

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

1153 SENATE JUDICIARY

BE IT FURTHER RESOLVED, that the Alaska Municipal League supports any efforts to substantially increase penalties for those who operate clandestine illegal substance laboratories particularly in cases where minor children could be impacted.

Fairbanks Daily News-Miner

Meth 101: Hotels learn to spot labs

By KYLE HOPKINS
Staff Writer

Tuesday, February 25, 2003 - The hot plates, alcohol, cold medicine, pickle jars and mostly household chemicals collected by Alaska State Trooper Teague Widmier offered enough over-the-counter ingredients to create about five grams of methamphetamine. And to accidentally scorch a hotel room or gas oven nearby guests when the chemicals are hastily dumped before a raid.

Widmier displayed the make-shift meth lab components at a Monday afternoon forum at the Westmark. More than 60 representatives of area hotels, motels and inns gathered to learn how to spot labs and their operators.

Two recent meth busts in which labs or ingredients were discovered in local hotel rooms helped prompt the event, said Bob Harmon, general manager for the Westmark Fairbanks Hotel.

"It was time to just set something up for the hospitality community so they can know what to look for," Harmon said.

Widmier, an investigator with the statewide drug enforcement unit in Fairbanks, encouraged the group to call authorities when they suspect a room is being used as a lab.

"We'd be more than glad to come over and pay a visit and see what's going on," he said.

Doris Lundin, owner of the Fairbanks Hotel, said she hopes employees return to work with a higher sense of vigilance.

"These kinds of chemicals can hurt everybody in a hotel," she said.

Methamphetamine production in Fairbanks and North Pole still appears to be on the rise, Widmier said. Many of the labs authorities raid here are designed to manufacture enough for a cook's personal use and to share with friends, but are so prevalent authorities could bust two a week if they had the resources.

Authorities also have worked with major Fairbanks retailers to limit the amount of Sudafed sold to a single customer.

Widmier told the collection of managers, security, housekeepers and other industry workers how meth is created and how to spot each step of the process. The table of ingredients ranged from relatively specialized products like a nutritional supplement for animals and sodium metal to familiar items like Drano and Iso-Heet.

Most of the ingredients by themselves wouldn't raise a red flag. But meth cooks buy certain household items like matches, coffee filters and particularly Sudafed in huge quantities, Widmier said.

Labs produce a strong chemical smell sometimes compared to model airplane glue. Hotel staff also might want to watch for the remnants of boxes of matches ripped apart and plastic containers with protruding hoses.

"This is exactly what I wanted them to show me. The chemicals, the containers," said Sam Brown, who handles security as bell captain for the Regency Fairbanks Hotel. "I had a good idea of what I was looking for. Now we've nailed it down."

A high volume of phone calls to and from a room and heavy traffic at odd times of the night also may be cause for suspicion.

Methamphetamine users may seem anxious, talk rapidly and appear itchy, the trooper said. Rotted teeth and sores on the face and hands, from scratching, also are common. The high lasts 10 to 12 hours, keeping addicts up for days before they crash, hard. Widmier painted an unappealing picture of the drug and its use.

"A lot of them don't snort it now that are heavy meth users. They just eat it," he said.

The audience watched a short training film geared toward law enforcement, warning that improperly handling an active meth lab or ingredients can lead to injury or death.

On Jan. 9, drug investigators raided a room at the Ranch Motel off South Cushman Street and found two men in the middle of cooking what was suspected to be meth. On Feb. 3, University Fire Department responded to a fire at the Aspen Hotel off Airport Way that investigators blamed on a suspected methamphetamine lab. A 19-year-old man was charged with manufacturing the drug.

Lundin fears a trend. A member of the Downtown Association and the Fairbanks Convention and Visitors Bureau, she said

she's worked to improve the image of her business.

"Anything like this that looks like it's trying to come in and infiltrate really gets my gander up," she said.

Contact Kyle Hopkins at khopkins@newsminer.com or call 459-7593.

Fairbanks Daily News-Miner

Suspected meth lab ignites hotel fire

By DAN RICE
Staff Writer

Tuesday, February 04, 2003 - Chemicals from a suspected methamphetamine lab ignited a blaze in a west Fairbanks hotel Monday morning, causing the evacuation of about 20 occupants and thousands of dollars in damage to the building.

The fire was contained to one room of the Aspen Hotel off Airport Way and was extinguished by a sprinkler system shortly after it began. University Fire Department received the call for the blaze at about 8 a.m. and responded with 27 firefighters who spent about two hours ventilating the building and clearing the rooms for evacuated occupants to return.

More than four hours after the fire was reported, Alaska State Troopers arrested Brandon Burnett, 19, on a charge of manufacturing meth during a traffic stop in south Fairbanks. Burnett had been staying in the room where the blaze started since Saturday, said trooper Teague Widmeir, an investigator with the statewide drug enforcement unit.

He was not in the room when the fire started and was unaware of it when contacted by troopers, Widmeir said. He said that Burnett admitted to troopers that he was manufacturing meth.

Widmeir called the operation a "mobile box lab" and said it was relatively small scale. Burnett kept the chemicals and utensils he used to make the drug in a packing trunk, he said.

Firefighters called drug investigators after discovering chemicals in the room, Widmeir said, and it appears the chemicals were the direct cause of the blaze.

"It appeared that one of the Mason jars used for cooking spilled over, and there was a candle found by the jar," he said, adding it's also possible that a bad reaction between chemicals started the fire.

Widmeir said troopers also found finished meth as well as scales, indicating that meth had been sold from the room.

More people than Burnett could have been involved with the lab, he said, and it's possible troopers will make more arrests. Burnett could also face more charges in connection with the damage caused to the hotel, he said.

The operation is the second meth lab that troopers have discovered in a Fairbanks hotel in less than a month. On Jan. 9, drug investigators raided a room at the Ranch Motel off South Cushman Street and found two men in the middle of cooking what was suspected to be meth.

Jeffrey Franks, 41, and Bruce Barcus, 42, were both arrested in connection with that bust.

"It's starting to be (a trend)," Widmeir said of meth labs in hotels.

Phil Rounds, a battalion chief with the University Fire Department, said Monday's blaze could have been much worse if not for the sprinkler system that had the blaze extinguished before firefighters even arrived. He estimated damage to the building at \$25,000 to \$30,000.

"When you consider the potential loss," Rounds said. "That (sprinkler) was worth every penny."

Reporter Dan Rice can be reached at drice@newsminer.com or 459-7503.



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January

Web posted Friday, January 10, 2003

Suspected meth lab in Fairbanks raided

FAIRBANKS (AP) -- Drug investigators kicked in the door of a motel room Thursday and interrupted two men in the middle of cooking what is suspected to be methamphetamine.

Three drug investigators went to the Ranch Motel Thursday morning and knocked on the door of one of the units, said Alaska State Trooper Teague Widmier, an investigator for the statewide drug enforcement unit in Fairbanks.

They didn't get an answer, but "all of the a sudden we heard jars clinking," Widmier told the Fairbanks Daily News-Miner. He kicked in the door and interrupted the two men inside as they were trying to flush chemicals down the toilet and bathtub drain, Widmier said.

"The hot plates were still hot and the odor was very strong," said Widmier, indicating authorities likely caught the two men in the middle of cooking meth. "The Mason jars were just empty, laying on the bathroom floor and bath tub and they had water running in the tub," he said.

Authorities said they were tipped off to the operation.

Jeffrey Franks, 41, was arrested on a warrant and a charge of probation violation for a prior meth bust. Bruce Barcus, 41, was charged with fourth-degree misconduct involving a controlled substance after investigators found traces of meth inside his pockets, Widmier said.

Investigators also found traces of methamphetamines scattered throughout the room, he said. Widmier thinks the suspects had been using meth all night long because the pair wouldn't stop twitching, a trait associated with methamphetamine use. Widmier called the suspected lab a medium-sized operation.

An agent from the Drug Enforcement Administration and investigators from the Fairbanks University of Alaska police departments helped collect samples from inside the hotel room.

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The samples will be sent to the state crime lab and, pending test results, Barcus and Franks could face more charges.

Widmier said they found toluene, acetone, matches for red phosphorus and iodine, all highly flammable and toxic ingredients used in cooking meth.

Because the toxic chemicals used in making meth can seep into the carpet, draperies and furniture, motel owner Donna Gilbert said the apartment won't be livable until it's stripped clean of the lingering chemicals.



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Frontiersman

Online archives from the Wasilla Frontiersman.

February 15, 2002

Valley hotbed of meth activity, officials say

By NAOMI KLOUDA-Frontiersman reporter

MAT-SU - Drug enforcement officials say there's an alarming increase in methamphetamine production in the Valley, but a little help from the public could see the problem stamped out.

Palmer's District Attorney office received 54 new meth lab cases to prosecute this quarter, compared to Anchorage's 57 new cases for the same period, said Jack Smith, assistant district attorney.

"What we are seeing here is potentially an epidemic like in the Lower 48," said Mat-Su Drug Enforcement Unit Supervisor Patrick Davis. "Yet Alaska has the opportunity to take a pro-active approach and curb this by hitting it en masse."

The good news is that the epidemic has a cure - if enough people are educated about meth production. It's not like the fad drugs that are brought into the state, such as cocaine and ecstasy, Davis said. Making meth is dangerous.

Meth production creates toxic vapors and wastes that are so hazardous suspects are made to remove their clothing and don chemical suits for the ride to jail.

Drug unit officers undergo special training to make them aware of the 30,000 possible chemicals in the processes used to make meth. Davis is an Alaska State Trooper, yet he had to learn enough about molecules and the incompatibility of chemicals to make him a chemist.

The Alaska Legislature passed a law last year making meth production a class A felony offense, recognizing it as a worse crime, in fact, than using the drug. Possession or using meth is a class C felony crime. This gives judges the ability to sentence meth "cooks" to five-year presumptive terms, Smith said.

Methamphetamine was devised by the Nazis in Germany during World War

II.

"It was given to soldiers to amp them up for battle," Davis said.

In the '60s, Davis said, meth began cropping up as "biker's dope" in California, among such groups as the Hell's Angels.

The drug can be ingested as a powder, by shooting up or smoking and gives an eight to 12-hour high that begins with a 30-40 minute rush. If more meth is taken, the person can stay awake for three days. But after 72 hours the body starts shutting down, wanting to sleep. The ensuing deep sleep is like the person was knocked out by anesthesia. "You can't wake them up," Davis said.

"When the person wakes and craves more, the process starts again but he will reach a tweaking stage considered dangerous, when the body tries to shut down and the drug won't let it," Davis said.

A superhuman feeling similar to that given by LSD can result. Also, paranoia and other behavior makes the user dangerous to those around him and to officers trying to make a traffic stop or arrest.

Entering a place where meth is made involves an array of hazards. Drug officers involved with collecting evidence from meth labs in the previous decade suffered kidney and liver failure and damage to their lungs. Some died in explosions from entering rooms so charged with vapors that an electrical carpet-spark ignited fire.

The drug enforcement agency stepped in about 10 years ago, after Occupational Safety and Health Administration (OSHA) decided the only officers who should be handling the stuff used to make meth ought to be highly trained.

After a 1999 bust in Valdez, Davis said, the drug team had to wait a day and half for a vapor cloud to clear out before they could enter the home to clean up the hazardous chemicals.

Landlords who unknowingly rent to methamphetamine "cooks" find their property uninhabitable after the renter moves on, Smith said.

"The house becomes an environmental hazard," he explained.

The Valley has proven an attractive place to set up "Beavis and Butthead" meth operations - small-time efforts for personal use and for sale to a few people. The wide open spaces between neighbors in the Valley grant more privacy, Smith and Davis said. The drug unit has busted larger meth operations, professionals who moved here from Fairbanks where they had previous meth convictions, and former pot growers who decided it's more lucrative to make meth than to wait 90 days for a marijuana crop.

Officers found two meth operations in vans being driven around town. "They were cooking it on a stove or hot plate in the van, probably to avoid being detected by neighbors," Smith said.

To catch meth lab operators, drug enforcement officers depend on tips from the public. Neighbors might not realize the drug is being manufactured next door, but they notice the smell of bleach or starter fluid - strong odors they may not identify.

"They might see weird activity, such as a lot of people going in and out of a house in a short amount of time, indicating the cook has made a batch and now it's ready to sell," Davis said.

Store clerks should be suspicious if they see someone purchasing large quantities of coffee filters, matches, pseudoephedrine and bleach, according to information that has been provided to store owners by the drug unit.

The process for making meth takes cold medication, such as pseudoephedrine, and chemically alters it so that it produces a high, Davis said.

"The ephedrine molecule in the chemical process that is used basically removes an oxygen atom and turns it into methamphetamine," he explained.

All labs share common hazards such as flammability, combustibility and heat stress, as well as the inherent hazards of the original products being used, like Heet, fuel and acids. There are also unique hazards to each lab in that the gases generated by combinations of phosphorous and hydriotic acid, are chemical compounds that can be pyroforic, meaning they react with air to spontaneously ignite, or aquaforic, meaning that they can explode with contact to water.

What's especially troubling is when a whole family lives in the environment in which meth is produced. One Wasilla drug arrest and conviction stemmed from a 13-year-old boy who reportedly told his school counselor that his dad made him help make meth. The boy's job, the child said, was to tear up matchbooks used to obtain red phosphorous.

In that same home, drug enforcement officers reported they found the boy's father sitting with a baby on his lap and a loaded syringe next to him. On the stove top, a batch of meth reportedly sat drying in a pan. Three other children and his wife all lived in the same apartment, which was in a Wasilla apartment complex.

The 13-year-old has since been taken from the home and reportedly lives with relatives in the Lower 48. His father is now serving time for a drug conviction on that case, Smith said.

Davis said about 90 percent of their cases come from tips given by the public. The Mat-Su Drug Team encourages anyone with information

concerning potential meth lab activity to contact them at 373-0705.

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Online archives from the Wasilla Frontiersman.

August 14, 2001

Law enforcement officials take part in drug training

By Frontiersman staff

ANCHORAGE — Alaska State Troopers are among the more than 50 law enforcement officers from around the state taking part in nine days of training offered by the U.S. Department of Justice Drug Enforcement Administration, Aug. 6-15 at the National Guard Armory at Fort Richardson.

Those receiving the training include federal agents, state investigators and local police officers from across the state. The training is designed to provide law enforcement officers with the tools and techniques necessary to deal with illegal methamphetamine laboratories in a safe and proper manner.

According to Lt. Al Storey, commander of the Alaska State Trooper Statewide Drug Enforcement Unit, "the extreme danger of clandestine labs is widely known in other states, but these types of labs are a fairly recent development in Alaska." Alaska law enforcement units seized 50 labs in the calendar year 2000, nearly double the number seized in 1999.

"The trend towards discovering an increasing number of labs is expected to continue and law enforcement officials are worried about this illegal activity," Storey said, "not only because of the effect that the illegal drug has on its users, but also because of the dangers of fires and chemical contamination."

Officers attending the class will learn what chemicals are used in clandestine labs, the dangers of those chemicals, and how to properly collect samples of evidence for subsequent prosecution. They will also be taught how to use the specialized equipment needed for work in contaminated

locations, without endangering their own health.

The training is being co-hosted by the Drug Enforcement Administration and the Alaska State Troopers, with additional support from the Anchorage Police Department and the Alaska National Guard Counter Drug Support Unit.

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ALASKA STATE LEGISLATURE



SENATOR GRETCHEN GUESS

Memorandum

Date: March 19, 2003
To: Senator Ralph Seekins
Chair, Senate Judiciary
From: Senator Gretchen Guess
Re: Changes to CSSB9 (STA)

Changes to the CS are as follows:

Pg. 1 line 14 INSERT "or team of law enforcement officers"

Pg. 2 line 2 INSERT "as part of an investigation,"

Pg. 2 line 9 INSERT "this subsection is on the primary law enforcement agency that conducted the investigation."

Pg. 5 line 21 INSERT "that a substance for which a limit has been set under (b) of this section is present on the property in an amount or concentration that is above the limit set by the department for that substance." [DELETED the presence of one of the following substances above the limit set by the department for that substance: lead, mercury, methamphetamines, volatile organic compounds, iodine, sodium hydroxide, red phosphorous, lithium metal, sodium metal, or another substance for which the department has set a limit under (b) of this section.]

Pg. 5 line 24 (b) INSERT "The Department of Public Safety shall annually submit a list to the department that contains the names of hazardous chemicals that are associated with the methods used at illegal drug manufacturing sites in the state that could contaminate a dwelling."

Pg. 5 line 30 INSERT The department "may" also determine... [DELETE "shall"]

Pg. 6 line 1 INSERT or occupy the site and "may" adopt...[DELETE "shall"]

Pg. 6 line 13 INSERT the owner certifies to the department "under penalty of unsworn falsification that"

Pg. 7 line 9 [DELETE subsection (b) from CSSB 9(STA)]

23-LS0186\V
Lauterbach
3/19/03

CS FOR SENATE BILL NO. 9()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS GUESS, Ellis, French

A BILL
FOR AN ACT ENTITLED

1 "An Act relating to the evaluation and cleanup of sites where certain controlled
2 substances may have been manufactured or stored; 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.** The purpose of this Act is to provide a just, equitable, and practicable
7 method, to be cumulative with and in addition to any other remedy provided by law, whereby
8 property that endangers the life, safety, or welfare of the general public or occupants of the
9 property because of toxic chemical contamination that may result from illegal drug
10 manufacturing may be required to be decontaminated or vacated and secured against use.

