

CS FOR HOUSE BILL NO. 47(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

Offered: 4/11/03

Referred: Labor and Commerce

Sponsor(s): REPRESENTATIVES CHENAULT, Wolf, Stevens, Crawford

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to using credit rating or credit scoring for insurance purposes; and
2 providing for an effective date."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
5 to read:

6 PURPOSE. The purpose of this Act is to regulate the use of credit information for
7 personal insurance so that consumers are afforded certain protections with respect to the use
8 of credit information.

9 * **Sec. 2.** AS 21.36 is amended by adding a new section to read:

10 **Sec. 21.36.460. Use of credit information.** (a) An insurer authorized to do
11 business in this state that uses credit information to underwrite or rate risks may not
12 (1) use an insurance score that is calculated using the income, sex,
13 address, zip code, ethnic group, religion, marital status, or nationality of the consumer
14 as a factor;

1 (2) deny, cancel, or not renew a policy of personal insurance solely on
2 the basis of credit information, without consideration of any other applicable
3 underwriting factor independent of credit information; this paragraph does not
4 authorize the use of factors prohibited under (1) of this subsection;

5 (3) base an insured's renewal rates for personal insurance solely on
6 credit information, without consideration of any other applicable factor independent of
7 credit information;

8 (4) take an adverse action against a consumer solely because the
9 consumer does not have a credit card account, without consideration of any other
10 applicable factor independent of credit information;

11 (5) consider an absence of credit information or an inability to
12 calculate an insurance score in underwriting or rating personal insurance, unless the
13 insurer does one of the following:

14 (A) treats the consumer as otherwise approved by the director if
15 the insurer presents information that the absence or inability relates to the risk
16 for the insurer;

17 (B) treats the consumer as if the applicant or insured had
18 neutral credit information, as defined by the insurer; or

19 (C) excludes the use of credit information as a factor and uses
20 only other underwriting criteria;

21 (6) take an adverse action against a consumer based on credit
22 information, unless an insurer obtains and uses a credit report issued or an insurance
23 score calculated within 90 days from the date the policy is first written or renewal is
24 issued;

25 (7) use credit information unless, not later than every 36 months
26 following the last time that the insurer obtained current credit information for the
27 insured, the insurer recalculates the insurance score or obtains an updated credit
28 report; notwithstanding the requirements of this paragraph,

29 (A) at annual renewal, on the request of a consumer or the
30 consumer's agent, the insurer shall again underwrite and rate the policy based
31 on a current credit report or insurance score; an insurer is not required to

1 recalculate the insurance score or obtain the updated credit report of a
2 consumer more frequently than once in a 12-month period;

3 (B) the insurer may obtain current credit information upon any
4 renewal before the 36 months if consistent with its underwriting guidelines;

5 (C) an insurer is not required to obtain current credit
6 information for an insured under the requirements of (A) of this paragraph if
7 one of the following applies:

8 (i) the insurer is treating the consumer as otherwise
9 approved by the director;

10 (ii) the insured is in the most favorably priced tier of the
11 insurer, within a group of affiliated insurers; however, the insurer may
12 order a credit report if consistent with the insurer's underwriting
13 guidelines;

14 (iii) credit was not used for underwriting or rating the
15 insured when the policy was initially written; however, the insurer may
16 use credit for underwriting or rating the insured upon renewal if
17 consistent with its underwriting guidelines; or

18 (iv) the insurer reevaluates the insured beginning not
19 later than 36 months after inception and thereafter based on other
20 underwriting or rating factors, excluding credit information;

21 (8) use the following as a negative factor in insurance scoring
22 methodology or in reviewing credit information for the purpose of underwriting or
23 rating a policy of personal insurance:

24 (A) credit inquiries not initiated by the consumer or inquiries
25 requested by the consumer for the consumer's own credit information;

26 (B) inquiries relating to insurance coverage if identified as an
27 insurance coverage inquiry on a consumer's credit report;

28 (C) collection accounts with a medical industry code if
29 identified as a medical collection account on the consumer's credit report;

30 (D) multiple lender inquiries if coded by the consumer
31 reporting agency on the consumer's credit report as being from the home

1 mortgage industry and made within 30 days of one another, unless only one
2 inquiry is considered; or

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

7 (b) If it is determined through the dispute resolution process established under
8 15 U.S.C. 1681i(a)(5) (Fair Credit Reporting Act) that the credit information of a
9 current insured was incorrect or incomplete and if the insurer receives notice of the
10 determination from the consumer reporting agency or the insured, the insurer shall
11 again underwrite and rate the consumer within 30 days after receiving the notice.
12 After again underwriting or rating the insured, the insurer shall make any adjustments
13 necessary, consistent with the insurer's underwriting and rating guidelines. If an
14 insurer determines that the insured has overpaid a premium, the insurer shall refund to
15 the insured the amount of overpayment calculated back to the last 12 months of
16 coverage or the actual policy period, whichever period is shorter.

17 (c) If an insurer writing personal insurance uses credit information in
18 underwriting or rating a consumer, the insurer or its agent shall disclose, on the
19 insurance application or at the time the insurance application is taken, that it may
20 obtain credit information in connection with the application. A disclosure shall be
21 written or provided to an applicant in the same medium as the application for
22 insurance. The insurer is not required to provide the disclosure statement required
23 under this subsection to an insured on a renewal policy if the consumer has previously
24 received a disclosure statement. An insurer's use of the following example disclosure
25 statement constitutes compliance with this subsection: "In connection with this
26 application for insurance, we may review your credit report or obtain or use a credit-
27 based insurance score based on the information contained in that credit report. We
28 may use a third party in connection with the development of your insurance score."

