTANDING ANY PROVISION OF THIS SECTION TO THE CONTRARY, AN INSURER:

(I) AT ANNUAL RENEWAL, UPON THE REQUEST OF A CONSUMER OR THE CONSUMER'S AGENT, SHALL REUNDERWRITE AND RERATE THE POLICY BASED UPON A CURRENT CREDIT REPORT OR INSURANCE SCORE. AN INSURER MAY RECALCULATE THE INSURANCE SCORE OR OBTAIN THE UPDATED CREDIT REPORT OF A CONSUMER MORE FREQUENTLY THAN ONCE DURING A TWELVE-MONTH PERIOD.

(II) MAY OBTAIN CURRENT CREDIT INFORMATION UPON A RENEWAL BEFORE THE THIRTY-SIXTH MONTH OF COVERAGE, IF OBTAINING CURRENT CREDIT INFORMATION IS CONSISTENT WITH THE INSURER'S UNDERWRITING GUIDELINES.

(III) NOTWITHSTANDING SUBPARAGRAPH (I) OF THIS PARAGRAPH (g), NEED NOT OBTAIN CURRENT CREDIT INFORMATION FOR AN INSURED IF ONE OF THE FOLLOWING SITUATIONS APPLY:

(A) THE INSURER IS TREATING THE INSURED IN A MANNER OTHERWISE APPROVED BY THE COMMISSIONER;

(B) THE INSURED IS IN THE MOST-FAVORABLY-PRICED TIER OF THE INSURER, WITHIN A GROUP OF AFFILIATED INSURERS; EXCEPT THAT THE INSURER MAY ORDER A CREDIT REPORT IF ORDERING THE CREDIT REPORT IS CONSISTENT WITH ITS UNDERWRITING GUIDELINES;

(C) CREDIT WAS NOT USED FOR UNDERWRITING OR RATING THE INSURED WHEN THE INSURED'S INITIAL POLICY OF INSURANCE WAS WRITTEN; EXCEPT THAT AN INSURER MAY USE CREDIT FOR UNDERWRITING OR RATING THE INSURED UPON RENEWAL IF THE USE OF CREDIT IS CONSISTENT WITH ITS UNDERWRITING GUIDELINES; OR

(D) THE INSURER REEVALUATES THE INSURED BEGINNING NO LATER THAN THIRTY-SIX MONTHS AFTER INCEPTION AND THEREAFTER BASED UPON OTHER UNDERWRITING OR RATING FACTORS, EXCLUDING CREDIT INFORMATION.

(h) USE THE FOLLOWING AS A NEGATIVE FACTOR IN AN INSURANCE SCORING METHODOLOGY OR IN REVIEWING CREDIT INFORMATION FOR THE PURPOSE OF UNDERWRITING OR RATING A POLICY OF PERSONAL LINES OF PROPERTY AND CASUALTY INSURANCE:

(I) CREDIT INQUIRIES NOT INITIATED BY THE CONSUMER OR INQUIRIES REQUESTED BY THE CONSUMER FOR HIS OR HER OWN CREDIT INFORMATION;

(II) INQUIRIES RELATING TO INSURANCE COVERAGE, IF SO IDENTIFIED ON A CONSUMER'S CREDIT REPORT;

(III) COLLECTION ACCOUNTS WITH A MEDICAL INDUSTRY CODE, IF SO IDENTIFIED ON THE CONSUMER'S CREDIT REPORT;

(IV) MULTIPLE LENDER INQUIRIES, IF CODED BY THE CONSUMER REPORTING AGENCY ON THE CONSUMER'S CREDIT REPORT AS BEING FROM THE MOTOR VEHICLE LENDING INDUSTRY AND MADE WITHIN THIRTY DAYS AFTER ONE ANOTHER, UNLESS ONLY ONE INQUIRY IS CONSIDERED;

(V) 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 THIRTY DAYS OF ONE ANOTHER, UNLESS ONLY ONE INQUIRY IS CONSIDERED;

(VI) IDENTITY THEFT THAT MAY BE SUFFICIENTLY AND INDEPENDENTLY CORROBORATED;

(VII) CREDIT INFORMATION ADVERSELY IMPACTED BY A DISSOLUTION OF MARRIAGE OR BY THE CREDIT INFORMATION OF A FORMER SPOUSE.

(2) IF IT IS DETERMINED THROUGH THE DISPUTE RESOLUTION PROCESS AS SET FORTH IN THE FEDERAL "FAIR CREDIT REPORTING ACT", 15 U.S.C. SEC. 1681i (a) (5), THAT THE CREDIT INFORMATION OF A CURRENT INSURED WAS INCORRECT OR INCOMPLETE AND IF THE INSURER RECEIVES NOTICE OF A DETERMINATION FROM EITHER THE CONSUMER REPORTING AGENCY OR FROM THE INSURED, THE INSURER SHALL REUNDERWRITE AND RERATE THE CONSUMER WITHIN THIRTY DAYS AFTER RECEIVING THE NOTICE. AFTER REUNDERWRITING OR RERATING THE INSURED, THE INSURER SHALL MAKE ANY ADJUSTMENTS NECESSARY, CONSISTENT WITH ITS UNDERWRITING AND RATING GUIDELINES. IF AN INSURER DETERMINES THAT THE INSURED HAS OVERPAID A PREMIUM, THE INSURER SHALL REFUND TO THE INSURED THE AMOUNT OF OVERPAYMENT CALCULATED BACK TO THE SHORTER OF EITHER THE LAST TWELVE MONTHS OF COVERAGE OR THE ACTUAL POLICY PERIOD.