11 * **Sec. 2.** AS 46.03 is amended by adding new sections to read:

12 **Article 7A. Cleanup of Illegal Drug Sites.**

13 **Sec. 46.03.500. Notice of illegal drug manufacturing site.** (a) When a law
14 enforcement officer or team of law enforcement officers, qualified under federal

1 regulations to investigate and dismantle illegal drug manufacturing sites, determines,
2 as part of an investigation, that a site constitutes an illegal drug manufacturing site, the
3 primary law enforcement agency conducting the investigation shall notify the owner
4 of the property, any lienholder of record, the occupants and users of the property, and
5 the department that the determination has been made. The owner of the property may
6 appeal the determination to the superior court for review of whether the determination
7 was made in compliance with this subsection. In the appeal, the burden of proving by
8 a preponderance of the evidence that the determination was made in compliance with
9 this subsection is on the primary law enforcement agency that conducted the
10 investigation.

11 (b) The notice to the property owner required under (a) of this section shall be
12 given in a manner that is consistent with the Alaska Rules of Civil Procedure for the
13 service of process in a civil action in this state and must include the following
14 information:

15 (1) the parcel identification number and legal description of the
16 property where the site is located;

17 (2) a statement of the determination made by the law enforcement
18 officer that the site was an illegal drug manufacturing site and the findings that formed
19 the basis for the determination;

20 (3) a citation to, and short summary of, AS 46.03.510, which restricts
21 transfer and occupancy of the site until it is determined to be fit for use; and

22 (4) the following information, which shall be provided to the law
23 enforcement agency by the department:

24 (A) a copy of the standards contained in regulations adopted
25 under AS 46.03.530 that determine whether the property is fit for use;

26 (B) a copy of the sampling procedures established under
27 AS 46.03.520(b) and a copy of the list of laboratories maintained under
28 AS 46.03.520(c) that must be used for determining whether the property is fit
29 for use; and

30 (C) a copy of the guidelines for decontamination established by
31 the department under AS 46.03.540(b).

1 (c) The notice to the department required under (a) of this section must
2 include

3 (1) the parcel identification number and legal description of the
4 property where the site is located;

5 (2) a statement of the determination made by the law enforcement
6 officer that the site was an illegal drug manufacturing site and the findings that formed
7 the basis for the determination;

8 (3) the name and mailing address of the person who owns the property
9 where the site is located; and

10 (4) the name and mailing address of any lienholder of record for the
11 property where the site is located.

12 (d) The notice required under (a) of this section for the occupants and users of
13 the property shall be accomplished by immediate posting of the entryway of the
14 property with a notice that includes the location of the property, the information
15 described in (b)(2) and (3) of this section, and a statement that the property may pose a
16 substantial risk of physical harm to persons or animals that enter or occupy the
17 property.

18 (e) If a person other than the owner, such as a property manager or rental
19 agency, is authorized to let others use or occupy property for which an owner has
20 received a notice under (a) of this section or is authorized to transfer, sell, lease, or
21 rent the property to others, the owner of the property shall communicate the substance
22 of the notice to that person within four days after receiving the notice.

23 **Sec. 46.03.510. Restrictions on property.** (a) Until determined to be fit for
24 use under AS 46.03.550, the property for which a notice has been issued under
25 AS 46.03.500(a) may not be transferred, sold, leased, or rented to another person
26 except as provided in (b) of this section, and a person may not use or occupy the
27 property at any time after the fourth day following the day on which the property was
28 posted with the notice required under AS 46.03.500(d), except as necessary for testing
29 or decontamination under AS 46.03.520 and 46.03.540. An oral or written contract
30 that would transfer, sell, lease, rent, or otherwise allow the use of the property in
31 violation of this subsection is voidable between the parties at the option of the

1 purchaser, transferee, user, lessee, or renter. However, this subsection does not

2 (1) make voidable a promissory note or other evidence of indebtedness
3 or a mortgage, trust deed, or other security interest securing the promissory note or
4 evidence of indebtedness, if the note or evidence of indebtedness, mortgage, trust
5 deed, or other security interest was given to a person other than the person
6 transferring, selling, using, leasing, or renting the property to induce the person to
7 finance the transfer, sale, use, leasing, or rental of the property;

8 (2) make voidable a lease or rental agreement between the property
9 owner and the person who caused the property to be contaminated and determined
10 unfit for use; or

11 (3) impair obligations or duties required to be performed on
12 termination of a contract, as required by the contract, such as payment of damages or
13 return of refundable deposits.

14 (b) Notwithstanding (a) of this section, property covered by (a) of this section
15 may be transferred or sold if full written disclosure is made to the prospective
16 transferee or purchaser that the property has been determined to be an illegal drug
17 manufacturing site and the property has not been determined to be fit for use. The
18 disclosure shall be attached to the earnest money receipt, if any, and shall accompany
19 the transfer or sale document. The disclosure is not considered to be part of the
20 transfer or sale document, however, and may not be recorded. The property shall
21 continue to be subject to the restrictions in (a) of this section after transfer or sale
22 under this subsection.

23 (c) A person who knowingly transfers, sells, leases, or rents property to
24 another, knowingly allows another to use or occupy property, or, being the owner of
25 property, knowingly occupies or uses the property, in violation of this section is guilty
26 of a class A misdemeanor. In this subsection, "knowingly" has the meaning given in
27 AS 11.81.900(a).

28 (d) It is an affirmative defense to a prosecution under (c) of this section for
29 allowing another to use or occupy the property that the defendant or an agent of the
30 defendant, within four days after receiving a notice under AS 46.03.500, filed an
31 appropriate civil action to remove the user or occupier from the property for which the

1 notice was received.

2 **Sec. 46.03.520. Sampling and testing procedures.** (a) If the owner of the
3 property for which notice was received under AS 46.03.500(b) desires to determine if
4 the property is fit for use, the owner shall cause the site to be tested for the substances
5 covered in regulations adopted under AS 46.03.530, using the sampling procedures
6 and laboratory services specified under (b) and (c) of this section. The property owner
7 shall inform the laboratory used for a test under this subsection that the test is related
8 to property that has been determined to be an illegal drug manufacturing site.

9 (b) The department shall establish sampling and testing procedures for
10 evaluating substances on property that may have been an illegal drug manufacturing
11 site.

12 (c) The department shall establish and maintain a list of laboratories in the
13 state that have notified the department that they have the capacity to perform the
14 testing procedures established under this section and that they wish to be on the list
15 maintained under this subsection. A laboratory may not be included on the list unless
16 the laboratory agrees to send the department a copy of test results related to properties
17 whose owners have informed the laboratory that the test results are for property that
18 has been determined to be an illegal drug manufacturing site.

19 **Sec. 46.03.530. Standards for determining fitness.** (a) Property for which a
20 notice was received under AS 46.03.500(b) is not fit for use if sampling and testing of
21 the property under AS 46.03.520 shows that a substance for which a limit has been set
22 under (b) of this section is present on the property in an amount or concentration that
23 is above the limit set by the department for that substance.

24 (b) The Department of Public Safety shall annually submit a list to the
25 department that contains the names of hazardous chemicals that are associated with
26 the methods used at illegal drug manufacturing sites in the state that could contaminate
27 a dwelling. The department shall adopt regulations that set the limit for each
28 substance listed by the Department of Public Safety for purposes of determining
29 whether the property for which a notice was received under AS 46.03.500 is fit for
30 use. The department may also determine whether there are other substances
31 associated with illegal drug manufacturing sites that may pose a substantial risk of

1 physical harm to persons or animals that enter or occupy the site and may adopt
2 regulations that set limits for those substances for purposes of determining whether the
3 property for which notice was received under AS 46.03.500 is fit for use.

4 **Sec. 46.03.540. Decontamination requirements.** (a) If the owner desires to
5 decontaminate the property for which a notice has been issued under AS 46.03.500,
6 the owner shall follow the guidelines established by the department under (b) of this
7 section.

8 (b) The department shall establish guidelines for decontamination of sites that
9 are determined to be unfit for use under AS 46.03.530. The department shall provide
10 a copy of the guidelines to any person who requests a copy.

11 **Sec. 46.03.550. Fitness for use.** (a) Property for which a notice has been
12 issued under AS 46.03.500 shall be determined by the department to be fit for use if
13 the owner certifies to the department under penalty of unsworn falsification that

14 (1) based on sampling and testing procedures established by the
15 department under AS 46.03.520(b) and testing performed by laboratories that are on
16 the list maintained by the department under AS 46.03.520(c), the limits on substances
17 specified in regulations adopted under AS 46 03.530 are not exceeded on the property;

18 (2) if the property was ever tested under AS 46.03.520 and the test
19 results showed the property to be unfit for use under AS 46.03.530, decontamination
20 procedures were performed in accordance with the guidelines established under
21 AS 46.03.540(b) and the requirements of (1) of this subsection have been met; or

22 (3) a court has held that the determination that the property was an
23 illegal drug manufacturing site was not made in compliance with AS 46.03.500(a).

24 (b) The department shall maintain a list of properties for which the department
25 has received notice under AS 46.03.500(c). When the department determines under
26 (a) of this section that a property on the list is fit for use, the department shall remove
27 the property from the list and notify the owner of the property that the property is fit
28 for use. On request, the department shall give a copy of the list maintained under this
29 section to any person who requests the list.

30 **Sec. 46.03.560. Securing the property.** The owner of property for which a
31 notice was received under AS 46.03.500(b) shall ensure that the property is vacated

1 and secured against use

2 (1) within four days after receiving the notice if the owner does not test
3 the property under AS 46.03.520 within four days after receiving the notice; or

4 (2) within four days after receiving the test results if the owner tests
5 the property within four days after receiving the notice, the test shows the presence of
6 a substance that exceeds the limits set in regulations adopted under AS 46.03.530, and
7 the owner does not begin decontamination procedures under AS 46.03.540 within four
8 days after receiving the test results.

9 **Sec. 46.03.570. Regulations.** The department shall adopt regulations
10 implementing AS 46.03.500 - 46.03.599.

11 **Sec. 46.03.599. Definitions.** In AS 46.03.500 - 46.03.599,

12 (1) "illegal drug manufacturing site" means property on which there is
13 reasonable cause to suspect contamination with chemicals associated with the
14 manufacturing of a controlled substance and where

15 (A) activity involving the unauthorized manufacture of a
16 controlled substance listed on schedule I or II in AS 11.71 or a precursor
17 chemical for the substances has occurred; or

18 (B) there are kept, stored, or located any of the devices,
19 equipment, things, or substances used for the unauthorized manufacture of a
20 controlled substance listed on schedule I or II in AS 11.71;

21 (2) "site" means an illegal drug manufacturing site.

22 * **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to
23 read:

24 **REGULATIONS.** The Department of Environmental Conservation may immediately
25 begin to develop and adopt regulations to implement this Act. The regulations take effect
26 under AS 44.62 (Administrative Procedure Act).

27 * **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to
28 read:

29 **CERTIFICATION OF EFFECTIVE DATE OF REGULATIONS.** The lieutenant
30 governor shall certify to the revisor of statutes the effective date of the initial regulations
31 adopted by the Department of Environmental Conservation under sec. 3 of this Act.

1 * Sec. 5. Sections 1 and 2 of this Act take effect on the effective date of the initial
2 regulations adopted by the Department of Environmental Conservation under sec. 3 of this
3 Act.

4 * Sec. 6. Sections 3 and 4 of this Act take effect immediately under AS 01.10.070(c).

SB

13

Alaska State Legislature

Senator John Cowdery
Chair, Rules & Transportation



Senator Kim Elton
Minority Whip

MEMORANDUM

April 2, 2003

To: Senator Ralph Seekins, Chair
Senate Judiciary Committee

From: Senator John Cowdery *lc*
Senator Kim Elton *KE*

Re: Hearing Request

We respectfully request a hearing on Senate Bill 13, prohibiting discrimination in insurance rates based on credit rating or credit scoring.

We appreciate the hours you devoted to this issue in the Labor & Commerce committee. The attached sponsor statement lays out many of the problems with the practice of credit scoring. We have also attached several letters and news articles, as well as the recent Alaska Division of Insurance study.

We look forward to taking this matter up at the committee's earliest convenience.

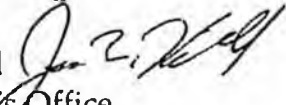


SENATOR KIM ELTON

MEMORANDUM

May 5, 2003

To: Legislative Legal Services

From: Jesse Kiehl 
Sen. Elton's Office

This memo refers to my previous memo of May 2 regarding SB 13.

Upon conferring with staff to the joint sponsor, Sen. Cowdery, I have two revisions to that request.

1. The 36-month time limit for consumers to notify an insurer that credit information (on which underwriting or rating decisions were based) has been corrected should be shortened to 12 months.
2. Please amend the CS so the models, credit factors, and scoring formulae or algorithms used for underwriting, tiering, and rating filed with the division may be protected as a trade secret. Add a requirement that the division make available to the public a description of the factors involved in the models (&c) and their approximate weighting.

As promised, I have also attached draft language for the provisions requiring insurers to assist consumers with the error correction process.

The chair of the Senate Judiciary Committee has noticed a hearing on SB 13 tomorrow morning (5/6/03) at 8:00 a.m. I would like to have the C.S. available then. Please accept my apologies for the short notice on these changes. I appreciate your assistance.

Amend CSHB 47 (STA)

Page 4, line 7, insert the following new section. Relabel the existing sections (b) - (g) accordingly.

Dispute Resolution

(b) An insurer that uses credit information in underwriting or rating shall establish a dispute resolution process that meets the minimum standards of this subsection.

- (1) If the insured notifies the insurer that credit information used in underwriting or rating or for calculating an insurance score is inaccurate, the insurer shall attempt to verify the accuracy of the information by obtaining credit information from all credit reporting agencies. If there is a discrepancy between the credit information obtained from the credit reporting agencies, the insurer may not use the credit information until the discrepancies are corrected. If there is no discrepancy among the credit information obtained from the credit reporting agencies, but the consumer maintains that the credit information is incorrect, the consumer may provide the insurer with documentation demonstrating that the credit information obtained from the credit reporting agency is incorrect. When the consumer provides documentation, the insurer may not use the disputed credit information until the credit information is determined to be correct under the FCRA dispute resolution process.
- (2) The insurer shall establish a process, as required by AS 21.39.090, to respond to questions related to the application of the insured's rating plan.

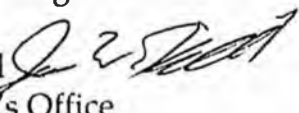


SENATOR KIM ELTON

MEMORANDUM

May 2, 2003

To: Legislative Legal Services

From: Jesse Kiehl 
Sen. Elton's Office

Please prepare a work draft of a committee substitute for SB 13, the bill Senators Cowdery and Elton jointly sponsor on credit scoring in insurance.

The CS will constitute a major rewrite of the bill. It should accomplish the following:

- Narrow the scope to address personal lines of insurance, including boats, ATV's, motorcycles, mobile homes, renter's coverage, inland marine, &c.
- Allow an insurer to use credit information for underwriting, tiering, and/or rate setting only with the consent of the consumer, and specify that an insurer or producer may not take an adverse action against a consumer who withholds his or her consent.
- Prohibit insurers from using credit information to make an underwriting, tiering, or rating decision without considering "other substantive factors."
- Allow insurers to use credit information only for underwriting, tiering, and/or rating new business. It should make explicit that an insurer may not use credit information at renewal.
- Provide that a consumer forced by divorce or death of a spouse or partner to seek new insurance does not constitute new business and credit information may not be used.
- Prohibit insurers from using the following types of credit information, either independently or as part of a credit score:
 1. Information disputed under FCRA
 2. Number or type of credit inquiries
 3. Type of credit card
 4. Absence of credit card
 5. Personal Finance Company account(s)
 6. Absence of credit history
 7. Too little information to calculate a score
 8. Initial purchase of a home or vehicle (including boats, ATV's, &c)
 9. Total available credit

ALASKA SENATE

STATE CAPITOL • JUNEAU, ALASKA 99801-1182 • (907) 465-4947 • FAX (907) 465-2108
SENATOR_KIM_ELTON@LEGIS.STATE.AK.US

10. Medical collections

11. Age at which credit was first established

- Prohibit insurers from using a credit score that uses income, age, sex, address, zip code, census block, ethnicity, religion, marital status, or nationality as a factor.
- Prohibit insurers from using a credit score or credit information based on a consumer credit report that is more than seven months old.
- Prohibit insurers from using a credit score derived from an insurance model to determine eligibility for a payment plan. This provision should not ban use of a traditional lending credit score, the intent of which is to evaluate creditworthiness, in determining payment plan eligibility.
- Require insurers to file the models, credit factors, and scoring formulae or algorithms used for underwriting, tiering, and rating with the division. No new provision should allow a third party or vendor to file on the insurer's behalf. No new provision should be made to render this information confidential or classify it as a trade secret.
- Require insurers to file the data used to develop those models, factors, formulae, and algorithms with the division. No new provision should allow a third party or vendor to file on the insurer's behalf. This data may be kept confidential by the department and protected as a trade secret.
- Require an insurer that takes an adverse action in underwriting, rating, or tiering based on credit data to:
 1. Give notice of adverse action under the Fair Credit Reporting Act (FCRA).
 2. Notify the consumer of his/her right to a free copy of the consumer's credit report.
 3. Inform the consumer of his/her rights to correct errors in a credit report under FCRA.
 4. Assist the consumer with the error correction process. I will forward draft language for this requirement to you as soon as I receive it from the Division of Insurance.
 5. Provide information on how a consumer can improve his or her credit score.
 6. Inform the consumer of all factors in the consumer's credit history that hurt his/her score. The division should approve the wording of this information in advance.
- Require insurers to refund the difference in premium due to use of credit information in underwriting, tiering, and/or rating if incorrect credit information was used and the consumer has his/her credit report corrected under FCRA and notifies the insurer. Fairness would seem to dictate a 36-month time limit for the consumer to find such errors.
- Define adverse action. The definition on page three of CSHB 5(STA), 23-LS0021\I would do nicely, although I believe the inclusion of the word "or" on line 16 is a typographical error.

