HOUSE DOCKET, NO. 782 FILED ON: 1/19/2011

HOUSE . . . . . No. 309

The Commonwealth of Massachusetts

PRESENTED BY:

Ronald Mariano

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to the use of credit based insurance scoring for underwriting and rating of insurance.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Ronald Mariano	*3rd Norfolk*	*1/19/2011*

HOUSE DOCKET, NO. 782 FILED ON: 1/19/2011

HOUSE . . . . . No. 309

By Mr. Mariano of Quincy, a petition (accompanied by bill, House, No. 309) of Ronald Mariano relative to the use of credit based insurance scoring for underwriting and rating of insurance. Financial Services.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act relative to the use of credit based insurance scoring for underwriting and rating of insurance.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

The General laws are hereby amended by inserting after chapter 175K the following Chapter:-

CHAPTER 175L

Section 1. The following words, as used in this chapter, unless the context otherwise requires or a different meaning is specifically prescribed, shall have the following meanings:

"Adverse Determination", means a denial, cancellation, termination or non-renewal of insurance coverage, an increase in any charge for insurance coverage, placement into a Page 2 lower tier, or any other unfavorable change in the terms of coverage or amount of any existing or applied for insurance.

"Affiliate", means any company that controls, is controlled by, or is under common control with another company.

"Applicant", means an individual who has applied to be covered by a personal lines insurance policy with an insurer.

"Consumer", means an insured whose credit information is used or whose insurance score is calculated in the underwriting or rating of a personal lines insurance policy or an applicant for such a policy.

"Commissioner", means the Commissioner of the Massachusetts Division of Insurance, appointed pursuant to G.L. ch. 26, Section. 6, or his or her designee.

"Consumer Report", means any written, oral or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing or credit capacity which is used or expected to be used or collected in whole or in part for the purpose of service as a factor in establishing the consumer's eligibility for (1) credit or insurance to be used primarily for personal, family, or household purposes, or

(2) employment purposes, or

(3) other purposes authorized under section fifty-one of chapter ninety-three of the Massachusetts General Laws. The term does not include any report containing information solely as to transactions or experiences between the consumer and the person making the report, any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device, or any report in which a person who has been re2quested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys his decision with respect to such request, if the third party advises the consumer of the name and address of the person to whom the request was made and such person makes the disclosures to

the consumer required under section sixty-two of chapter ninety-three of the Massachusetts General Laws.

"Consumer Reporting Agency", means any person who means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.

"Credit Information", means any credit related information whether obtained as a credit history, a credit report, a consumer report, a credit score, an insurance score or any other compilation or collection of a person's credit.

"Credit Report", means any written, oral, or other communications of information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing or credit capacity which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor to determine personal lines insurance premiums, eligibility for coverage, or tier placement.

"FCRA", refers to the Fair Credit and Reporting Act, 15 U.S.C.S. Section 1681 et seq.

"Insurance Score", means a numerical designation intended to quantify the insurance risk a person presents by using such person's credit information in a formula designed to objectively rate insurance risk of loss.

"Personal Lines Insurance", Means property/.casualty insurance coverage sold to individuals and families pursuant to chapter 174A and chapter 175A of the General Laws.

"Rating Plan", means a plan that establishes the base rates, classification factors, modifications to rates or factors and premium costs of insurance coverage.

"Tier Placement Plan", means the practice of placing a person with a specific affiliate or subsidiary company based on the person's risk factors, or the practice of placing a person within a specific tier within the same company.

Section 2. (1) Any insurer that used credit information, including insurance scores, in its rating plan or tier placement plan shall file with the Commissioner written standards governing the insurer's use of credit information. An insurer's written standards shall:

(a). Indicate how credit information is relevant to the insurer's rating plan or tier placement plan. This requirement may be satisfied by applying the insurer's insurance scoring model to the insurer's past experience.