(3) (a) IF AN INSURER OFFERING PERSONAL LINES OF PROPERTY AND CASUALTY COVERAGE USES CREDIT INFORMATION IN UNDERWRITING OR RATING A CONSUMER, THE INSURER OR THE PRODUCER SHALL DISCLOSE, EITHER ON THE INSURANCE APPLICATION OR AT THE TIME THE INSURANCE APPLICATION IS TAKEN, THAT IT MAY OBTAIN CREDIT INFORMATION IN CONNECTION WITH SUCH APPLICATION. THE DISCLOSURE SHALL BE EITHER IN WRITING OR IN THE SAME MEDIUM AS THE APPLICATION FOR INSURANCE IS TAKEN. THE INSURER MAY PROVIDE THE DISCLOSURE STATEMENT REQUIRED PURSUANT TO THIS SUBSECTION (3) TO AN INSURED ON A RENEWAL POLICY, IF THE CONSUMER HAS PREVIOUSLY BEEN PROVIDED A COPY OF THE DISCLOSURE STATEMENT.

(b) USE OF THE FOLLOWING DISCLOSURE STATEMENT SHALL CONSTITUTE COMPLIANCE WITH THE PROVISIONS OF THIS SUBSECTION (3); EXCEPT THAT AN INSURER MAY USE DIFFERENT TERMS OR PHRASES TO COMMUNICATE THE SAME MEANING:

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.

(4) IF AN INSURER TAKES AN ADVERSE ACTION BASED UPON CREDIT INFORMATION, THE INSURER SHALL MEET THE NOTICE REQUIREMENTS OF THIS SUBSECTION (4). SPECIFICALLY, AN INSURER SHALL:

(a) PROVIDE NOTIFICATION TO THE CONSUMER THAT AN ADVERSE ACTION HAS BEEN TAKEN, IN ACCORDANCE WITH THE REQUIREMENTS OF THE FEDERAL "FAIR CREDIT REPORTING ACT", 15 U.S.C. SEC. 1681m (a); AND

(b) PROVIDE NOTIFICATION TO THE CONSUMER EXPLAINING THE REASON FOR THE ADVERSE ACTION. THE REASONS SHALL BE PROVIDED IN SUFFICIENTLY CLEAR AND SPECIFIC LANGUAGE SO THAT A PERSON MAY IDENTIFY THE BASIS FOR THE INSURER'S DECISION TO TAKE ADVERSE ACTION. THE NOTIFICATION SHALL INCLUDE A DESCRIPTION OF UP TO FOUR FACTORS THAT WERE THE PRIMARY INFLUENCES OF THE ADVERSE ACTION. 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 SUBSECTION (4). STANDARDIZED CREDIT EXPLANATIONS PROVIDED BY CONSUMER REPORTING AGENCIES OR OTHER THIRD-PARTY VENDORS ARE DEEMED TO COMPLY WITH THIS SUBSECTION (4).

(5) AN INSURER THAT USES INSURANCE SCORES TO UNDERWRITE AND RATE RISK SHALL FILE ITS SCORING MODELS OR OTHER SCORING PROCESSES WITH THE COMMISSIONER. A THIRD PARTY MAY FILE SCORING MODELS ON BEHALF OF AN INSURER. A FILING THAT INCLUDES INSURANCE SCORING MAY INCLUDE LOSS EXPERIENCE JUSTIFYING THE USE OF CREDIT INFORMATION. THE INSURER MAY REQUEST THAT INFORMATION REQUESTED PURSUANT TO THIS SUBSECTION (5) NOT BE OPEN TO PUBLIC INSPECTION OR CONSIDERED AN OPEN RECORD PURSUANT TO ARTICLE 72 OF TITLE 24, C.R.S.

(6) AN INSURER SHALL INDEMNIFY, DEFEND, AND HOLD A PRODUCER HARMLESS

AGAINST ALL LIABILITY, FEES, AND COSTS ARISING OUT OF OR RELATING TO THE ACTIONS, ERRORS, OR OMISSIONS OF THE PRODUCER WHO OBTAINS OR USES CREDIT INFORMATION OR INSURANCE SCORES FOR AN INSURER, SO LONG AS THE PRODUCER FOLLOWS THE INSTRUCTIONS OF OR PROCEDURES ESTABLISHED BY THE INSURER AND COMPLIES WITH ANY APPLICABLE LAW OR RULE. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PROVIDE A CONSUMER OR INSURED WITH A CAUSE OF ACTION THAT DOES NOT EXIST IN THE ABSENCE OF THIS SECTION.