- State that nothing in this act requires an insurer to use credit information for any purpose.

The Division of Insurance asks that these restrictions be made clear in both chapter 36 and 39 of title 21, as appropriate, to aid them in enforcement.

I understand how little time is left in the session, and appreciate your assistance.

Alaska State Legislature

Senator John Cowdery
Chair, Rules & Transportation



Senator Kim Elton
Minority Whip

SB 13 - Prohibiting Credit Scoring in Insurance Sponsor Statement

SB 13 prohibits insurance companies in Alaska from using credit scores in underwriting or rate setting for car or home insurance. Credit scores are derived by running credit histories through a secret formula that is not available to insurance regulators or consumers. Alaska home and auto insurers commonly base decisions on whether to offer a policy on credit scores. If insurance is offered, premiums are then based on the secret score and not on driving record or claim history. The worse the credit score, the higher the premium.

State insurance regulators and other organizations have scrutinized the use of credit scores since the insurance industry adopted the methodology in the 1980s. Research in other jurisdictions clearly demonstrates credit scoring is discriminatory, and an investigation by the Alaska Division of Insurance concluded, "unequal effects exist on consumers with varying income and ethnic characteristics. In the aggregate, consumers that reside in higher income/high percentage Caucasian zip codes may be less impacted by the use of the consumer's credit history." In keeping with its statutory mandate (AS.21.36.120) to protect the Alaska consumer against unfair discrimination, the division recommended curbing the practice to protect the public.

Some Alaskans have poor credit for reasons beyond their control—those who went through a divorce; seasonal workers; those who had serious medical emergencies; or those with unforeseen problems in their businesses or careers. There are many Alaskans without credit histories at all: rural Alaskans in a cash economy; members of religious groups that forbid the use of credit (neither a borrower nor a lender be); and many older Alaskans who distrust credit and instead pay cash. Is it fair to deny insurance to a 30-year-old woman with a clean driving record simply because a divorce changed her credit status? Is it fair to raise the premiums of a 67-year-old man with a clean driving record whose medical bills affected his credit history?

For that matter, credit scores reflect much more than your debt and payment history. Just having credit checked too often can result in a worse credit score. Losing health insurance, seeking credit counseling, paying debt early, using a debit card, or having a

Nordstrom's card all are known to hurt a person's credit score, and therefore increase the cost of insurance.

Lack of information is another fundamental problem with credit scoring. Neither consumers nor state regulators have access to scores or how information is manipulated to create those scores. The insurance industry is unwilling or unable to articulate how or why, thus we cannot know with certainty whether discriminatory factors are used in determining the scores. There is simply no explanation for how the 'black box' can be effective in light of a recent study showing tremendous inaccuracies in the credit reports used to calculate scores.

Hawaii has completely banned the use of credit scoring in both rate setting and underwriting. Maryland and Washington have sharply restricted it. The Hawaii law was implemented in 1987, and Hawaiians enjoy lower premiums than Alaskans.

CS FOR SENATE BILL NO. 13()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY

Offered:

Referred:

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

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;

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

10 (A) the absence of credit history or the inability to determine
11 the consumer's credit history if the insurer has received accurate and complete
12 information from the consumer;

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

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

16 (D) credit inquiries by the consumer for the consumer's own
17 credit information;

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

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

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

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

28 (I) the consumer's obtaining an automobile or home loan within
29 the previous 12 months;

30 (J) the presence or absence of personal finance company
31 accounts; or

1 (K) the age at which credit is established;

2 (3) use the credit history of the consumer when the consumer provides
3 a written notice to the insurer affirming that the credit history results from the actions
4 of a joint account owner who is or was a spouse of the consumer;

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

8 (5) use credit history to determine an insurance score if the history is
9 obtained more than 60 days before the policy is issued;

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

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

26 (f) If the use of disputed credit history results in denial or cancellation of
27 personal insurance coverage, an insurer shall reunderwrite the coverage without the
28 use of credit information as a factor. This subsection applies only if, within 10 days
29 following denial or cancellation, the consumer provides a reconsideration certification
30 to the insurer that sets forth any items of the credit history that are disputed and that
31 indicates that the consumer has initiated the dispute resolution process in 15 U.S.C.

1 1681 (Fair Credit Reporting Act) by requesting a copy of the consumer's credit report.
2 An insurer's reconsideration certification form

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

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

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

9 (h) In this section,

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

12 (A) cancellation, denial, or failure to renew personal insurance
13 coverage;

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

17 (i) application of a rating rule;

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

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

23 (C) any reduction or adverse or unfavorable change in the
24 terms of coverage or amount of personal insurance due to a consumer's credit
25 history or insurance score; a reduction or adverse or unfavorable change in the
26 terms of coverage occurs when

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

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

- 1 (2) "affiliate" has the meaning given in AS 21.22.200;
- 2 (3) "consumer" means an individual policyholder or applicant for
3 insurance;
- 4 (4) "consumer report" has the meaning given in 15 U.S.C. 1681 et seq.
5 (Fair Credit Reporting Act);
- 6 (5) "credit history" means written, oral, or other communication of
7 information by a consumer reporting agency bearing on a consumer's
8 creditworthiness, credit standing, or credit capacity that is used or expected to be used,
9 or collected in whole or in part, for the purpose of serving as a factor in determining
10 personal insurance premiums or eligibility for coverage;
- 11 (6) "insurance score" means a number or rating that is derived from an
12 algorithm, computer application, model, or other process that is based in whole or in
13 part on credit history;
- 14 (7) "personal insurance" means
- 15 (A) private passenger automobile or motorcycle coverage;
- 16 (B) homeowner coverage, including mobile homeowner's,
17 manufactured homeowner's, condominium owner's, and renter's coverage;
- 18 (C) dwelling property coverage;
- 19 (D) earthquake coverage for a residence or personal property;
- 20 (E) personal liability and theft coverage;
- 21 (F) personal property inland marine coverage;
- 22 (G) personal boat, watercraft, snowmobile, and recreational
23 vehicle coverage; and
- 24 (H) umbrella insurance coverage.

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

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

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

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

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

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

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

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

(e) In this section,

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

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

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

* Sec. 4. AS 21.36.460(g) and (h), added by sec. 2 of this Act, and AS 21.39.035(a), (b), (d), and (e), added by sec. 3 of this Act take effect June 1, 2003.

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

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: SB 13
(S) Publish Date: 5/2/03

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
Title Insurance Discrimination by BRU Insurance (116)
Credit Rating Component Insurance Operations
Sponsor Senators Cowdery & Elton
Requester Senate Labor & Commerce Component No. 354

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation prohibits insurers from using credit information to rate insurance policies. To the extent that insurers currently use credit information in their ratings plans, they will need to submit new filings to discontinue this practice. The division anticipates costs for reviewing any rate filings will be part of on-going operations.

Prepared by: Linda S. Hall, Director Phone 907.269.7900
Division: Division of Insurance Date/Time 4/8/03 8:25 AM
Approved by: Edgar Blatchford, Commissioner Date 4/8/2003
Agency: Department of Community & Economic Development

Several Organizations oppose the use of insurance credit scoring:

John Bryant, Agent Champion, is Terminated

John Bryant was an agent for a very large insurer. He treated his clients the way they deserve to be treated and even went to bat for them in the game of "insurance credit scoring". He was terminated for his efforts

The Center for Economic Justice

"David "Birny" Birnbaum, of the Center for Economic Justice, recently said, "There has been no comprehensive **independent** [emphasis added] study of a link between credit problems and car accidents. The industry is accepting 'statistics' from the company that provides that information and programs!" ¹

The National Association of Professional Allstate Agents

The National Association of Professional Allstate Agents (NAPAA) has studied the issue of "credit scoring," or "insurance scoring," and because Allstate was one of the earliest users of credit scoring algorithms to underwrite and rate insurance policies, Allstate insurance agents have the most experience dealing with this system and its adverse effect on our customers. Our conclusions based on this unique experience are:

- o It is a secret methodology, not subject to examination by Insurance Commissioners, which affects the premium and/or acceptance of insurance applicants and existing customers.
- o Credit scoring appeared when insurance companies were denied the ability to overtly Redline geographical areas and certain minority groups.
- o Credit scoring is a new method of Redlining meant to replace the old method.
- o Particularly affected are minorities, low-income groups, senior citizens and others who rarely, or never, make use of credit. Other affected people are those who have had divorces, the death of a spouse, large medical bills or even those who check their own credit regularly to be sure the information is accurate.
- o The insurance/credit score is a moving target - Today one may have a "score" of 4, next month a score of 2. The consumer just has to hope they get lucky when they apply, because they are stuck with whatever the score happens to be at that time, with no possibility of improvement, for the life of the policy.
- o Credit scoring allows a company to take rate increases at their sole discretion by merely adjusting their never examined and secret algorithm by changing the weighting of certain values.

Credit scoring for insurance is not socially acceptable. It violates the values Americans hold dear. The American way is to be judged on those things that are directly relevant to the

subject: Tickets, accidents, vehicle usage etc. for auto insurance and condition of premises, past losses and upkeep etc. for property insurance. Credit scoring for insurance purposes is Redlining. NAPAA strongly opposes Redlining, thus we have no choice but to oppose credit scoring.

United Farmers Agents Association

"Our industry struggles with a bad reputation already. The misuse of credit scoring will further erode consumer confidence. It's time for the industry to step up and commission an independent study of the relationship between credit and future losses. It's time for the industry to force the release of the rating factors in the FICO programs. Its time to change the rules so consumers can get specific answers about their scores."

The National Association of State Farm Agents, Inc.

Resolution Sept 28, 2001

The National Association of State Farm Agents, inc. (NASFA) hereby resolves that we are opposed to any insurance company using credit scoring for the purpose of Property & Casualty underwriting and rating. We further support legislation to prohibit credit scoring for the purpose of Property & Casualty underwriting and rating. We believe this form of underwriting is profiling clients who would otherwise be eligible for Property & Casualty business.

The Coalition of Exclusive Agent Associations

Credit Scoring POSITION STATEMENT Adopted March 11,2002

"In the absence of full and good faith disclosure to the consumer and appropriate state insurance officials of all weighting factors and the respective percentage(s) or importance of their weighting, the CEAA opposes the use and consideration of credit status and/or credit scoring in any manner in connection with the acceptance, rejection, renewal or determination of insurance coverage or with respect to the determination of insurance rates and/or rate increases. It is the position of CEAA that credit information, written or otherwise, should not be given any consideration as a basis for determining the acceptance, rejection or renewal of insurance coverage or insurance rates."

National Auto Agents Alliance

"The National Auto Agents Alliance recently issued a statement that credit scoring is "unreliable, inaccurate, and so against public interest as to endanger the insurance industry to the wrath of the public... The NAAA feels that credit scoring may even suggest a level of redlining that segments insureds into "haves and have-nots."

National Association of Insurance Commissioners

"In a White Paper issued recently by the NAIC, which now wants this credit scoring practice monitored, it was suggested that insurers not be allowed to deny policies based solely on credit reports. It also recommends that the industry develop objective, verifiable guidelines for ordering credit reports"

This information is from the following website.
www.geocities.com/insurance_credit_scoring

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1/17/03

DON'T BASE INSURANCE RATES ON ...

Credit ratings

A GAIN THIS year, the Legislature will have the chance to end the insurance industry's controversial use of credit ratings to determine how much auto and home insurance will cost Alaskans.

A measure introduced by Sens. John Cowdery, R-Anchorage, and Kim Elton, D-Juneau, would bar the use of credit scoring to set premiums.

Critics of credit scoring say it opens the door to financial and even racial discrimination. Its proponents say it is a fair and accurate assessment of potential losses.

The practice is under fire in more than two dozen states. Similar legislation was introduced last year in the Alaska Legislature, but died in the Senate Labor and Commerce Committee as time ran out in the session and questions remained about exactly what the bill should contain.

Credit scoring is how many insurers nowadays calculate in whole or in part, the amount of your insurance premiums. They obtain personal information from credit bureaus, including debt amount, collections, bankruptcies, payment history, amount and types of credit. They feed it into a computer model and you receive a score. A good score means lower rates. A bad score can mean you pay more.

Insurers say the use of credit histories and scoring is necessary because it allows them to identify drivers who will cost the company the most in losses. They say studies — which themselves have stirred questions — have shown that people who keep their financial house in order are better risks.

Opponents of credit scoring say it reared its head after insurance companies some years ago were barred from "redlining" certain geographical areas and minorities. Additionally, they say the practice zeros in on the elderly, the young, people with little credit, renters and others, even those with errors in their credit history. Purchasing a home, for instance, can affect your credit rating, and the insurance you will have to buy for the home.

Testimony introduced last year before the state Senate Transportation Committee illustrates the point.

A woman with a clean driving record and who already had insurance — but who rented her home — received a \$452 increase on her six-month insurance bill because of her credit score. At the same time, a man with with good credit who was buying his home qualified as a preferred customer — even though his driving record included a DWI with an accident.

It would seem to us that driving records or a history of losses should count toward calculating insurance premiums, not a person's credit history or a score generated from information that may be flawed, from a system immune from public scrutiny.

Cowdery and Elton are on the right track in pursuing this legislation. Hopefully it will fare better than it did last year.

OUR VIEW

Credit scoring

*Either reform or abolish
this insurance shortcut*

Insurance companies love the practice of credit scoring because it's cheap and easy. By some magic known only to actuarial wizards, a person's credit records can be converted into a number that companies find useful to decide whether to insure a person or how much to charge him. No need to spend a lot of time tracking down motor vehicle files, checking property records or evaluating other information that directly bears on what kind of risk the applicant poses.

And if there is no logical connection between a person's credit history and the odds that she will make auto or home insurance claims? No problem. It's magic, but it works.

Except that it doesn't always.

Some people with good driving records get socked with big rate increases because of what's in their credit file.

*The whole exercise
of credit scoring is
premised on the
assumption that
what is in a person's
credit file is
accurate. Many an
Alaskan can testify
to the contrary.*

Some people with good credit but bad driving records get lower rates they don't deserve.

Some people have less than perfect credit records for reasons beyond their control. They may have suffered a medical catastrophe. A recent divorce may have scrambled their finances. An angry ex-spouse may be withholding child support payments.

And the whole exercise of credit scoring is premised on the assumption that what is in a person's credit file is accurate. Many an Alaskan can testify to the contrary.

Credit scoring has drawn plenty of criticism, even from inside the insurance industry. The National Association of Professional Allstate Agents has condemned it on multiple grounds. The methodology is secret, with no oversight by state insurance commissioners. Credit scores can change frequently, calling their reliability into question. Noting the impact it has on minorities, the poor, senior citizens and others who don't use much credit, the group calls credit scoring "a new method of redlining."

Anchorage state Sen. John Cowdery, R-Lower Hillside, is leading the charge to ban credit scoring in Alaska. Hardly an advocate of big government, he knows first hand from his daughter's experience how credit scoring can punish someone with a clean driving record. He's joined by colleagues from both ends of the spectrum: conservative Republican Fred Dyson of Eagle River and Democrats Kim Elton of Juneau and Gretchen Guess and Johnny Ellis of Anchorage.

ADN 1/27/2003

At minimum, some reforms are essential.

Exclusive reliance on credit scores should be banned. Customers must have a way to make sure their credit records are accurate and get refunds if errors cause them to be overcharged for insurance. Those with little credit history should not be penalized for it. State insurance regulators must be able to scrutinize the mystery formulas so they can judge how appropriate the process is.

By the time insurance companies comply with reasonable conditions like these, credit scoring may no longer be such a cheap and easy way to decide coverage and set rates. If insurance companies aren't willing to mend the practice of credit scoring, though, the Legislature should end it altogether.