(b). Provide the circumstances under which credit information will be requested on an applicant and/or policyholder, including a statement that the decision to request credit information on an applicant and/or policyholder shall not be based in whole or in part on race, color, religious creed, sex, age, ancestry, sexual orientation, children, veteran status, national origin, marital status, place or residency, income, receipt of public assistance, blindness or any other physical handicap or disability.

(c) Prohibit obtaining an insurance score for any arbitrary, capricious, or unfairly discriminatory reason.

(d) Outline the use of credit information in an insurer's rating plan and/or tier placement plan.

(e) Illustrate that the insurer's use of credit information in the rating plan or tier placement plan will not result in rates that are excessive, inadequate or unfairly discriminatory.

(2) An insurer shall not utilize credit information in its rating plan or tier placement plan until such time as the insurer has filed the written standards with the Commissioner pursuant to paragraph (1).

(3) An insurer shall utilize credit information in its rating plan or tier placement plan in accordance with the insurer's written standards filed with the Commission pursuant to Paragraph (1).

Section 3. (1) An insurer that utilized credit information, including insurance scores, in its rating plan or tier placement plan shall not use such credit information as the sole basis for a decision to deny, cancel, or non-renew any person's insurance coverage.

(2) An insurer that utilizes credit information, including insurance scores, in its rating plan or tier placement plan shall not sue such credit information for any rating or tier placement decision without also considering other applicable factor(s) independent of credit information.

(3) An insurer shall not consider the following credit information in the development of a rating plan or tier placement plan:

(a) An applicant's or policyholder's unavailability of credit information;

(b) Inquiries not initiated by the consumer and contained on a consumer report;

(c) Collection accounts or delinquency reports identified with a medical industry code;

(d) Credit information which has been adversely impacted by a documented incident of identity fraud;

(4) An insurer that utilizes credit information, including insurance scores, in its rating plan or tier placement plan shall treat all similar cre4dit lines or transactions similarly and may not distinguish between similar credit lines or transactions based on such characterizations as "conventional," "sub-prime," "personal finance," or other characterizations based on a lender's primary marketing niche.

(5) An insurer that utilizes credit information, including insurance scores, in its rating plan or tier placement plan shall consider multiple credit inquiries made by lenders within 30 days of one another on the same subject matter as a single credit inquire.

(6) An insurer that utilizes credit information, including insurance scores, in its rating plan for renewal business or tier placement plan for renewal business shall update a policyholder's credit information every three years or at the request of the policyholder, whichever is sooner, and adjust any rate or tier placement decisions accordingly at such time. All notice requirements under this regulation shall be complied with each time credit information is utilized by the insurer.

Section 4. (1) (a) An insurer that utilized credit information, including insurance scores, in its rating plan or tier placement plan shall provide notice to an applicant or policyholder within 48 hours of taking the application and in the same medium as application information is received, and each time credit information is utilized thereafter. Such notice shall:

i) Stating that the insurer will be requesting credit information on the applicant or policyholder and explaining the significant characteristics of credit information and how it will impact the applicant's or policyholder's insurance.

ii) Informing the applicant or policyholder of his/her rights under FCRA and G.L. ch. 93, Section 50 et seq.; and

iii) Explaining that any premium quote given prior to receiving an applicant's credit information is subject to change.

(b) An insurer may satisfy this notice requirement through a duly licensed insurance producer, when applicable.

(2) An insurer that utilizes credit information, including insurance scores, in its rating plan or tier placement plan shall annually provide to the policyholder an educational brochure produced by the Massachusetts Division of Insurance on the subject of credit information and insurance.

(3) An insurer that utilizes credit information, including insurance scores, in its rating plan or tier placement plan shall, upon making an adverse determination based upon cre4dit information, provide the applicant or policyholder with:

(a) An explanation, which is reasonably understandable to the applicant or policyholder; of the specific credit factor(s) that result in the adverse determination. Standardized credit explanations provided by consumer reporting agencies or other third-party vendors shall comply with this subsection;

(b) The identity, telephone number, and address of any consumer reporting agency from which credit information was obtained; and

(c) Notice of the applicant's or policyholder's right to dispute any incorrect or inaccurate information found on the consumer report, and the procedure for doing so as set forth in the FCRA and G.L. ch.93, Section 50 et seq.

