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HOUSE CS FOR CS FOR SENATE BILL NO. 13(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered: 5/18/03

Referred: Rules

Sponsor(s): SENATORS ELTON AND COWDERY, Ellis, Dyson, Guess, French, Lincoln

REPRESENTATIVES Crawford, Ogg, Kerttula, Lynn

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to using credit history or insurance scoring for insurance purposes;
2 and 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. It is the purpose of this Act to regulate the use of credit information for
7 personal insurance so that consumers are provided with certain protections with respect to the
8 use of credit information. This Act is not intended to apply to commercial insurance
9 transactions.

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

11 **Sec. 21.36.460. Uses of and restrictions on credit history or insurance**
12 **scoring applicable to personal insurance.** (a) If an insurer writing personal
13 insurance uses credit information in underwriting or rating a consumer, the insurer
14 shall disclose, either on the insurance application or, at the time the insurance

1 application is taken, that the insurer will obtain credit information in connection with
 2 the application. The disclosure required under this subsection shall be in writing or in
 3 the same medium as the application for insurance. Use of the following statement
 4 constitutes compliance with this subsection: "In connection with this application for
 5 insurance, we will review your credit report or obtain or use a credit-based insurance
 6 score based on the information contained in your credit report. We may use this
 7 information to decide whether to insure you or how much to charge." If an insurer
 8 uses a third party to calculate the applicant's insurance score, the disclosure required
 9 under this subsection must also contain language similar to: "We may use a third-
 10 party in connection with the development of your insurance score."

11 (b) An insurer that takes adverse action involving personal insurance against a
 12 consumer based in whole or in part on credit history or insurance score shall provide
 13 the consumer the opportunity to request reconsideration of the adverse action and
 14 provide written notice to the applicant or named insured. The notice must

15 (1) clearly and specifically state the significant factors of the credit
 16 history or insurance score that resulted in the adverse action, in a manner that allows
 17 the consumer to identify the basis for the adverse action;

18 (2) inform the consumer that the consumer is entitled to

19 (A) request reconsideration of the adverse action; and

20 (B) a free copy of the consumer's report under 15 U.S.C. 1681
 21 et seq. (Fair Credit Reporting Act);

22 (3) inform the consumer that the consumer has the right to correct
 23 errors in the credit report;

24 (4) advise the consumer on ways to improve the consumer's insurance
 25 score; and

26 (5) provide information to assist the consumer with the error correction
 27 process.

28 (c) An insurer may use credit history to cancel, deny, underwrite, or rate
 29 personal insurance only in combination with other substantive underwriting factors.
 30 For the purposes of this subsection,

31 (1) refusal to offer personal insurance coverage to a consumer

1 constitutes denial of personal insurance; and

2 (2) an offer of placement with an affiliate insurer does not constitute
3 denial of coverage.

4 (d) An insurer may not

5 (1) fail to renew or, at renewal, again underwrite or rate a personal
6 insurance policy based in whole or in part on a consumer's credit history or insurance
7 score; the prohibition in this paragraph against underwriting or rating a personal
8 insurance policy at renewal may be waived by the consumer; waiver allowed under
9 this paragraph must occur at each renewal;

10 (2) cancel, deny, underwrite, or rate personal insurance coverage based
11 in whole or in part on

12 (A) the absence of credit history or the inability to determine
13 the consumer's credit history if the insurer has received accurate and complete
14 information from the consumer; this subparagraph does not apply if the insurer
15 treats the consumer as if the consumer had neutral credit information as
16 approved by the director;

17 (B) credit inquiries not initiated by the consumer;

18 (C) credit inquiries relating to insurance coverage, if identified
19 on a consumer's credit report;

20 (D) credit inquiries by the consumer for the consumer's own
21 credit information;

22 (E) multiple lender inquiries, if coded on the consumer's credit
23 report as being for automobile, boat, recreation vehicle, or home mortgage
24 loans, unless all inquiries under that code within a 30-day period are counted
25 as one;

26 (F) credit history or an insurance score based on collection
27 accounts identified with a medical industry code;

28 (G) the consumer's use of a particular type of credit card,
29 charge card, or debit card or the absence of a credit card;

30 (H) the consumer's total available line of credit; however, the
31 consumer's ratio of debt to total available line of credit may be considered;

1 (I) the age of the most recent automobile or home loan obtained
2 by the consumer; however, an insurer may consider the bill payment history or
3 total number of loans; or

4 (J) the person's age when credit is established;

5 (3) use the credit history of the consumer when the consumer is
6 adversely affected by a joint account owner who was the spouse of the consumer or a
7 joint account owner who is the spouse of the consumer and who is a party to a divorce
8 or dissolution action against the consumer; this paragraph applies only if the consumer
9 provides written notice to the insurer that identifies the credit information that is
10 adversely affected by the joint account owner; this paragraph does not prevent the use
11 of credit history that is not identified by the consumer as required by this paragraph;

12 (4) use an insurance score that is calculated using the income, age, sex,
13 address, zip code, census block, ethnic group, religion, marital status, or nationality of
14 the consumer as a factor;

15 (5) use credit history to determine an insurance score if the history is
16 obtained more than 90 days before the policy is issued;

17 (6) use an insurance score derived from an insurance scoring model to
18 determine eligibility for an insurance payment plan; this paragraph does not prohibit
19 the use of credit history to evaluate the ability of the consumer to make payments.