*The methodology is
secret, with no
oversight by state
insurance
commissioners.
Credit scores can
change frequently,
calling their
reliability into
question.*



TOUCH-SCREEN VOTING

What do you think?

Last week's question:

Sens. John Cowdery, a Republican, and Kim Elton, a Democrat, have pre-filed a bill to prohibit "credit scoring," the insurance industry practice of setting rates based on a customer's credit history. Should the cost of someone's insurance be based on credit history?

YES	NO	UNSURE
34	259	5
11%	87%	2%

Number of respondents: 298

Comments:

A person with a perfectly clean driving record and who may have lost a business or employment causing creditors to take legal action to collect a debt should not be penalized by paying higher car insurance rates.

Does owning a small business make you a bad driver? Do medical bills you can't pay make you a bad driver? Does an acrimonious divorce make you a bad driver? Does cutting up your credit cards or paying cash for your car make you a bad driver? All those things give you a bad credit score. Credit scoring has to go.

If the insurance companies insist on basing my insurance on my credit report, then I can make them an offer. For each year I complete as a safe driver with no claims against my policy, the insurance company should reimburse me the moneys I have awarded them for that year.

A person should be allowed to buy insurance at a reasonable price regardless of their credit history.

This week's question:

A citizens group, BEARS Inc., is proposing a center where garbage bears would be placed in an attempt to rehabilitate them. The center also would be a place to view bears and educate people

Juneau hospitality shines

By JIM POWELL

nk you to the hundreds people and businesses at participated in last l's site selection visit by c Winter Game's Inter-Committee.

turday morning, with ng crowds at the airport, d in the fog as the com- jet circled overhead. As icken and it became . no planes were going t looked as if the care- ared visit was in jeop-

d, Juneau's welcoming e met Saturday night ed the entire program. 10... the committee nt... eau and once :tic Winter Game's sup- rned out at the airport, st, the hockey rink, the nd at the high school. l was the International

and other skiers and snowboard- ers waving signs and chanting "Juneau 2006." Inside the lodge, an impressive presentation by local experts was given about our ski facilities and capabilities for the ski, snowboard and snowshoe events. The games would take place in early March and records show Eaglecrest has never failed to have a large snow pack then. Our large volunteer and family oriented ski area was highlight-



ed. During the warm in- formal recep- tion that followed there were lots of one- on-one con- versations between committee members and the skiing public.

Then on to Douglas, where two Douglas Fire Department trucks escorted us to the hockey rink. The... ..

Alaskan Native Elder Agnes Ballinger. The lunch was capped off with a short DVD produced by the Juneau Convention and Visitors Bureau, Mad Dog Graphx, Damon Struebner, and others.

The high school complex, where the 2,000-plus student athletes would be housed, was the final venue. The committee entered the gym to welcome signs and cheers by the JDHS cheerleaders. The dance team performed its light show. A very impressive selling point was our renovated high school. Our ability to house, feed, and have a safe place for athletes to meet is one of our bid's strongest components.

Concerning the weather, the committee was very responsive to Juneau's proposals for contingency plans for back-up ferry



Bad credit? Sorry, no insurance

Measure would restrict practice some say isn't fair

By Wayne Hoffman
The Idaho Statesman

Go!

State lawmakers say insurance companies are using the credit histories of Idahoans to stick customers with arbitrarily higher insurance premiums -- or to deny them coverage altogether.



Kim Hughes / The Idaho Statesman

Some insurance agents say that's true, and that credit scoring is a practice that must end. Others contend that if lawmakers outlaw the practice, even those Idahoans with sterling credit will see their auto and homeowner's insurance premiums skyrocket.

"Basically, they're stealing, as

Michael Howard's homeowner's insurance premium is more than doubling because of low credit scores. Idaho lawmakers today will consider a bill that would forbid insurance companies to use credit scores as the primary reason to deny insurance or increase insurance rates.

If you go

The Senate Commerce and Human Resources Committee will consider Senate Bill 1408 at 1:30 p.m. today in Room 437.

How credit scoring works

In general, companies that put together credit scores examine your credit history and give it a score. The score takes into account your ability to pay on time, whether your accounts are kept current, the number of open accounts, the number of credit applications outstanding and whether you've had a bankruptcy, a tax lien or a civil court judgment against you.

Pros and cons

Supporters of credit scoring contend it's an excellent predictor of future insurance claims, so it's become more

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OPINION

LEGISLATORS

COMMITTEES

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far as I can see. It insults me and it violates my civil rights," said Boisean Michael Howard, whose insurance agent told him a month ago that his homeowner's policy would be canceled because his credit score had plummeted. Now, he said, he has a new homeowner's insurance policy, and the coverage that used to cost him \$265 a year is up to \$725 a year.

and more common in recent years to use credit history to help determine homeowner's and auto insurance premiums. They contend that records of collections, tax liens, bankruptcies and civil court judgments are as helpful in figuring insurance rates as a person's driving record, and those predictions help keep rates down.

Opponents contend credit scores are unfair, hurt people arbitrarily and lead to people going without insurance.

-- Wayne Hoffman

▪ [Senate Bill 1408](#)

"They've got too many tools to rip off the public whenever they want," he said.

Credit scores come from a person's credit history. A person who pays bills on time and has little revolving credit, for example, might have a good credit score, while a person who is months behind on bills and has burgeoning credit card debt might have a bad credit score.

Insurance companies say bad credit scores tend to correlate to future claims the company will have to pay.

Boise insurance agent Bob Ricketts said the practice is neither fair nor logical. It is legal in Idaho, though.

"If you have a person with a DUI and they have good credit, they will be accepted in a preferred-rate class now," said Ricketts, chairman of the Independent Insurance Agents of Idaho.

Coeur d'Alene Sen. John Goedde is the group's president. He's proposing legislation that would restrict the use of credit scores by insurance companies when figuring automobile and homeowner's insurance. About half of the state legislatures across the

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country are looking at similar legislation.

Goedde, a freshman Republican, said he's heard of homeowner's insurance rates shooting up 300 percent, and said the biggest losers are the elderly, the very young and members of minority groups. His legislation, Senate Bill 1408, would restrict insurance companies from using credit scores as the primary reason for denying insurance or jacking up a customer's insurance rates.

The measure will have a hearing today.

Another insurance agent, Republican Rep. Bill Deal of Nampa, said it would be OK to use credit scores for new customers. But he calls the trend of the past 10 years -- using credit scores to judge existing customers -- "very inequitable and morally wrong."

Boise insurance agent Eric Jeglum said he opposes the proposed legislation. He said studies have proved "without a doubt" that credit scores are a reliable predictor of future insurance claims. The worse the credit score, the more claims are likely, he said. And the better the credit score, the fewer the claims, in general.

If that tool were not available to insurance companies, he said, rates would climb 20 percent for people who are now categorized as having good credit.

"Credit scoring allows us to accurately indicate what the rates should be," Jeglum said.

He equates it to what happens when insurance companies figure the premium for teen drivers. Not all of them are unreliable behind the wheel, but insurance companies assign a higher premium to them because young drivers, as a group, tend to be a higher risk than older drivers with more experience.

Max Marshall of Boise doesn't buy it. He had to file bankruptcy for health reasons, and now he says he can't insure his home for anything less than \$325 a year.

"I don't understand why my credit rating would affect home insurance," Marshall said. "I don't think it's fair. It seems to be discrimination."

"Now, not only do we have the health bills, everything is going to cost more for something

that is beyond our control."

"We've been anecdotalized to death on this," said Michael Harrold of the National Association of Independent Insurers, whose group favors the use of credit scoring. There's always going to be someone who appears to be an exception to the pattern when it comes to credit scores. But the bottom line, said Harrold, the association's Northwest regional manager, is, "You're not hearing from the 50 to 60 to 70 percent of policyholders who are getting a discount" because of good credit scores.

"Really, insurance is about predicting future loss. It's not always about what you've done in the past. (Credit scores) are a phenomenally predictive tool," he said.

As the number of delinquent accounts, tax liens, bankruptcies and civil court judgments increase, so do insurance companies' losses, according to Harrold's data from the credit-scoring company Fair, Isaac.

"I don't see why it's pro-consumer to prohibit the use of a mechanism to allow people to pay the most fair insurance rate," Harrold said.

Ralph Buchanan, president of the United Farmers Agents Association, said the reason is simple: It's wrong.

"The old way of rating auto insurance, I could go out and get a five-year history of tickets and accidents for you. That for years and years has told me whether you're a good driver or bad," Buchanan said.

But the American Insurance Association contends people are paying a fairer rate for insurance now that credit scores are available to guide insurers.

Restricting the use of credit scores would result in less competition among companies and require the good customers to subsidize the bad, association members say.

Two-thirds of customers have good credit, and they will see their rates go up to pay the claims of the one-third with bad credit, said Bill Gausewitz, AIA's assistant vice president for state affairs.

For Howard, that's little comfort.

"Tripling your homeowner's rate because of your credit rating assumes quite a lot," he said. "It's nothing short of stealing."

To offer story ideas or comments, contact reporter Wayne Hoffman at whoffman@idahostatesman.com or 377-6416.

Insurers get an earful from senators
Panel: Industry's use of credit history is wrong

By Wayne Hoffman
The Idaho Statesman

A Senate committee chastised the insurance industry Thursday for its use of people's credit history in figuring insurance premiums and voted 7-2 to restrict the practice.

8 RS + 1 D

Senators on the Commerce and Human Resources Committee said the use of credit scores to set rates and sometimes to deny insurance coverage is arbitrary, mysterious and flat wrong.

Senate Bill 1408, now on its way to the full Senate, would restrict the use of credit scores so that they cannot be the primary basis for an insurance company's decision to change rates or drop automobile or homeowner's insurance coverage.

Some insurance trade associations contend the credit scores have proven to be excellent indicators of potential insurance claims, and they're used to keep rates down.

Others contend the practice discriminates and that there's nothing to prove the scores really reflect much of anything.

Half of the states in the country are considering legislation restricting in some fashion the use of credit scores.

"For me to try to explain to my customers why this is taking place ... it's confusing," said Boise insurance agent Bob Ricketts of the Independent Insurance Agents of Idaho, who is against the practice.

He said he has plenty of proof to show that clients who have a history of claims were renewed with double-digit reductions in premiums while some clients with no insurance claims are showing double-digit increases in premiums.

Sen. Brent Hill, R-Rexburg, found the insurance industry's explanations so nebulous and frustrating that he grilled insurance agent Jennifer Oldenburg for her support of credit scores.

Oldenburg said credit scores have been helpful in selling insurance at competitive prices.

"It's not the only thing that's used" to determine premiums, Oldenburg said.

But Hill said he had yet to hear a good reason for where credit scores come from and how they are applied. He expressed dismay that Oldenburg can't counsel people on how to get their credit back in good standing.

"I'm not surprised you don't know. Your customer doesn't either," Hill said.

Oldenburg said insurance companies have the right to pick the best mechanisms for figuring insurance rates.

"That's right. They have that right -- at the present time," Hill retorted.

American Insurance Association lobbyist Phil Barber acknowledged the insurance industry "has done a very poor job in informing agents and informing me and the public in general" about credit scoring.

But he said lawmakers should avoid passing Senate Bill 1408 in haste when a compromise could be reached.

Barber said the industry would be willing to accept a restriction that says insurance companies can't use the scores as the sole reason to cancel or jack up rates.

But senators voted 7-2 against that proposal, saying it would leave consumers in no better a position than they're in now. Insurance companies will merely make credit scores the majority reason for the decision and throw in a miniscule second factor to comply with the law, they said.

To offer story ideas or comments, contact reporter Wayne Hoffman at whoffman@idahostatesman.com or 377-6416.

National Association of Professional Allstate Agents

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Commissioner Mike Kreidler
Washington Department of Insurance
Insurance Building/14th & Water
Capitol Campus
P.O. Box 40255
Olympia, WA 98504-0255

October 15, 2001

Dear Commissioner Kreidler,

The National Association of Professional Allstate Agents (NAPAA) has studied the issue of "credit scoring," or "insurance scoring," and because Allstate was one of the earliest users of credit scoring algorithms to underwrite and rate insurance policies, Allstate insurance agents have the most experience dealing with this system and its adverse effect on our customers. Our conclusions based on this unique experience are:

- It is a secret methodology, not subject to examination by Insurance Commissioners, which affects the premium and/or acceptance of insurance applicants and existing customers.
- Credit scoring appeared when insurance companies were denied the ability to overtly Redline geographical areas and certain minority groups.
- Credit scoring is a new method of Redlining meant to replace the old method.
- Particularly affected are minorities, low-income groups, senior citizens and others who rarely, or never, make use of credit. Other affected people are those who have had divorcees, the death of a spouse, large medical bills or even those who check their own credit regularly to be sure the information is accurate.
- The insurance/credit score is a moving target - Today one may have a "score" of 4, next month a score of 2. The consumer just has to hope they get lucky when they apply, because they are stuck with whatever the score happens to be at that time, with no possibility of improvement, for the life of the policy.
- Credit scoring allows a company to take rate increases at their sole discretion by merely adjusting their never examined and secret algorithm by changing the weighting of certain values.

Credit scoring for insurance is not socially acceptable. It violates the values Americans hold dear. The American way is to be judged on those things that are directly relevant to the subject: Tickets, accidents, vehicle usage etc. for auto insurance and condition of premises, past losses and upkeep etc. for property insurance. Credit scoring for insurance purposes is Redlining. NAPAA strongly opposes Redlining, thus we have no choice but to oppose credit scoring.

Insurance commissioners, in various states, are conducting hearings to better understand how the use of credit impacts the insurance consumer. Captive Allstate agents wish to participate and contribute at these meetings since they are closest to the consumer and see firsthand how implementation of credit directly affects the customer. However, they have been discouraged to do so under threat of retaliation by Allstate. If an agent's presence at these hearings were made mandatory, we would make every effort to assure the presence of a NAPAA representative.

Sincerely,

Janice Mathison
Executive Director

National Association of Professional Allstate Agents

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Washington Department of Insurance
Commissioner Mike Kreidler
Insurance Building/ 14th & Water
Capitol Campus
P.O. Box 40255
Olympia, WA 98504-0255

- Carol Bureau
- Gigi
- Lisa Smego
- Bill D.

October 22, 2001

Dear Commissioner Kreidler,

In a previous letter to you from our association (copy attached), we informed you of NAPAA's position on Credit Scoring. In that letter, we explained that captive insurance agents who may desire to participate and contribute at hearings regarding Credit Scoring and Redlining have been prevented from doing so by threats of retaliation by their companies.

Agents have more knowledge of the effects of this practice on their clients than any other segment involved in the process. Yet, contrary to the public good, insurance companies exert every effort to prevent such knowledge from being made public.

On October 12, 2001, NAPAA informed the Allstate insurance agents in the state of Washington of the public hearings to be held on Credit Scoring. We encouraged them and their clients to attend one of the meetings. Allstate reacted swiftly to our bulletin. In a letter dated October 15, 2001, Field Vice President A. Darryl Page warned Allstate agents against participating in those hearings. We have attached a copy of his letter.

It is clearly not in the best interests of the citizens of Washington state, efforts of your office to regulate insurers, or those of legislators representing their constituents for a private company to deny access to the information possessed by insurance agents; valuable and insightful information.

We urge you to find a way that would allow agents to participate, to testify at public hearings, in legislative committee hearings and other government venues without fear of retaliation by their associated companies. Otherwise, how can our system of government function as it was intended?

NAPAA stands ready to assist in any effort you may make to ensure that your department and the citizens of Washington hear the truth.

Sincerely,

Janice Mathison
Executive Director

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April 18, 2002

Honorable Kim Elton
Senator,
Alaska State Senate

Juneau, AK 99811

Re: Credit History and Credit Scoring in Insurance

Dear Senator Elton

I read in the paper yesterday that you have proposed legislation to prohibit the use of credit history and credit scoring in the State of Alaska for underwriting and selection of personal automobile insurance and homeowners insurance. I support your efforts to do so and would like to offer some observations that may be of interest.

By way of background, I am a retired state employee (as of 3/31/97), having worked at the Alaska Division of Insurance for more than 27 years as its Chief of Market Surveillance. I was responsible for rate review, form review and market conduct examinations. I also spent considerable time working with legislators and staff on a variety of insurance issues. Currently I continue to reside in Juneau and operate a small consulting firm that provides market conduct examination services for state insurance departments. I have no Alaska contracts. States currently using my services include Delaware, New Mexico and North Dakota. For these states I establish examination processes, develop state specific handbooks on how to perform such examinations, train examiners, supervise and conduct examinations. My views do not reflect those of the states for whom I provide services, they are my own.

In 1995 when credit history was first being used by insurers in personal automobile insurance, The National Association of Insurance Commissioners appointed a working group to look into the issue and ultimately develop a white paper as a guide for states considering what to do about the issue. I chaired the initial working group but after several meetings asked Maryland to assume the chair since I was somewhat over-committed at the time. I continued to remain active with the working group. I can recall one meeting in Northbrook Illinois that was of particular interest. We had about a dozen

regulators from a number of states meet with an insurer to gain an understanding why they felt the credit history should be an underwriting consideration. Our group was comprised of a good cross section of expertise including actuaries, economists, and examiners.