29 (d) If an insurer takes an adverse action based on credit information, the
30 insurer shall provide the notice as required in this subsection. The insurer shall
31 provide notice to the consumer

1 (1) as required under 15 U.S.C. 1681m(a) (Fair Credit Reporting Act)
2 that an adverse action has been taken; and

3 (2) explaining the reason for the adverse action; the reason must be
4 provided in sufficiently clear and specific language so that a person can identify the
5 basis for the insurer's decision to take an adverse action; the notification must include
6 a description of up to four factors that were the primary influences of the adverse
7 action; the use of generalized terms such as "poor credit history," "poor credit rating,"
8 or "poor insurance score" does not meet the explanation requirements of this
9 paragraph; standardized credit explanations provided by consumer reporting agencies
10 or other third-party vendors are presumed to comply with this paragraph.

11 (e) An insurer shall indemnify, defend, and hold the insurer's agents harmless
12 from all liability, fees, and costs arising out of or relating to the actions, errors, or
13 omissions of an agent who obtains or uses credit information or insurance scores for
14 an insurer if the agent follows the instructions of or procedures established by the
15 insurer and complies with any applicable law or regulation. This subsection does not
16 provide a consumer or other insured with a cause of action that does not exist in the
17 absence of this subsection.

18 (f) A consumer reporting agency may not provide or sell data or lists that
19 include information that, in whole or in part, was submitted in conjunction with an
20 insurance inquiry about a consumer's credit information or a request for a credit report
21 or insurance score. The restrictions provided in this subsection do not apply to data or
22 lists the consumer reporting agency supplies to an insurance agent from whom
23 information was received, an insurer on whose behalf the agent acted, or an insurer's
24 affiliates or holding companies. Nothing in this subsection shall be construed to
25 restrict an insurer from being able to obtain a claims history report or a motor vehicle
26 report. In this subsection, "information" includes the expiration dates of an insurance
27 policy or any other information that may identify time periods during which a
28 consumer's insurance may expire and the terms and conditions of the consumer's
29 insurance coverage.

30 (g) In this section,

31 (1) "adverse action" means a denial or cancellation of, an increase in a

1 charge for, or a reduction or other adverse or unfavorable change in the terms of
2 coverage or amount of insurance, existing or applied for, in connection with the
3 underwriting of personal insurance;

4 (2) "affiliate" means a company that controls, is controlled by, or is
5 under common control with another company;

6 (3) "applicant" means an individual who has applied to be covered by a
7 personal insurance policy with an insurer;

8 (4) "consumer" means

9 (A) an insured whose credit information is used or whose
10 insurance score is calculated in the underwriting or rating of a personal
11 insurance policy; or

12 (B) an applicant for a personal insurance policy;

13 (5) "consumer reporting agency" means a person that, for monetary
14 fees, dues, or on a cooperative nonprofit basis, regularly engages, in whole or in part,
15 in the practice of assembling or evaluating consumer credit information or other
16 information on consumers for the purpose of furnishing consumer reports to third
17 parties;

18 (6) "credit information" means credit-related information derived from
19 a credit report, found on a credit report, or provided on an application for personal
20 insurance; information that is not credit-related may not be considered "credit
21 information," regardless of whether it is contained in a credit report or in an
22 application or is used to calculate an insurance score;

23 (7) "credit report" means a written, oral, or other communication of
24 information by a consumer reporting agency bearing on a consumer's credit
25 worthiness, credit standing, or credit capacity that is used or expected to be used or
26 collected, in whole or in part, for the purpose of serving as a factor in determining
27 personal insurance premiums, eligibility for coverage, or tier placement;

28 (8) "insurance score" means a number or rating that is derived from an
29 algorithm, computer application, model, or other process that is based, in whole or in
30 part, on credit information for the purposes of predicting the future insurance loss
31 exposure of an individual applicant or insured;

1 (9) "personal insurance" means

2 (A) private passenger automobile coverage;

3 (B) homeowner coverage, including mobile homeowner's,
4 manufactured homeowner's, condominium owner's, and renter's coverage;

5 (C) noncommercial dwelling property coverage;

6 (D) earthquake coverage for a residence or personal property;

7 (E) personal liability and theft coverage;

8 (F) personal inland marine coverage;

9 (G) mechanical breakdown coverage for personal auto or home
10 appliances; and

11 (H) boat, personal watercraft, snowmobile, and recreational
12 vehicle coverage.

13 * **Sec. 3.** AS 21.39 is amended by adding a new section to read:

14 **Sec. 21.39.035. Making of rates; personal insurance.** (a) Credit
15 information may not be used to determine personal insurance rates, premiums, or
16 eligibility for coverage unless the insurance scoring models or scoring processes are
17 filed with the director. Insurance scoring models include all attributes and factors
18 used in the calculation of an insurance score.

19 (b) Information filed under (a) of this section

20 (1) is confidential, and the information is not subject to public
21 inspection under AS 40.25.100 - 40.20.140;

22 (2) shall be considered a trade secret under AS 45.50.910; and

23 (3) may be made public by the director for the sole purpose of
24 enforcement actions taken by the director.

25 (c) In this section,

26 (1) "credit information" has the meaning given in AS 21.36.460;

27 (2) "insurance score" has the meaning given in AS 21.36.460;

28 (3) "personal insurance" has the meaning given in AS 21.36.460.

29 * **Sec. 4.** Section 3 of this Act takes effect immediately under AS 01.10.070(c).

30 * **Sec. 5.** Except as provided in sec. 4 of this Act, this Act takes effect January 1, 2004.