20 (e) If incorrect credit history is used to underwrite or rate personal insurance
21 coverage and a consumer is charged higher premiums or offered less favorable policy
22 terms due to the disputed credit history, the insurer shall reissue or rerate the policy
23 retroactive to the effective date of the current policy term and the policy, as reissued or
24 rered, shall provide premiums and policy terms the consumer would have been
25 eligible for if accurate credit history had been used to underwrite or rate the policy. If
26 an insurer determines that the insured has overpaid a premium, the insurer shall refund
27 to the insured the amount of overpayment calculated back to the last 12 months of
28 coverage or the actual policy period, whichever period is shorter. This subsection
29 applies only if the consumer discovers the incorrect credit history within 12 months
30 after the policy is issued, resolves the dispute as described under (f) of this section or
31 under the process in 15 U.S.C. 1681 et seq. (Fair Credit Reporting Act), and notifies

1 the insurer in writing that the dispute has been resolved.

2 (f) If the use of disputed credit history results in denial or cancellation of
3 personal insurance coverage, an insurer shall reunderwrite the coverage without the
4 use of credit information as a factor. This subsection applies only if, within 10 days
5 following denial or cancellation, the consumer provides a reconsideration certification
6 to the insurer that sets forth any items of the credit history that are disputed and that
7 indicates that the consumer has initiated the dispute resolution process in 15 U.S.C.
8 1681 (Fair Credit Reporting Act) by requesting a copy of the consumer's credit report.
9 An insurer's reconsideration certification form

10 (1) is subject to filing and approval by the director under
11 AS 21.42.120; and

12 (2) shall be provided by an insurer to the consumer at the time of
13 denial or cancellation.

14 (g) This section does not require an insurer to use credit history for any
15 purpose.

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

23 (i) In this section,

24 (1) "adverse action" has the meaning given in 15 U.S.C. 1681 et seq.
25 (Fair Credit Reporting Act) and includes

26 (A) cancellation, denial, or failure to renew personal insurance
27 coverage;

28 (B) charging a higher insurance premium for personal
29 insurance than would have been offered if the credit history or insurance score
30 had been more favorable, whether the charge is by

31 (i) application of a rating rule;

1 (ii) assignment to a rating tier that does not have the
2 lowest available rates; or

3 (iii) placement with an affiliate company that does not
4 offer the lowest rates available to the consumer within the affiliate
5 group of insurance companies; or

6 (C) any reduction or adverse or unfavorable change in the
7 terms of coverage or amount of personal insurance due to a consumer's credit
8 history or insurance score; a reduction or adverse or unfavorable change in the
9 terms of coverage occurs when

10 (i) coverage provided to the consumer is not as broad in
11 scope as coverage requested by the consumer but available to other
12 insureds of the insurer or any affiliate; or

13 (ii) the consumer is not eligible for benefits that are
14 available through affiliate insurers;

15 (2) "affiliate" has the meaning given in AS 21.22.200;

16 (3) "consumer" means an individual policyholder or applicant for
17 insurance;

18 (4) "consumer report" has the meaning given in 15 U.S.C. 1681 et seq.
19 (Fair Credit Reporting Act);

20 (5) "credit history" means written, oral, or other communication of
21 information by a consumer reporting agency bearing on a consumer's
22 creditworthiness, credit standing, or credit capacity that is used or expected to be used,
23 or collected in whole or in part, for the purpose of serving as a factor in determining
24 personal insurance premiums or eligibility for coverage;

25 (6) "insurance score" means a number or rating that is derived from an
26 algorithm, computer application, model, or other process that is based in whole or in
27 part on credit history;

28 (7) "personal insurance" means

29 (A) private passenger automobile or motorcycle coverage;

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

- 1 (C) dwelling property coverage;
 2 (D) earthquake coverage for a residence or personal property;
 3 (E) personal liability and theft coverage;
 4 (F) personal property inland marine coverage;
 5 (G) personal boat, watercraft, snowmobile, and recreational
 6 vehicle coverage; and
 7 (H) umbrella insurance coverage.

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

9 **Sec. 21.39.035. Required filing of insurance scoring models; personal**
 10 **insurance.** (a) Credit history may not be used to determine personal insurance rates,
 11 premiums, or to make underwriting decisions unless the insurance scoring models are
 12 filed with the director. Insurance scoring models include all attributes and factors
 13 used in the calculation of an insurance score, statistical validation, documentation,
 14 appropriate loss information, and any other relevant factors.

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

16 (1) is confidential, shall be considered a trade secret, and is not subject
 17 to public inspection under AS 21.06.060;

18 (2) may be released or otherwise shared as provided in AS 21.06.060;
 19 and

20 (3) shall be filed by the insurer and may not be filed by a third party or
 21 vendor.

22 (c) An insurer shall comply with AS 21.36.460 when using credit history to
 23 calculate a personal insurance score or determine personal insurance premiums or
 24 rates.

25 (d) Notwithstanding (b) of this section, the director shall make available to the
 26 public a general description of the insurance scoring models filed under (a) of this
 27 section. A general description of insurance scoring models may not disclose any trade
 28 secrets contained in the models.

29 (e) In this section,

30 (1) "credit history" has the meaning given in AS 21.36.460;

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

- 1 (3) "personal insurance" has the meaning given in AS 21.36.460.
- 2 * **Sec. 4.** AS 21.36.460(g), added by sec. 2 of this Act, and AS 21.39.035(b), added by sec.
- 3 3 of this Act, take effect June 1, 2003.
- 4 * **Sec. 5.** Except as provided in sec. 4 of this Act, this Act takes effect January 1, 2004.