(7) (a) A CONSUMER REPORTING AGENCY SHALL NOT PROVIDE OR SELL DATA OR LISTS THAT INCLUDE INFORMATION THAT, IN WHOLE OR IN PART, WAS SUBMITTED IN CONJUNCTION WITH AN INSURANCE INQUIRY ABOUT A CONSUMER'S CREDIT INFORMATION OR A REQUEST FOR A CREDIT REPORT OR INSURANCE SCORE. INFORMATION THAT MAY NOT BE PROVIDED OR SOLD INCLUDES, BUT IS NOT LIMITED TO, THE EXPIRATION DATES OF AN INSURANCE POLICY OR OTHER INFORMATION THAT MAY IDENTIFY PERIODS IN WHICH A CONSUMER'S INSURANCE MAY EXPIRE AND THE TERMS AND CONDITIONS OF THE CONSUMER'S INSURANCE COVERAGE.

(b) THE RESTRICTIONS PROVIDED IN PARAGRAPH (a) OF THIS SUBSECTION (7) SHALL NOT APPLY TO DATA OR LISTS THE CONSUMER REPORTING AGENCY SUPPLIES TO THE INSURANCE PRODUCER FROM WHOM INFORMATION WAS RECEIVED, THE INSURER ON BEHALF OF WHOM THE PRODUCER ACTED, OR SUCH INSURER'S AFFILIATES OR HOLDING COMPANIES.

(c) NOTHING IN THIS SUBSECTION (7) SHALL BE CONSTRUED TO RESTRICT AN INSURER FROM BEING ABLE TO OBTAIN A CLAIMS HISTORY REPORT OR A MOTOR VEHICLE REPORT.

(8) FOR THE PURPOSES OF THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "ADVERSE ACTION" MEANS A DENIAL OR CANCELLATION OF, AN INCREASE IN ANY CHARGE FOR, OR A REDUCTION OR OTHER UNFAVORABLE CHANGE IN THE TERMS OF COVERAGE OR AMOUNT OF ANY INSURANCE EXISTING OR APPLIED FOR IN CONNECTION WITH THE UNDERWRITING OF PERSONAL LINES OF PROPERTY AND CASUALTY INSURANCE COVERAGES.

(b) "AFFILIATE" MEANS A COMPANY THAT CONTROLS, IS CONTROLLED BY, OR IS UNDER COMMON CONTROL WITH ANOTHER INSURER.

(c) "APPLICANT" MEANS A PERSON WHO HAS APPLIED TO BE COVERED UNDER A POLICY OF PERSONAL LINES OF PROPERTY AND CASUALTY INSURANCE.

(d) "BENEFICIARY OR CLAIMANT" INCLUDES AN INSURED PERSON AND A THIRD-PARTY CLAIMANT.

(e) "CONSUMER" MEANS AN INSURED WHOSE CREDIT INFORMATION IS USED OR WHOSE INSURANCE SCORE IS CALCULATED IN THE UNDERWRITING OR RATING OF PERSONAL LINES OF PROPERTY AND CASUALTY INSURANCE OR AN APPLICATION FOR PERSONAL LINES OF PROPERTY AND CASUALTY INSURANCE COVERAGE.

(f) "CONSUMER REPORTING AGENCY" SHALL HAVE THE SAME MEANING AS IN

SECTION 12-14-103 (4.5), C.R.S.

(g) "CREDIT INFORMATION" MEANS CREDIT-RELATED INFORMATION DERIVED FROM A CREDIT REPORT ITSELF OR PROVIDED ON AN APPLICATION FOR PERSONAL LINES OF PROPERTY AND CASUALTY INSURANCE. INFORMATION THAT IS NOT CREDIT-RELATED SHALL NOT BE CONSIDERED "CREDIT INFORMATION" REGARDLESS OF WHETHER IT IS CONTAINED IN A CREDIT REPORT OR IN AN APPLICATION OR IS USED TO CALCULATE AN INSURANCE SCORE.

(h) "CREDIT REPORT" MEANS A WRITTEN, ORAL, OR OTHER COMMUNICATION OF INFORMATION BY A CONSUMER REPORTING AGENCY BEARING ON A CONSUMER'S CREDITWORTHINESS, CREDIT STANDING, OR CREDIT CAPACITY THAT IS USED OR EXPECTED TO BE USED OR COLLECTED IN WHOLE OR IN PART FOR THE PURPOSE OF SERVING AS A FACTOR TO DETERMINE PERSONAL LINES OF PROPERTY AND CASUALTY INSURANCE PREMIUMS, ELIGIBILITY FOR COVERAGE, OR TIER PLACEMENT.

(i) "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 PURPOSE OF PREDICTING THE FUTURE INSURANCE LOSS EXPOSURE OF AN INDIVIDUAL APPLICANT OR INSURED.

SECTION 2. Repeal. 10-4-116, Colorado Revised Statutes, as enacted in section 2 of House Bill 04-1292, enacted at the Second Regular Session of the Sixty-fourth General Assembly, is repealed.

SECTION 3. Effective date - applicability. (1) This act shall take effect January 1, 2005; except that section 2 of this act shall take effect upon passage.

(2) This act shall apply to personal lines of property and casualty insurance policies issued or renewed on or after January 1, 2005.

SECTION 4. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 4, 2004