The company data presented suggested that there was a considerable correlation between the propensity for loss and credit history. There were several problems for which we could not elicit satisfactory answers and essentially these remain unchanged today. They are:

1. The data was based on the Company's customer database and since that had spent considerable time, effort and money to develop the system, they did not want another company to copy their data and use it as their own. They felt that such action, which is fairly commonplace, would place them at a competitive disadvantage. We were not able to look at the underlying data or supporting calculations. The data would appear to be more supportive of rate differentials rather than selection differentials.
2. In our attempts to understand how poor credit could tie into increased likelihood of loss only one person made an analytical observation that made some sense. He said that the intended form of credit scoring was in a sense a quantification of responsibility. It would appear that poor credit history is a reflection of responsibility and attitude that according to the presenters carried over into how a person drives an automobile or does things that might reduce an insurers exposure to loss. This tie was not demonstrated, it was theorized.
3. The insurer at that point had not developed the process to the point that duplication for factors already considered in other underwriting considerations could be avoided.
4. Fiscal emergencies were not factored out of the process. Someone with a longstanding good credit history who has an expensive medical emergency that temporarily revises the persons payment history would not receive special consideration even though the underlying attitude to paying on their commitments was unchanged. A similar issue arises in a depressed economy when layoffs occur. Being unable to continue to meet obligations is not the same as being unwilling to meet them and credit scoring does not make the distinction.

Many insurers these days are trying to outsource functions or parts of functions to independent vendors. They do this in part because it is difficult for the regulator to achieve a comprehensive view of the company's operations. They also do it for perceived gains from savings on expenses. The savings often come from reduced management oversight of the outsourced function.

During the past few years, I have been involved in the examination of eight major auto and homeowners insurers, six of those directly and the other two as a supervisor. Some do not use credit history, some do not use credit scoring. Some use credit only for placement in a rating tier. Some use credit only on new business. I believe that the

system as I have seen it is inherently flawed and are unfairly discriminatory. Insurance is by its nature discriminatory and that is not unreasonable. Unfair discrimination is quite another story. Some examples of why I think Credit History and Credit Scoring is unfair are:

1. If credit history and credit scoring is intended to reflect responsibility then it is unfair because that connection has not been established and no efficient method has been established to identify exceptions.
2. Most insurers use credit scoring only at the initial underwriting and that is to determine into which rating tier the person should be written. That is unfair since attitudes can change, credit history can change, and no opportunity is provided to assure that the selection criteria and measurement has remained unchanged. If a person's score improves is he/she locked into the tier that resulted from the initial review? This might arguably be a conflict with the federal Fair Credit Reporting Act that contains a limit on how long the information in a credit report can be used.
3. The fact that scoring information is secret is unfair. If the information developed on a person and how it is used is secret, how is anyone to know that it has been properly used? It makes the Insurance Director's job to oversee a fair insurance marketplace very difficult if not impossible to achieve.
4. The nature of the scoring is that a large transaction such as the purchase of a house has a negative influence on the credit score thus presenting the buyer with problems when he/she attempts to insure the house. It's a sort of "Catch 22" kind of effect which comes up frequently in complaints. A contact with other state insurance departments concerning their complaints on credit history and credit scoring might prove enlightening.

At this juncture, my own preference is for an outright ban on the use of credit history and credit scoring for personal lines automobile insurance and homeowners insurance. If the legislature wishes to proceed with some form of limitation, I would urge caution because that would tend to give a flawed program sanction. Better not to act or to assure that the Director of Insurance has adequate rulemaking authority to provide for protection of the public. I would also urge caution about the structure of a ban because there are insurance lines of business where credit history review is appropriate, for example some of the commercial financial products and possibly fidelity and surety products.

I am sorry that my late awareness of this as a legislative issue in Alaska and my somewhat bizarre travel schedule prevents me from providing more direct input. I will be on travel status for the next three weeks but can be reached at my cell phone (907) 321-4084.

Very truly yours,



Donald P. Koch, CIE
President

**Testimony of Birny Birnbaum
Before the Alaska Senate Labor and Commerce Committee**

Insurance Credit Scoring and SB 13

April 22, 2003

Thank you for the opportunity to offer testimony in support of a prohibition against insurers' use credit scoring for underwriting, rating and conditioning payment plan eligibility for personal lines insurance. In addition to this testimony, I have previously submitted:

- A report I recently submitted to the Ohio Civil Rights Commission, which concludes that insurers' use of credit scoring very likely has a disproportionate impact on poor and minority communities;
- Tables from the *2000 Statistical Abstract of the United States*, which show a vivid correlation between income and the credit characteristics most heavily weighted in insurance credit scoring models.
- Comments on the problems with the National Conference of Insurance Legislators model law on credit scoring;
- Preliminary comments on a recent study by the Bureau of Business Research at the University of Texas.
- Comments submitted to the House State Affairs Committee on 3/29/03
- Comments submitted to the Senate Labor and Commerce Committee on 4/8/03

I have previously laid out my arguments why it is reasonable and necessary to prohibit insurers' use of consumer credit information for personal lines insurance underwriting, rating and payment plan eligibility – the practice is inherently unfair, discriminates against certain classes of consumers, undermines the insurance mechanism, undermines regulatory oversight of rates and violates actuarial principles for risk classification.

I wanted to use my time today to respond to some of the industry arguments on credit scoring and the comments of Mr. Niehaus of Progressive, in particular. On April 8, Mr. Niehaus offered a number of assertions regarding credit scoring.

First, he said that a ban on credit scoring would force Progressive to raise rates for two-thirds of their policyholders. This is, of course, not true. A ban on credit scoring will simply prevent insurers from using this unfair classification tool. Insurers choose the rates they charge, subject to review by the insurance commissioner.

Also, since when did we determine whether a practice was fair based on how many people benefited from the practice? In America, the minority is supposed to be protected against unfair practices by the majority.

However, you should know that several years ago in Arizona, after the Arizona Senate had passed a bill to prohibit credit scoring, Progressive and an industry trade association sent letters to their policyholders threatening rate increases if the credit scoring ban was enacted. And after credit scoring was banned for homeowners insurance and severely restricted for auto insurance in Maryland, insurers sent notices with renewal policies implying that the state legislature had forced the insurers to increase rates.

The bottom line is that the legislation to prohibit insurers from using credit scoring should also contain a provision to include a notice to consumers upon policy issuance or renewal along the lines of:

Your legislature has banned the use of your personal credit information by insurers to determine if you are eligible for coverage and how much you will pay. No insurer is required to raise rates or charge you more as a result of this law.

Second, Mr. Niehaus argues that good drivers will subsidize bad drivers if the use of credit is prohibited. The Texas study showed that for the consumers with the worst credit scores, there were 12 claims out of a hundred policies and for the best credit scores there were 9 claims out of a hundred policies. So the shift of about one claim per hundred evens out the frequency of claims among all groups. The bottom line is that most consumers don't file claims in a given year and the movement of one claim from one group of consumers to another can change that group from being "good" drivers to "bad" drivers.

Third, Mr. Niehaus argued that a ban on credit scoring would create an unlevel playing field where direct writers would have an advantage. This is not correct. The FCRA allows all insurers to use credit to get mailing lists of consumers. But once a solicitation is sent, the insurer is subject to the insurance laws of the state. All sorts of insurers use credit for direct mail insurance solicitation – Allstate, State Farm, Progressive, GEICO and many others – with and without agents. This argument has no merit.

Fourth, Mr. Niehaus failed to identify Maryland as a state that banned the use of credit scoring in recent years —for homeowners. And Maryland severely restricted the use of credit. Although insurance industry lobbyists have been successful at fighting good credit scoring legislation in many states, there are a number of states today where either the state senate or the state house has passed a law banning the use of credit.

Fifth, Mr. Niehaus argued that a ban on credit would damage an Alaskan market that is already in bad shape. He said that Alaska was 47th out of 51 states and the DC in profitability and that insurers had lost money in three of the last four years. Since these are the years that insurers have used credit scoring, it appears that credit scoring is the factor damaging the market! Again, the bottom line is that a ban on credit scoring will not "damage the market." It will simply make the underwriting and rating of insurance policies fairer because that underwriting and rating will be based on factors that consumers understand and that provide consumers with an economic incentive to prevent losses.

Sixth, Mr. Niehaus suggested that the legislature look at the NCOIL model as an alternative. The NCOIL model was developed as a compromise between some agents groups and the insurance industry. In exchange for supporting credit scoring, the agents got a liability shield for carrying out credit scoring practices on behalf of insurers. The NCOIL model provides very few consumer protections. Rather, it simply endorses the practices of most insurers.

Attached please find a description of the Progressive scoring model, which was presented at a hearing last year in Michigan. It should be noted that Progressive's credit scoring practices are among the most consumer friendly in the industry – the least bad among many bad practices. So when you are looking at Progressive, remember that other insurers' practices are much worse.

But even looking at the relatively simple Progressive model, here are the nine factors:

1. Months you have managed credit
2. Age at which you first established credit
3. Number of times a payment was past due more than 30 days
4. Number of loans and accounts with a satisfactory current payment record
5. Number of credit card accounts currently past due more than 30 days
6. Percent of available credit limit currently being used on revolving accounts
7. Percent of available credit limit currently being used on all open accounts
8. Months since your most recent auto loan was made
9. Credit inquiries you initiated in the past 25 months

Note how little these factors have to do with how well a consumer manages his or her credit. Items 1 and 2 are directly related to a consumer's age, not how they manage credit. Item 3 makes no distinction between a consumer who had a difficult time years ago – perhaps because of unemployment or a medical catastrophe – and one having trouble today. Item 5 is strongly correlated to income, as shown in the Statistical Abstract charts I provided earlier. How does the timing of your auto loan relate to how you manage credit?

And this is among the most consumer friendly of any insurer's scoring models! It should be clear that even if there is a statistical relationship between any of these factors and expected loss, the factors are pulling in people who manage credit well in addition to people who do not manage credit very well.

Finally, today, I would like to discuss the Texas study. The industry has argued that the Texas study cements their assertion that credit is correlated to risk of loss. That is not the case. There has never been much dispute that insurers can produce numbers showing that credit scores are correlated to expected losses. The question has always been, is this correlation due to credit itself or is it due to some other factor that credit is correlated to? In 1996, the NAIC credit scoring working group dismissed the simple loss ratio analysis – credit scores versus loss ratio – as insufficient to demonstrate a true correlation between credit and risk of loss. Rather, the NAIC group called for a multi-variate analysis – an analysis that takes into account all the other underwriting and rating factors used by insurers – to determine what credit's unique contribution to risk of loss might be. The NAIC wanted to know if credit was correlated with some other factor – something already used by insurers but mispriced or something prohibited.

The Texas study regarding correlation relies upon the same loss ratio methodology rejected by the NAIC in 1996. As such, the study offers nothing new on the correlation controversy.

However, the study also showed that the average and median credit scores for the standard market were substantially higher than the scores for the non standard market insurers. Since the scores were taken from policies issues in the beginning of 1998 – specifically chosen because the insurers were not using credit at the time – we would expect a random distribution of credit scores between the two groups. In other words, because the scores were taken before insurers were using credit, we expect the average credit scores in the two markets to be the same. But they weren't – not by a long shot. This means that insurers were already using some underwriting factor or factors to distinguish risk of consumers that is correlated to credit. *The Texas study showed that credit is duplicating some other factor or factors that insurers are already using!*

Since the best evidence to date shows that credit is a surrogate for other factors, we have further information to support a ban on insurers' use of credit scoring.

Personal insurance credit inquiry for John Doe

With your permission, Progressive reviews selected information from your credit history when you request a quote for insurance. Your rate is based on many factors: the car you drive, where you live, the amount and type of coverage you select, your driving and claims history, and your payment and credit history.

	You	Average
Experience you have with managing credit		
Months you have managed credit	48 Months	96 Months
Age at which you first established credit	16	21
Number of times a payment was past due more than 30 days	4	1
Current payment status of installment loans and revolving accounts		
Number of loans and accounts with a satisfactory current payment record	2	5
Number of credit card accounts currently past due more than 30 days	0	0
Use of available credit		
Percent of available credit limit currently being used on revolving accounts	88%	35%
Percent of available credit limit currently being used on all open accounts	70%	56%
Months since your most recent auto loan was made	12 Months	4 Months
Credit inquiries you initiated in the past 25 months	5	4
Insurance Credit Score	116	100

Your payment and credit history information was obtained from Experian. More detailed information can only be obtained by you by calling Experian at 1-888-397-3742. You may order a copy of your credit report free of charge.

Definitions

Installment loans have fixed terms with regular payments, such as a car loan, home loan, student loan, or personal loan. Revolving accounts have varying payments depending on the balance of the account. This includes all major credit cards and cards from department stores.

Personal insurance credit inquiry for John Doe

How your insurance credit score is determined

A lower score is better, as it indicates that you have carefully and consistently managed credit over many years. Consumers who use credit responsibly are statistically less likely to be involved in auto accidents and may be eligible for lower rates. To determine your insurance credit score, we subtract points for items that are better than average and add points for items that are worse than average.

Every consumer starts with the same number of points 100

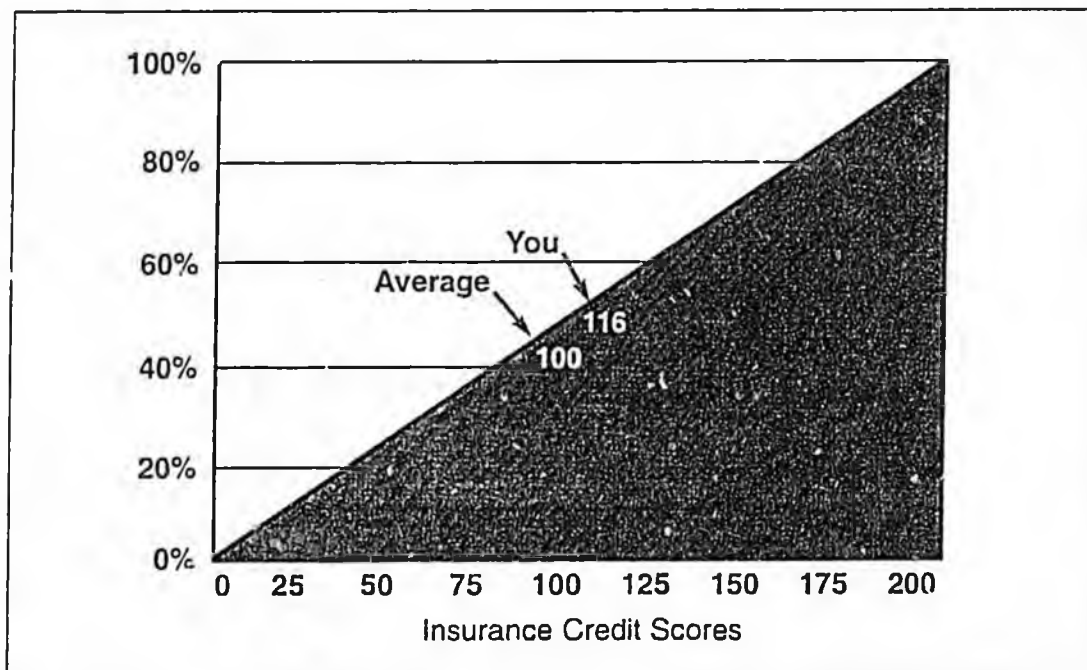
Items better than average:

First established credit at age 16	-10	
12 months since last auto loan was made	<u>-7</u>	
Total of all better than average items		-17

Items worse than average:

Managed credit for 48 months	18	
2 loans and accounts that are current	8	
88% of available credit in use	4	
5 credit inquiries in the past 25 months	<u>3</u>	
Total of all worse than average items		<u>33</u>

Your insurance credit score = **116**



Consumers who received a quote from Progressive in the past 6 months had an average insurance credit score of 100.

Your insurance credit score is 116 and is lower than 44% of consumers who received a quote from Progressive in the past 6 months, but is higher than the average.

So, what's in the Score?

Scoring model vendors refuse to divulge the methodology of these studies, the underlying data for independent verification, or the details of the study results. They claim these models are a "trade secret" and 'fear' that disclosure would lead to outside infringement.

What we do know is:

Information used in scoring models:

Outstanding Debt
Length of Credit History
New Application for Credit
Types of Credit in Use
Late payments
Collections
Bankruptcies
Inquiries

Information NOT used in scoring models:

Ethnic Group
Religion
Gender
Familial Status
Handicap
Age
Marital Status
Address
Nationality
Income -????.

And they use the following to determine the score:

Number of delinquencies.

The number of months since the most recent delinquency.

The number of trade lines open.

The number of adverse public record items (bankruptcies, judgments, liens, and foreclosures).

The number of months since the most recent public record item.

Trade account balances.

Ratio of the trade account balance to the credit limit available on the account.

