

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:
<i>Ronald Mariano</i>	<i>3rd Norfolk</i>	<i>1/19/2011</i>

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:

1 The General laws are hereby amended by inserting after chapter 175K the following

2 Chapter:-

3 CHAPTER 175L

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

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

10 “Affiliate”, means any company that controls, is controlled by, or is under common
11 control with another company.

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

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

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

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

24 (2) employment purposes, or

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

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

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

39 “Credit Information”, means any credit related information whether obtained as a credit
40 history, a credit report, a consumer report, a credit score, an insurance score or any other
41 compilation or collection of a person’s credit.

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

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

48 “Insurance Score”, means a numerical designation intended to quantify the insurance risk
49 a person presents by using such person’s credit information in a formula designed to objectively
50 rate insurance risk of loss.

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

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

55 “Tier Placement Plan”, means the practice of placing a person with a specific affiliate or
56 subsidiary company based on the person’s risk factors, or the practice of placing a person within
57 a specific tier within the same company.

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

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

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

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

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

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

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

79 (3) An insurer shall utilize credit information in its rating plan or tier placement plan in
80 accordance with the insurer's written standards filed with the Commission pursuant to Paragraph
81 (1).

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

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

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

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

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

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

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

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

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

103 (6) An insurer that utilizes credit information, including insurance scores, in its rating
104 plan for renewal business or tier placement plan for renewal business shall update a
105 policyholder’s credit information every three years or at the request of the policyholder,
106 whichever is sooner, and adjust any rate or tier placement decisions accordingly at such time.

107 All notice requirements under this regulation shall be complied with each time credit information
108 is utilized by the insurer.

109 Section 4. (1) (a) An insurer that utilized credit information, including insurance scores,
110 in its rating plan or tier placement plan shall provide notice to an applicant or policyholder within
111 48 hours of taking the application and in the same medium as application information is
112 received, and each time credit information is utilized thereafter. Such notice shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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