(d) Use of one of the following example disclosure statements constitutes compliance with this section:

(i) "In connection with this insurance, we may review your credit report or obtain or use a credit based insurance score based on the information contained in that report. An insurance score uses information form your credit report to help predict how often you are likely to file claims and how expensive those claims will be. Typical items from a credit report that could affect a score include, but are not limited to, the following:-payment history, number of revolving accounts, number of new accounts, the presence of collection accounts, bankruptcies and foreclosures. The information used to develop the insurance score comes from (insert name.)"; or

(ii) Use of the following example disclosure statement for renewal business constitutes compliance with this section:

"In connection with this insurance, we previously used a credit report or obtained or used a credit based insurance score based on information contained in that report. We may obtain or use credit information again provided, however, that upon renewal such information may only be used to reduce premiums. An insurance score uses information from your credit report to help predict how often you are likely to file claims and how expensive those claims will be. Typical

items from a credit report that could affect a score include, but are not limited to, the following: payment history, number of revolving accounts, number of new accounts, the presence of collection accounts, bankruptcies and foreclosures. The information used to develop the insurance score comes from (insert name)".

(4) An insurer that utilizes credit information, including insurance scores, in its rating plan or tier placement plan, upon receiving documentation that credit information has been disputed pursuant to the FCRA and G.L. ch. 93, Section 50 et seq., from either the applicant or policyholder or from a consumer reporting agency, shall not use the disputed information in any rating plan or tier placement an until such time as the disputed information is investigated and fund to be correct and accurate, or investigated and corrected.

(5) If it is determined that an insurer used incorrect credit information or documented disputed information, the insurer shall utilize the correct information in its rating plan or tier placement plan and make any necessary adjustments as to rate or placement effective as of the date the incorrect or disputed credit information was used to rate or place the applicant or policyholder. In no event shall the insurer be required to make an adjustment beyond the current policy term and the twelve months immediately preceding the current policy term.

Section 5. An insurer that utilizes credit information including insurance scores, in its rating plan or tier placement plan and that makes a rate filing with the Division pursuant to chapters 174A and 175A of the General Laws shall include in such filing the rating factor and the credit information associated with the rating factor.

Section 6. (a) No consumer reporting agency shall provide or sell data or lists that include any information that in whole or in part was submitted in conjunction with an insurance inquiry

about a consumer's credit information or a request for a credit report or insurance score. Such information includes, but is not limited to, the expiration dates of an insurance policy or any other information that may identify time period during which a consumer's insurance may expire and the terms and conditions of the consumer's insurance coverage.

(b) The restrictions provided in subsection (a) of this section do not apply to data or lists the consumer reporting agency supplies to the insurance agent or broker form whom information was received, the insurer on whose behalf such agent or broker acted, or sub insurer's affiliates or holding companies.

(c) Nothing in this section shall be construed to restrict any insurer form being able to obtain a claims history report or a motor vehicle report.

Section 7. An insurer shall indemnify, defend and hold agents harmless from and against all liability, fees and costs arising out of or relating to the actions, errors or omissions of the agent resulting from obtaining or using credit information and/or insurance scores for an insurer, provided the agent follows the instructions of or procedures established by the insurer, works within the authority granted by the insurer to the agent and com0ploies with any applicable law or regulation. Nothing in this SECTION shall be construed to provide a consumer or other insured with a cause of action that does not exist in the absence of this section.

Section 8. If any provision of the chapter or the applicability thereof to any person or entity or circumstance is held invalid by a court, the remainder of this chapter or the applicability of such provisions to other persons, entities or circumstances shall not be affected thereby.

Section 9. Non-compliance with the provisions of this chapter may result in the imposition of sanctions pursuant to section 17 of chapter 174A and section 18 of chapter 175A, and any other applicable laws and regulations.