Number of inquiries.

How this score is calculated and the actual score is unknown to the consumer. ***Update** - the credit bureaus are now offering your insurance credit score - at a price. (If anyone uses this service, please let email if you understand it anymore than before you obtained the score - Thanks!). Incidentally, because the methodology is given to **no one**, credit scoring models are completely **unverified for accuracy, uninvestigated for legality, and unregulated by regulators**. The scoring model vendors believe that if the consumer had access to the score and methodology of the score that:

1. consumers will not understand the score and;
2. if consumers did have the score, they may change their behavior and skew the results.

So this means the industry does not want us to change our behavior and become better drivers? No, because again, these scores are not being determined using driving records but whether or not you are likely to file a claim for an incident. **The industry is more concerned with their bottom line than they are for your safety.**

Credit reports can be manipulated, (Rapid ReScoring), and as long as the consumer is unaware as to how he/she is scored, the numbers will correlate. Obviously, the industry has found the use of insurance credit scoring to be extremely profitable as they fight mightily to keep it unrestricted, this leads me to believe there may be underlying reasons. (See my theories here.)

It may seem to make some sense that a person with a poor insurance credit score might be more likely to need compensation for an accident but that is only until you learn the type of individuals who have characteristics that score poorly in an insurance scoring model. A few of these include:

- Small business owners.
- Home-based business owners.
- Consumers who pay off their mortgages and/or auto loans early.
- Consumers who shop around for mortgage and/or auto loans for more than two weeks.
- Consumers with little or no credit histories, referred to as a "thin credit file".
- Consumers who do not believe in using credit.
- Consumers who seek credit counseling.

Does this appear to indicate financial irresponsibility to you?

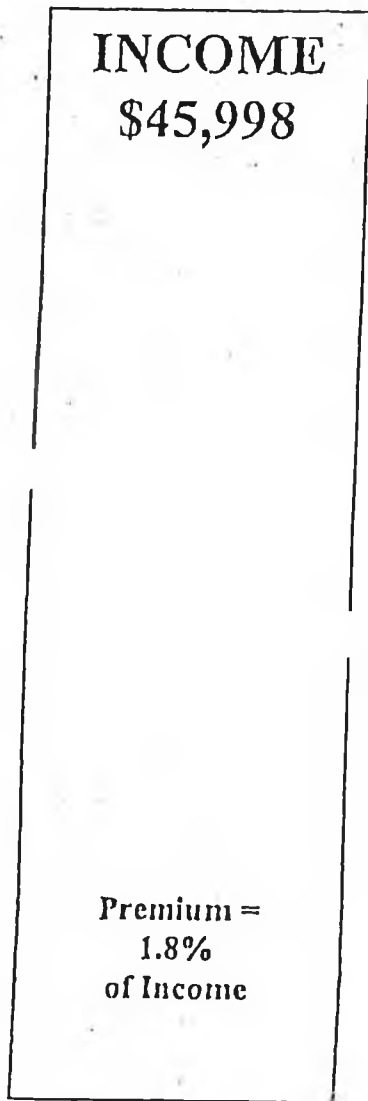
Then you have to consider the victims, the individuals who have poor insurance credit scores through no fault of the own:

- Victims of identity theft. (The fastest growing crime in America.)
- Victims of terrorist attacks.
- Employees who lose their health coverage.
- Consumers who experience a death in the family.
- Consumers who divorce.
- Consumers who experience catastrophic illnesses within the family.
- Consumers who file medical bankruptcies.
- Lower income Americans are more likely, in many cases, to have credit files that score poorly. (thin files). They are also less likely to have the disposable income necessary to settle an accident without the insurance company.

**This information is from the following website.
www.geocities.com/insurance_credit_scoring**

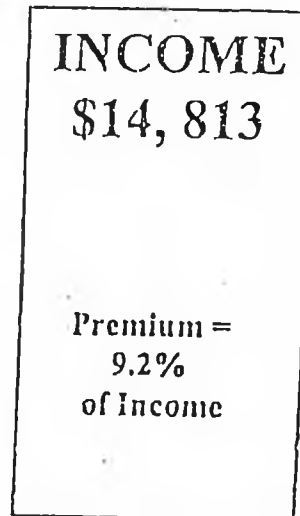
Comparison of Premium by Household Income

Maryland Division of Insurance



Premium
\$972

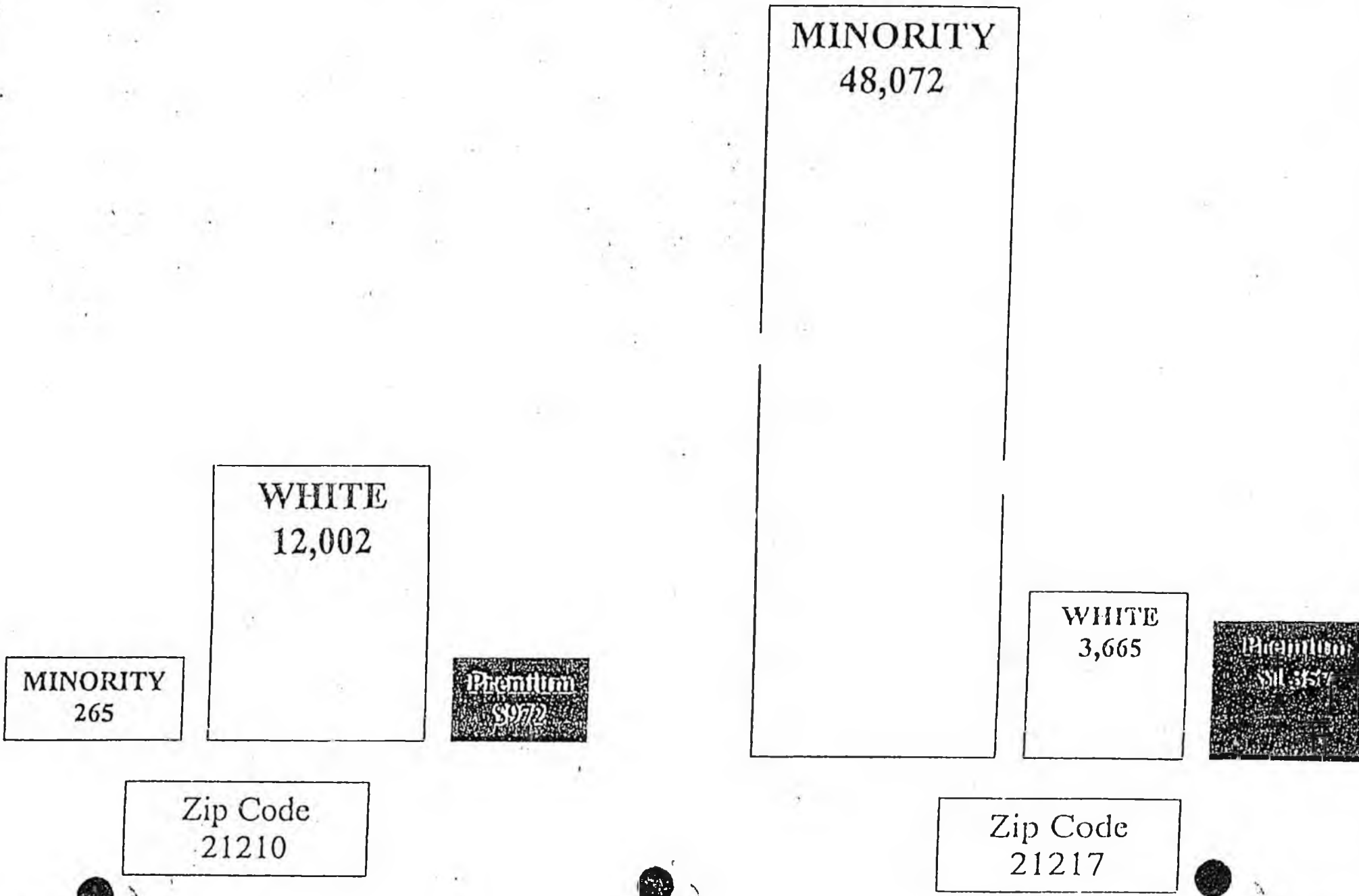
Zip Code
21210



Premium
\$1,357

Zip Code
21217

Comparison of Premium by Population Composition



STATE OF ALASKA

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GOVERNOR

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March 5, 2003

The Honorable John Cowdery
Alaska State Senate
State Capitol, Room 101
Juneau, AK 99801-1182

Re: SB 13 Preemption

Dear Senator Cowdery:

Deputy Attorney General Nordstrand asked that I respond to a question regarding SB 13, an Act that would prohibit the use of credit scoring in insurance rating. Apparently it has been suggested that SB 13 would be preempted by the Fair Credit Reporting Act (FCRA). Although such an argument may be made, for the reasons that follow I do not believe that a preemption argument would prevail.

It is true that FCRA permits insurers to use an individual's credit history in underwriting. But such permissive use does not mean that the FCRA preempts the state's regulatory authority over the business of insurance. Any preemption analysis with respect to a state's authority to regulate insurance should start with the McCarran-Ferguson Act, 15 U.S.C. § 1011, *et seq.*

In the McCarran-Ferguson Act Congress expressly left the regulation of insurance to the states. Indeed, the Act establishes what amounts to "reverse preemption" in favor of state regulation of insurance. First, Congress declared that it is in the public interest that the business of insurance continue to be regulated by the states. 15 U.S.C. § 1011. Next, Congress stated: "The business of insurance, and every person engaged therein shall be subject to the laws of the several States which relate to the regulation and taxation of such business." 15 U.S.C. § 1012 (a). Finally, Congress said:

No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of

insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance.

15 U.S.C. § 1012 (b).

Thus, any preemption analysis regarding state regulation of insurance starts with the premise that state laws are not preempted.

The FCRA itself makes it clear that Congress did not intend to preempt state regulation of insurance. 15 U.S.C. § 1681t (a) states:

Except as provided in subsections (b) and (c) of this section, this subchapter does not annul, alter, or exempt any person from complying with the laws of any State with respect to the collection, distribution, or use of any information on consumers, except to the extent that those laws are inconsistent with any provision of this subchapter, and then only to the extent of the inconsistency.

Subsections (b) and (c) do refer to insurance, however section 1681t (d) (2) (C) provides that those subsections "do not apply to any provision of State law...that gives greater protection to consumers than is provided under this subchapter."¹

Thus, the FCRA's provisions relating to insurance do not apply to any provision of state law that is intended to give consumers greater protection than is provided under the FCRA. Assuming that SB 13 is intended to provide greater consumer protections, it should survive a preemption challenge based on the FCRA's own terms.

Next, even if sections 1681t (a) and (d) did not on their face exempt SB 13 from FCRA preemption, SB 13 would only be found to be preempted to the extent of any inconsistency with the FCRA. Although at first look, SB 13's prohibition on the use of credit scoring seems inconsistent with the FCRA statement that insurers may use consumer credit information for underwriting, a proper analysis of the question is not as simple as that. The United States Supreme Court has held that where it is possible to comply with a state law without triggering a federal enforcement action under the federal law in question, the state law is not inconsistent with the federal law. *Jones v. Rath Packing Co.*, 430 U.S. 519, 540 (1977). The Court also found that an inconsistency analysis must consider whether the state law "stands as an obstacle to the ...purposes and objectives of the Congress." *Id.* at 540-41. SB 13 presents neither problem.

¹ Subsections (b) and (c) also do not apply to any state law enacted after January 1, 2004 when the FCRA is due to sunset. 1681t (d) (2) (A).

The FCRA provides that insurers *may* use consumer credit information for underwriting, not that they *must* do so. Therefore, compliance with a state law that prohibits the use of consumer credit information in underwriting or rating does not trigger any federal enforcement action under the FCRA. Thus, SB 13 is not inconsistent with the FCRA on that basis. Nor would SB 13 be an obstacle to the objectives of Congress in enacting the FCRA. The fundamental purpose of the FCRA was the protection of the consumer. If SB 13 merely adds additional consumer protection, it does not stand as an obstacle to fulfillment of that congressional intent. *See Credit Data of Arizona Inc. v. State of Arizona*, 602 F. 2d 195, 197-98 (9th Cir. 1979) (FCRA permits credit reporting agencies to charge reasonable fees for disclosure but does not require imposition of such fees – State law prohibiting such fees was not preempted).

In sum, because (1) the McCarran-Ferguson Act establishes reverse preemption in favor of State regulation of insurance, (2) the FCRA on its face does not abrogate State law if such law provides greater consumer protection than the FCRA, and (3) SB 13 is not, in any event, inconsistent with the FCRA, I believe that SB 13 would not be preempted by the FCRA.

Sincerely,

GREGG D. RENKES
ATTORNEY GENERAL

By:



Nathaniel B. Atwood
Assistant Attorney General

NBA:jem

cc: Scott Nordstrand
Deputy Attorney General

Linda S. Hall
Director, Division of Insurance

Use of Credit Reports and Credit Scoring By the Insurance Industry (March 2003)

State	Existing Rules and Previous Action	Recent Legislative or Regulatory Activity
Alabama	<p>In early August 2002, the Department of Insurance issued a consumer alert entitled "Credit Scoring: How Does It Affect You?" The alert, which can be accessed at www.aldoi.org/currentrelease.asp?Headline=282, suggested the department would promulgate a regulation in this area in 2002, but no action has been taken.</p>	<p>The Alabama Department of Insurance has developed a comprehensive draft regulation that will be vetted and considered during a public hearing in May 2003.</p>
Alaska	<p>Several bills were proposed during the 2002 legislative session, including two which would have prevented an insurer or underwriter from "bas[ing] a standard, rate, or rating plan, in whole or in part, directly or indirectly, upon a person's credit rating or credit scoring." While several hearings were held on these and related proposals, nothing was adopted in 2002. The legislature is likely to again consider the issue in 2003, and the Alaska Division of Insurance is expected to conduct an investigation in the interim.</p>	<p>The Alaska Insurance Division issued a report entitled "Insurance Credit Scoring in Alaska" in February 2003, and legislation will be considered this year. The department report can be accessed at: www.dced.state.ak.us/insurance/pub/FINAL_credit_score_report.pdf.</p> <p>Two legislative proposals to ban the use of credit information by the insurance industry are expected to receive a committee hearing before the end of March.</p>
Arizona	<p>In 2002, HB 2386 was adopted by the House and Senate and signed into law on May 22, 2002. The new law, which is now effective, does the following:</p> <ul style="list-style-type: none"> • Defines "adverse underwriting decision" and requires the written disclosure of certain information when such an action is taken. Among other provisions, the disclosure must include the specific reasons for the adverse underwriting decision. • Establishes rules concerning the correction or deletion of certain kinds of "personal information." • Grants consumers the right to request that an insurer reconsider an underwriting decision in certain instances. 	
Arkansas	<p>Among other provisions, Arkansas Code Ann. §23-56-317 provides that:</p> <ul style="list-style-type: none"> • No insurer shall refuse to issue or renew coverage or limit the amount of coverage on a risk based solely upon the insurer's knowledge of the insured's or applicant's consumer report (as defined), unless: <ol style="list-style-type: none"> (1) the report can be shown to identify characteristics that substantially increase the risk of loss at or after policy issuance or renewal; and (2) the insurer or its agent sends a notice of cancellation, refusal to renew, or declination to the insured or applicant which contains a statement which advises that the cancellation, non-renewal, or declination is based on information contained in a consumer report. • If the insurer relies solely upon a credit scoring system or model in reaching its underwriting decision, the insurer must: <ol style="list-style-type: none"> (1) file the credit scoring system with the commissioner; and (2) provide the applicant or insured with a clear, concise explanation of the factors taken into consideration in reaching its decision. • If used for rating, the guidelines on the use of consumer reports or consumer report scoring system or model must be filed with the commissioner. • No insurer may condition the issuance of an insurance policy upon the fact that an applicant or insured does not possess a credit card. 	<p>On March 24, the Arkansas Senate adopted Senate Bill 846, which is nearly identical to the NCOIL model law. The bill was adopted in the Senate without a single dissenting vote.</p>
California	<p>California has no express prohibition against an insurer using credit information. However, Proposition 103 (enacted in 1988) does not authorize the use of credit information as an "optional" auto rating factor. Prop 103 requires that auto insurance rates must be determined by the following factors in decreasing order of importance: (1) The insured's driving safety record; (2) The number of miles driven annually; and (3) The number of years of driving experience.</p> <p>In addition to these three factors, Prop 103 also authorizes the Commissioner, by regulation, to adopt optional factors that have a substantial relationship to the risk of loss. The Commissioner has not adopted credit information as an optional rating factor. Thus, this information cannot be used in determining auto insurance rates.</p>	

Provided by:

AK Independent Insurance Agents & Brokers Assn

State	Existing Rules and Previous Action	Recent Legislative or Regulatory Activity
Colorado	<p>This aspect of Prop J3 only applies to auto insurance, and since there is no express prohibition on the use of credit information, it can be used in other lines such as homeowners insurance. However, the California Department has taken an increasingly hostile attitude to the use of credit information, and some companies have reported the Department has rejected rate filings in part because of how credit information was used.</p> <p>Pursuant to C.R.S. 12-14.3-103(c)(III) and Division of Insurance Bulletin 11-00, insurers using credit scores or credit reports in the underwriting or rating process are to disclose this fact. Specifically, the consumer must receive written notification, or notification in the same medium as the application for insurance, that a credit report may be requested in connection with his/her application for insurance, and that credit scoring information may be used to determine either the consumer's eligibility for insurance or the premium to be charged.</p> <p>Regulation 5-1-16 became effective July 1, 2002. A copy of the new regulation can be accessed at http://www.dora.state.co.us/insurance/regs/5-1-16.pdf. Among other provisions, the regulation:</p> <ul style="list-style-type: none"> • Prohibits the use of credit history or insurance scoring as the sole basis for refusing to insure applicants, canceling or non-renewing existing insureds, rating policies, placing consumers in tiers, or reducing coverage. • Requires insurers to establish and comply with objective and verifiable guidelines. • Prohibits an insurer from treating credit inquiries not initiated by the consumer and collections accounts that are identified with a medical industry code as negative factors. • Requires that consumers over 65 with no credit history and consumers whose credit information is adversely impacted by a dissolution of marriage or by the credit information of a former spouse be treated as though they had a neutral credit history or insurance score. • Requires an insurer to use a consumer's current credit information whenever credit information is used in the underwriting or rating process. • Requires insurers to disclose certain information about its use of credit information upon the request of the insurance department. • Mandates the disclosure of certain information to consumers concerning the use of consumer reports or insurance scores. • Reaffirms the FCRA obligations that insurers face. • Provides for a policyholder appeal and error correction process. 	<p>House Bill 1273 has been adopted unanimously by both chambers of the Colorado General Assembly. The bill requires insurers to disclose to applicants or policyholders that credit information will be used for underwriting or rating and allows consumers to receive an explanation of the "significant characteristics of the credit information that impact the policyholder's insurance score."</p>
Connecticut	<p>The rules in place in Connecticut come in the form of guidelines issued by the Insurance Department – Guidelines for the Examination of Financial History Measurement Programs for Personal Risk Insurance Underwriting and Rating Plans (March 2, 2001). According to the state, the guidelines are supported by authority granted under Chapters 701 & 705. Among other provisions, the guidelines require the following:</p> <ol style="list-style-type: none"> (1) Such programs that are used to underwrite or rate risks must be filed with the Department. Among other things, the filing must identify the characteristics used in the program from which a measurement is derived. (2) Such programs may be used only for new business and must not penalize an insured for no credit history. (3) Documentation must be submitted to demonstrate the correlation between the measurement program and the expected risk of loss. (4) Financial History Measurement Programs may not use the following characteristics – number of credit inquiries, a consumer's total available line of credit, disputed credit information, and other characteristics. (5) Company rules must provide that a policy may not be declined, canceled, or non-renewed solely due to an adverse credit score or measurement. (6) There are a series of requirements that are initiated in the event of an adverse action. An adverse action includes the consumer who is denied coverage, charged a higher rate, assigned to a higher tier or higher priced company within an insurer group, not given a reduced discount, etc. (7) Companies are required to report after a program has been in place for two years, and they must also comply with department requests for a set of test examples reflecting various financial history characteristics. 	

State	Existing Rules and Previous Action	Recent Legislative or Regulatory Activity
Delaware	<p>The guidelines can be downloaded at http://www.state.ct.us/cld/letterfh.pdf.</p> <p>Both chambers of the Delaware General Assembly adopted resolutions that address the industry's use of credit information during the 2002 legislative session. The resolutions, House Resolution 85 and Senate Concurrent Resolution 35, were passed by their respective chambers just prior to the legislature's adjournment – and the two resolutions are very similar. They both call on the Department of Insurance to promptly promulgate regulations in this area, and the Senate version asks the department to report its recommendations to the General Assembly by January 15, 2003. The resolutions also note that the "Delaware Insurance Commissioner has required that insurers and credit score vendors using credit scoring models meet with the members of the Commissioner's office to fully explain the manner in which such models are being used in either or both the underwriting or rating of insurance policies."</p>	<p>In late 2002, the Delaware Insurance Department released its draft of Proposed Regulation 87, which would regulate insurer use of credit information. The department conducted a series of public hearings across the state in January and received numerous comments on the proposal, but nothing has been finalized to date. Another public hearing has been scheduled for April 22, 2003. More information about the proposed regulation can be accessed at www.state.de.us/inscom/CreditScore.htm.</p>
Florida	<p>Florida's insurance code has a number of general consumer protection provisions that provided the Florida Department with the authority to promulgate a regulation in this area.</p> <p>The regulation (4-125.004, 1996) provides that any insurer that requests or utilizes credit reports in the review of personal lines auto or homeowners insurance applications shall maintain and adhere to written procedures established by the insurer. These procedures must specify the following, among other items:</p> <ul style="list-style-type: none"> (1) the circumstances under which credit reports will or may be requested and the reports will or may be used in underwriting decisions; (2) that the insurer shall notify the applicant in writing prior to such request that a credit report will or may be requested (if the notification is given on the application, it must be initiated by the applicant); and (3) that any applicant affected by an adverse underwriting decision shall be advised of the means by which the applicant can obtain a copy of the credit report. <p>Any insurer that requests or utilizes credit reports in the consideration of personal lines auto or homeowners applications must maintain evidence of its compliance with these written procedures, and this evidence must be available for examination by the Dept. When an insurer under this rule denies an application based on info from a credit report, the insurer must indicate the means by which an applicant may obtain a copy of their credit report and by which the applicant may identify the specific items in the report which resulted in the denial.</p>	<p>Florida Insurance Commissioner Tom Gallagher established a task force in 2001 to examine the use of credit data and scoring models in the insurance industry. This task force has issued a detailed report, which can be accessed at: www.doi.state.fl.us/consumers/crtf/CRTF_Final_Report.pdf.</p>
Georgia	<p>The issue is addressed by Regulation 120-2-65 (1997), which can be accessed online at www.ganet.org/rules/index.cgi?base=120/2/65. The use of credit is prohibited under the regulations for private passenger auto insurance. However, the regulations contain an exception to the general prohibition which allows use of credit in underwriting if the use of credit is actuarially supported or relevant to the risk.</p> <p>There is no explicit requirement that insurers receive the department's approval prior to implementing underwriting guidelines which contain provisions for credit histories. However, a company using such guidelines without specific approval could be subject to penalties if the department determines that the use of credit is not actuarially supported or relevant to the risk.</p> <p>During 2002, Commissioner Oxendine announced he would support legislation to prohibit the use of credit scoring in auto insurance underwriting – see www.inscomm.state.ga.us/ANNOUNCEMENTS/020802.pdf. The commissioner's announcement followed two days of hearings in late 2001. Hearing transcripts and other information can be found at www.inscomm.state.ga.us/CONSUMER/CreditScoringHearings.asp.</p>	<p>On March 24, the Georgia House of Representatives adopted House Bill 215, which is effectively to the NCOIL model with several minor revisions. The bill, which would go into effect July 1, passed the House with only four opposition votes.</p>
Hawaii	<p>State law essentially prohibits the use of credit information in the underwriting of auto insurance. Specifically, §431:10C-207 provides: "No insurer shall base any standard or rating plan, in whole or in part, directly or indirectly, upon a person's race, creed, ethnic extraction, age, sex, length of driving experience, credit bureau rating, marital status, or physical handicap."</p> <p>As described in the April 3, 2002 edition of the <i>Honolulu Advertiser</i>, seven auto insurers recently agreed to pay more than \$115,000 in fines for illegally using criteria (including credit histories) barred under state law. The announcement followed a department investigation that began in August 2001. The companies fined represent nearly 2/3 of the auto market, and the fines ranged from \$5,500 to \$40,000. Fines against four</p>	

State	Existing Rules and Previous Action	Recent Legislative or Regulatory Activity
Idaho	<p>additional companies are still pending resolution, and the department has suggested that it might seek fines for each policy violation if insurers dispute the initial fines.</p> <p>Senate Bill 1408 (2002) was adopted overwhelmingly by the Idaho Legislature and took effect on January 1, 2003. The new law adds the following section to Idaho code.</p> <p>41-1843 INSURANCE RATES AND CREDIT RATING.</p> <p>(1) No insurer regulated pursuant to this title shall charge a higher premium than would otherwise be charged, or cancel, nonrenew or decline to issue a property or casualty policy or coverage based primarily upon an individual's credit rating or credit history.</p> <p>(2) As used in this section, "based primarily" means that the weight given by the insurer to an individual's credit rating or credit history exceeds the weight given by the insurer to all other criteria considered in making the decision to charge a higher premium or to cancel, nonrenew or decline to issue an insurance policy.</p> <p>(3) This section shall apply only to [P&C] insurance, as defined in chapter 5, title 41, Idaho Code, to be used primarily for personal, family or household purposes.</p> <p>The use of the phrase "based primarily" has been a source of controversy and concern, and many in the industry feel the term is subjective and likely to result in unnecessary litigation. The department of insurance has initiated its rulemaking process and is working on developing its rules on implementation of the new law.</p>	
Illinois	<p>Illinois passed a law during the 2001 session – PA 92-480 (HB 2419). Under the law, a company may not refuse to issue or renew a policy of insurance solely on the basis of a credit report for the lines of insurance covered. In addition, if a credit report is used in conjunction with other criteria to refuse to issue or renew a policy of insurance, the insurer shall provide the applicant or policyholder with a notice of the underwriting action taken. For purposes of that provision, compliance with the notification requirements of the FCRA shall constitute compliance with the state requirement.</p> <p>In late February, the Insurance Department released the results from its survey on insurer use of credit information, and those findings can be found online at www.state.il.us/ins/General/insurers_credit_report.pdf. The department has also developed an informational piece for consumers that can be accessed at www.state.il.us/ins/General/how_insurers_use_credit.htm.</p>	<p>On March 19, the Illinois House unanimously approved House Bill 1640, which is nearly identical to the NCOIL model law. It is now under consideration in the Senate.</p>
Indiana	<p>The only mention of the use of credit information in underwriting in the Indiana Code today is in IC 27-1-22-25, which deals only with private passenger automobile insurance. It states that an insurer may not charge a higher rate for a private passenger automobile policy to an individual who has filed for bankruptcy.</p> <p>Please note the law only states that an insurer may not charge a higher rate. It is silent about an insurer rejecting a potential insured based on a bankruptcy. Other than the bankruptcy language, the Indiana code and Indiana Department of Insurance rules are silent on the use of credit information.</p>	<p>Bulletin 111 (see http://www.ai.org/idoi/bulletin111.pdf) was issued July 1, 2002.</p>
Iowa	<p>The Iowa Insurance Division recently adopted a rule (191—20.12, effective July 1, 2001) that addresses the use of credit history in underwriting and making of rates for personal and homeowners policies. Among other provisions, the rule, which applies to personal lines insurance, requires the following:</p> <ul style="list-style-type: none"> • An insurer must disclose at the time an application is taken that it may or will gather credit information, and an insurer must notify a consumer when an adverse action is taken, following the requirements of the FCRA §624(b). • An insurer is also prohibited from canceling a policy, refusing to renew a policy, or rejecting an application based solely on information contained in a credit report or credit scores, and an insurer may not take these same actions based on information it knows is inaccurate or incomplete. • An insurer is also required to have specific, written criteria on how credit information is utilized in underwriting and tier placement. The commissioner may also require an insurer to file (1) the characteristics or factors from a credit report that are used as credit criteria or used in determining a credit score; (2) in the case of credit scoring, the algorithm, computer program, model, or other process 	

State	Existing Rules and Previous Action	Recent Legislative or Regulatory Activity
	<p>that is used in determining a credit score (along with the underlying support, including statistical validation, for the development of the algorithm, computer program, model, or other process that is used in determining a credit score); and (3) any underwriting guidelines relating to the use of the credit criteria or credit scores, along with appropriate supporting material for the use of the guidelines.</p> <ul style="list-style-type: none"> • At the request of the commissioner, an interested party (such as an scoring modeler) shall file or discuss under confidentiality protection with the commissioner the algorithm, computer program, model, or other process that is used in determining a credit score (along with the underlying support, including statistical validation, for the development of the algorithm, computer program, model, or other process that is used in determining a credit score). • Filings made by insurers or interested parties shall be considered confidential records and are protected as trade secrets in accordance with state law. 	
Kansas	<p>With only one dissenting vote, Senate Concurrent Resolution 1623 was adopted by the Kansas Legislature in 2002. The resolution authorized the creation of a private and public sector task force to study "the desirability of regulation of insurance scoring practices for the benefit of Kansas consumers" and to report back to the legislature before the start of the 2003 session.</p>	<p>A substitute version of Senate Bill 144 has been approved by the Kansas Senate. The initial proposal was developed and recommended by the insurance commissioner, and the revised version – which is very similar to the NCOIL model law – was drafted following hearings on the issues. The bill also includes the following provisions:</p> <ul style="list-style-type: none"> • Its provisions also apply to "individually underwritten policies of farm owners." • When an insurer reexamines an insured's credit report or score at the request of that consumer at annual renewal, the insurer may not increase insurance rates because of the current report or score. • Insurers taking adverse actions against consumers "shall provide a procedure whereby a consumer may review an adverse action based on credit information", and insurers and their agents are provided with immunity from any action arising from information provided through this process.
Kentucky	<p>KRS 304.20-040 and KRS 304.20-042, adopted in 1998 and revised in 2000, say insurers cannot decline, refuse to renew, or cancel auto or property and casualty insurance covering personal risks based solely on credit history or lack of credit.</p> <p>HB 564 was introduced in 2002 but not adopted. Under the proposal, "no insurer may base any rates, in whole or in part, upon the use of an insurance risk score unless the method for calculating the insurance risk score is filed in support of a rate filing with the commissioner and the commissioner determines the insurance risk score has a substantial relationship to the risk of loss."</p>	
Louisiana	<p>The insurance code's unfair trade practices provisions address this issue. Specifically, §22:1214(7)(l) states that the following acts are swept within unfair trade practices acts of the state:</p> <p>"With regard to automobile liability insurance, terminating or modifying coverage, or refusing to issue or refusing to renew any policy solely because the applicant or insured filed for bankruptcy. This Subparagraph shall not apply where the refusal to continue to insure is based upon nonpayment of premium."</p> <p>The Louisiana Department of Insurance held a public hearing on the industry's use of credit information on May 1, 2002, and a department report on the issue was expected to be released. The Department was also considering developing a new regulation or issuing a bulletin on the issue by the end of the year.</p>	<p>Legislative action is expected in Louisiana once the legislature convenes in late March.</p>
Maine	<p>The Maine Department of Professional & Financial Regulation has posted "P&C Tier Placement Guidelines" on its website, and these can be viewed at http://www.state.me.us/pfr/ins/tier.htm. The guidelines say the following about using credit reports in the auto insurance context:</p>	

State	Existing Rules and Previous Action	Recent Legislative or Regulatory Activity
	<p>May be used in conjunction with other underwriting criteria in determining tier placement. Company should be prepared to substantiate the relationship to insurance risk and provide notification information to insureds as required under the Fair Credit Reporting Act, Title 10 MRSA, Chapter 210, §1311-1329. Company, or a vendor on the company's behalf, should file all factors that are considered including any scoring algorithm.</p> <p>The guidelines say the following about using credit reports in the auto context:</p> <p>"May not be used as sole underwriting criteria or as the reason for rejecting a risk. Company must prove the relationship to insurance risk and provide notification information to insureds as required under Fair Credit Reporting Act. Do not allow 'black box' scoring. Company needs to file all factors that are considered and the scoring algorithm. For more details, please see article in the October 1997 Bureau Newsletter."</p>	
Maryland	<p>HB 521/Chapter 580 was adopted overwhelmingly by both chambers of the General Assembly in the closing minutes of the 2002 session and signed into law. A summary of the law follows:</p> <ul style="list-style-type: none"> • In the homeowners context, an insurer may not "refuse to underwrite, cancel, or refuse to renew a risk based, in whole or in part, on the credit history of an applicant or insured; rate a risk based, in whole or in part, on the credit history of an applicant or insured in any manner . . . ; or require a particular payment plan based, in whole or in part, on the credit history of the insured or applicant." • In the auto context, an insurer may not "refuse to underwrite, cancel, refuse to renew, or increase the renewal premium based, in whole or in part, on the credit history of an insured or applicant; or require a particular payment plan based, in whole or in part, on the credit history of the insured or applicant." • An insurer may use the credit history of an applicant to rate a new auto policy, but there are restrictions. The insurer may not use "a factor on the credit history of the applicant that occurred more than 5 years prior to the issuance of the new policy" and must advise the applicant that his/her credit history is used. At the request of the applicant, the insurer must also "provide a premium quotation that separately identifies the portion of the premium attributable to the applicant's credit history." • In the rating of a new auto policy, insurers may not use the absence of credit history (or the inability to determine the applicant's credit history) or the number of credit inquiries on a person's history. • Every two years or at the request of the insured, auto insurers must review the credit history of an insured who was adversely impacted by the use of credit history at the initial rating and make the appropriate premium adjustments. Insurers must disclose these review options to applicants at the time of issuance of the policy. • "With respect to private passenger motor vehicle insurance, an insurer that rates a new policy based, in whole or in part, on the credit history of the applicant may, if actuarially justified, provide a discount of up to 40% or impose a surcharge of up to 40%." • The MD Insurance Commissioner is also directed to conduct a study on whether the use of credit scoring has "an adverse impact on any demographic group defined by race or socio-economic status." These and other findings are required to be submitted to the General Assembly by January 1, 2004. <p>The Maryland Insurance Division issued a bulletin (Bulletin 02-14) that is intended assist insurers with their compliance obligations under the new law. The July 2002 bulletin, which is essentially a section-by-section Q&A, can be downloaded at www.mdinsurance.state.md.us/documents/BulletinP&C02-14.pdf. The department shortly thereafter issued a supplementary bulletin (Bulletin 02-16), which can be downloaded at www.mdinsurance.state.md.us/documents/BulletinP&C02-16.pdf.</p>	
Massachusetts	<p>Legislation on this subject is expected at some point in the future. In addition, Julianne Bowler, the commissioner of insurance, addressed the use of credit information in a April 8, 2002 interview that appeared in BestWire. She said: "Credit scoring is prohibited in Massachusetts, in all lines of business. It's tied into our fair trade practices act. All the insurance companies have that information on the checklists when they submit for rate or form approval so they know up front they can't use it."</p>	

State	Existing Rules and Previous Action	Relevant Legislative or Regulatory Activity
Michigan	<p>The Michigan Office of Financial and Insurance Services held a series of six public hearings on the use of credit information between June 4 and July 18, 2002, and the Commissioner issued a report on his findings in December 2002. The issuance of the report was followed in February by the development of a new bulletin – Bulletin No. 2003-01-INS – concerning the use of credit information. For copies of the testimony provided at the hearings, a copy of the Commissioner's report, and other information, see www.michigan.gov/cis/0,1607,7-154-10555_12902_15784--00,html.</p> <p>In July 2002, then-State Attorney General and current Governor Jennifer Granholm issued a Consumer Alert entitled "Home and Auto Insurance – Get the Credit You Deserve!" That alert can be found at www.ag.state.mi.us/cn/alerts/c_alerts/consumer_alert67.htm. The then-Attorney General also issued a press release related to the consumer alert in which she was quoted as saying: "Though not illegal, the practice of 'insurance credit scoring' should certainly give every consumer pause, especially in light of the fact that Consumer Reports has found that 70 percent of credit reports have an error and 29 percent have a major error. How fair is it to penalize consumers for a score that could very well be erroneous?" See www.ag.state.mi.us/press_release/pr10332.htm. She has also stated that she would support efforts to ban credit scoring, something she called "a terrible practice."</p>	<p>On February 14, 2003, outgoing Commissioner Frank Fitzgerald issued Order No. 03-005-M and Bulletin No. 2003-01-INS, which require insurers using credit information to take certain compliance actions. The key requirements are outlined below:</p> <ul style="list-style-type: none"> • Companies must file the specific credit classification factors used to calculate insurance scores and any credit-related formulas used to apply discounts with the department by July 1, 2003, and they must also file an actuarial certification justifying the discount levels and tiers being used. [The bulletin also makes clear that rating materials filed with the agency are accessible to inspection by the public.] • Insurers using insurance scoring discounts must recalculate and then apply an insured's score at least once annually, and carriers must recalculate these scores and apply the appropriate discounts whenever a person successfully disputes information contained in one's credit history. • Insurers using credit scoring must inform auto and homeowners policyholders and applicants that credit information is used and disclose the tier in which the person is placed. <p>The report issued by the department in December also included several recommendations for legislative action. Although no formal legislative action has taken place to date, the House Insurance and Financial Services Committee has established a subcommittee to study the issue.</p>
Minnesota	<p>Minn. Stat. §72A.499, subdivision 1, addresses insurer obligations when adverse underwriting decisions are made. These provisions are listed below:</p> <p>"Subdivision 1. Notice and information. (a) In the event of an adverse underwriting decision, the insurer or insurance agent responsible for the decision shall provide in writing to the applicant, policyholder, or individual proposed for coverage:</p> <p>(1) the specific reason or reasons for the adverse underwriting decision, a summary of the person's rights under sections 72A.497 and 72A.498, and that upon request the person may receive the specific items of personal information that support those reasons and the specific sources of the information; or</p> <p>(2) the specific reason or reasons for the adverse underwriting decision, the specific items of personal and privileged information that support those reasons, the names and addresses of the sources that supplied the specific items of information specified, and a summary of the rights established under sections 72A.497 and 72A.498.</p> <p>(b) In addition to the requirements of paragraph (a), if the adverse underwriting decision is either solely or partially based upon a report of creditworthiness, credit standing, or credit capacity that an insurer receives from a consumer reporting agency, the insurer or insurance agent responsible for the decision shall provide in writing the primary reason or reasons for the credit score or other credit based information used by the insurer in the insurer's adverse underwriting decision."</p> <p>The MN Department of Commerce's viewpoint on the relevant issues can be found in a consumer tip sheet that has been posted at www.commerce.state.mn.us/pages/ConsumerTips/ConTip-CreditScore.htm.</p>	<p>SF2363, which is now in effect, unanimously passed the Minnesota Legislature and was signed into law in 2002. In summary, the law provides the following:</p> <p>(a) An insurer may not reject, cancel or non-renew an auto or homeowners policy in whole or in part on the basis of credit information without consideration of other underwriting factors.</p> <p>(b) If credit information or scoring is used in underwriting the insurer must disclose that credit information will be obtained and used as part of the insurance underwriting process.</p> <p>(c) Insurance inquiries and non-consumer initiated inquiries may not be used as part of the scoring process.</p> <p>(d) If a credit information or score relating to a consumer is adversely impacted or cannot be generated because of the lack of a credit history, the insurer must exclude the use of credit as a factor in underwriting.</p> <p>(e) Insurers must provide reasonable credit exemptions based upon prior credit histories for persons whose credit information is unduly influenced by extraordinary life events, such as a catastrophic injury or the death of a spouse.</p> <p>(f) A scoring methodology may not be used by an insurer if the methodology incorporates the gender, race, nationality, or religion of an insured or applicant.</p> <p>(g) Insurers who employ a credit scoring or insurance scoring system in underwriting must have on file with the commissioner</p>

State	Existing Rules and Previous Action	Recent Legislative or Regulatory Activity
		(1) the Insurer's scoring methodology, and (2) information that supports the Insurer's use of a credit score or insurance score. Information provided by an insurer to the commissioner under these provisions is trade secret information.
Mississippi Missouri	<p>The Missouri Department of Insurance recently posted an FAQ on industry use of credit information to its website, and this can be found online at www.insurance.state.mo.us/consumer/faq/creditScoring.htm.</p> <p>Missouri Governor Bob Holden called for credit-related legislation in early 2002 and made the issue part of his legislative package. A substitute compromise bill – House Bill 1502 – was ultimately adopted in place of the two proposals originally put forth. Among other provisions, the law does the following:</p> <ul style="list-style-type: none"> • Prohibits insurers from taking adverse actions against consumers based on a credit report or insurance credit score without consideration of another noncredit related underwriting factor. • Requires that insurers disclose at time of application or on the application itself that credit reports or insurance scores are utilized. • Prohibits an insurer from taking an adverse action based on information in a credit report that is the subject of a written dispute until such dispute has reached a final determination in accordance with the FCRA. • Imposes certain disclosure requirements on insurers that take adverse actions based on a credit report or insurance score and provides those subject to an adverse action with the ability to request a reevaluation. • Permits insurers to obtain a current credit report or insurance score at the time of renewal underwriting, but prohibit adverse actions based on scores or credit reports that are more than three years old. • Prohibits the number of consumer insurance inquiries from being utilized as a negative factor in scoring formulas. • Prevents entities that create, compile, or provide insurance scores from selling or otherwise providing certain types of information – including the estimated expiration date of insurance policies – in certain instances. See §12. <p>The law applies to all contracts entered into on or after July 1, 2003.</p>	
Montana	<p>There is a statute and bulletin in place. Among other provisions, state law (see §33-18-210(11)) provides that:</p> <p>"An insurer writing automobile or homeowner insurance may not refuse to insure, refuse to continue to insure, charge higher rates, or limit the scope or amount of coverage or benefits available to an individual based solely on the insurer's knowledge of the individual's credit history unless (i) the insurer possesses substantial documentation that credit history is significantly correlated with the types of risks insured or to be insured; (ii) the insurer sends written communication to the individual disclosing that the insurance coverage was declined, not renewed, or limited in scope or amount of coverage or benefits because of credit information relating to the applicant or the insured; and (iii) upon subsequent request of the individual, mailed within 10 days of receipt of the denial, nonrenewal, or limitation, the insurer provides the individual with a copy of the credit report at issue or the name and address of a third party from whom the individual may obtain a copy of the credit report, within 10 days of receipt of the request."</p> <p>The department issued an "advisory bulletin" on September 7, 2001, that addresses Montana law concerning adverse actions. See http://www.state.mt.us/sao/Other/csmemorandum.htm.</p>	Two separate bills are moving through the Montana Legislature. The first, Senate Bill 349, is based on the NCOIL model law and was adopted 47-3 by the Senate on February 28. The second, House Bill 184, is supported by the insurance commissioner and was approved 87-11 by the House on February 12.
Nebraska	There is no written law, regulation, bulletin, or other provision in place regulating/restricting use of information in underwriting. The Department's "public position" is that credit history cannot be used as sole underwriting criterion – but consumer complaints have not been very successful.	The unicameral legislature is currently considering LB 487, and the proposal passed the Banking, Commerce, and Insurance Committee on February 26. The bill is nearly identical to the NCOIL model law.

State	Existing Rules and Previous Action	Recent Legislative or Regulatory Activity
	<p>However, the 2001 Legislature passed LB 444, which instituted two relatively simple disclosure requirements that apply to private passenger auto insurance. The applicable section of the law states:</p> <p>"On and after July 1, 2002, no private passenger automobile liability policy shall be delivered, issued for delivery, or renewed with respect to any motor vehicle licensed in this state unless accompanied by a disclosure showing . . . if any credit-based rating was used to determine the rate charged."</p> <p>As described by the department, this disclosure requirement covers only those situations where an individual insurer has two or more rate levels available to a policyholder and credit scoring or some other use of credit history is a factor used in determining which rate applies. In these situations, the insurer must make a clear affirmative statement to the policyholder that it has used credit history or credit scoring as a factor in determining the rate being charged. Please note that it will not suffice to merely include a blanket statement that credit scoring might have affected the rate – the disclosure should be an affirmative statement made only when credit scoring or credit history is used by the individual insurer in its pricing calculations.</p>	
Nevada	<p>In 2002, the Nevada Division of Insurance convened a meeting with a group of industry representatives, consumer advocates, and credit agencies to discuss the use of credit scores in setting insurance rates. The division is concerned about whether the practice unfairly discriminates against certain segments of the population, and they are investigating the issue.</p>	
New Hampshire	<p>On March 4, 2002, New Hampshire adopted a new regulation in this area (INS 3300), which is effective September 1. A copy of the new regulation can be accessed online at http://www.state.nh.us/insurance/Regs/ins3300adopted%203-4-02.pdf. A summary of the regulation follows:</p> <ul style="list-style-type: none"> • The regulation applies to auto and homeowners insurers that use insurance scores (as that term is defined) for underwriting and rating purposes. Insurers must develop written standards for the use of such scores, and these scores may not be based on race, sex, religion, national origin, place of residence, blindness, physical disabilities, or other articulated factors. • Insurers must submit their underwriting models and rates with the department "for approval." The characteristics, factors, and criteria associated used in the underwriting or rating must be filed. In addition, insurers must also separately submit their insurance scoring models, and such models must be approved prior to their use. As part of this latter filing, insurers must include statistical validation supporting the use of insurance scores in the rating process. • Insurers that use an insurance score at the time of original application must provide a notice of this fact to the consumer, and a similar notice must be provided if such scores are used upon renewal. The notice must be provided by the same method that the application is submitted. • The regulation defines "adverse action" and sets out a set of rules for when such actions are taken by an insurer. In these instances, insurers must notify the consumer, provide the contact information of the consumer reporting agency that furnished the information to the insurer, and provide notice of the consumer's rights. If requested, insurers must also provide consumers with the two primary reasons why the consumer was assigned the insurance score. 	
New Jersey		
New Mexico	<p>A March 4, 2002 Insurance Chronicle story reported on Superintendent Serna and the insurance division's position on the use of credit information, and the article suggested the division has some concerns with the correlation between risk and credit history and the impact of using credit histories in New Mexico. Bulletin No. 2002-001, located at http://www.nmipc.state.nm.us/insbul22001.pdf, also states that all insurers using credit scoring in any phase of their underwriting or ratemaking process must submit all portions of their programs related to credit scoring to the Insurance Division.</p>	<p>The Superintendent established a task force in 2002 to examine the issue, conduct public hearings, and develop policy recommendations. The task force provided its recommendations to the Superintendent in late 2002, but no new regulations have yet been promulgated as a result of the group's actions. Superintendent Serna remains concerned about the implications that the use of credit scoring may have on minorities, and he has asked the University of New Mexico to conduct a study of the issue (expected to be completed by the Summer of 2003).</p> <p>Two bills to ban the use of credit information by the insurance industry were introduced in 2003, but both failed to pass before the close of the legislative session.</p>

State	Existing Rules and Previous Action	Recent Legislative or Regulatory Activity
New York	The NY Department has some in-house guidelines regarding the use of credit information. It is an Informal Department opinion, which also covers the use of credit information for moving consumers among tiers in multi-tier plans. It is allowable to use credit history as one of the underwriting criteria, but not the sole criteria.	
North Carolina		Legislation in this area could be introduced and considered during the 2003 session.
North Dakota	<p>A story in the February 24, 2002 edition of the <u>Argus Leader</u> reported that "Commissioner Jim Poolman . . . wants to find out how widespread the practice of credit scoring is and what problems it might be creating." The article reported that the commissioner was particularly interested on the impact on farmers who suffer periodic financial problems, people with no credit history, and individuals who use cash for purchases.</p> <p>Commissioner Poolman scheduled a public hearing to "solicit opinions on the use of credit information in pricing and underwriting of insurance." The hearing, held on April 2, 2002, was attended by numerous legislators and several company representatives. The Commissioner and the legislature are now expected to consider whether regulation or legislation is needed.</p>	The North Dakota House and Senate both overwhelmingly passed House Bill 1260, which is nearly identical to the NCOIL model law. The most recent action on the bill, the Senate's passage, took place on March 24, 2003.
Ohio	<p>House Bill 519 was introduced in February 2002, which would:</p> <ul style="list-style-type: none"> • Prohibit an insurer from refusing to "write or renew motor vehicle insurance solely on the basis of an applicant's or insured's credit score or credit report." • Prohibit an insurer from considering "a credit score or credit report in underwriting motor vehicle insurance unless the credit score was determined or the credit report issued within the prior year." • Require that insurers annually obtain new credit scores and credit reports for each of its motor vehicle insurance insureds and utilize that information in determining its insureds' premiums. ["If spouses are covered under the same policy of motor vehicle insurance, an insurer shall obtain credit scores or credit reports on both spouses, and the better credit score or credit report shall be used in determining the premium for the policy."]] • Require that insurers notify an applicant in writing prior to the issuance of a policy if credit information is considered to determine rates. • Prohibit an insurer from increasing an applicant's or insured's premium as a result of a request for information on the insurer's use of credit scores and credit reports." • Require that a person's lack of credit history be treated as a neutral factor. • Compel the Department of Insurance to study and issue a report on the use of credit information by the insurance industry. 	
Oklahoma	<p>In a June 30, 2000 bulletin, Commissioner Fisher informed the industry that the OK Board for P&C Rates had recently established guidelines to be used "for credit reports/scores in underwriting and rate determinations for insurance in the State of Oklahoma.</p> <p>The Commissioner also made clear that "agents and consumers [should] not bear the expense of obtaining credit reports/scores." He also expressed concern with the liability exposure for agents when companies use a consumer's credit information, and he urged companies to "limit the information that goes to the agent as to eliminate any sort of liability the agent might incur."</p> <p>The Commissioner also said: "If you choose to apply credit reports/scores to your current book of business, please allow an additional 90 days notice to the standard renewal offer. This should give consumers time to verify the accuracy of their information."</p> <p>The formal procedures address these issues in greater detail, and some of the key provisions summarized below:</p> <ul style="list-style-type: none"> • Insurers are required to notify insureds of "any adverse action taken as a result of the insured's credit history or credit score, which includes an increase in premium due to a change in tier or company placement." 	In late February, the Oklahoma House passed House Bill 1751 by a vote of 99-1, and the proposal has been forwarded to the Senate for its consideration. The proposal is very similar to the model law that was adopted by NCOIL in November 2002.