

By Senator Storms

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1 A bill to be entitled
2 An act relating to insurance; amending s. 626.9541,
3 F.S.; prohibiting an insurer that issues motor vehicle
4 insurance from using a rate, rating schedule, rating
5 manual, or an underwriting rule that is not contained
6 in a rating manual and is determined in whole or in
7 part on the basis of certain characteristics of an
8 insured; including the refusal to insure or continue
9 to insure any individual or risk because of
10 educational level, trade, business, occupation,
11 profession, credit report, credit score, or certain
12 forms of lawful employment among the list of
13 activities constituting unfair methods of competition
14 and unfair or deceptive acts; amending s. 626.9741,
15 F.S.; prohibiting insurers from using credit reports
16 and credit scores in making rating determinations;
17 deleting provisions limiting and regulating the use of
18 credit scores by insurers when making rating
19 determinations; deleting the definition of "adverse
20 decision" and "tier"; deleting provisions authorizing
21 the Financial Services Commission to adopt rules;
22 providing an effective date.

23
24 Be It Enacted by the Legislature of the State of Florida:

25
26 Section 1. Paragraphs (o) and (x) of subsection (1) of
27 section 626.9541, Florida Statutes, are amended to read:
28 626.9541 Unfair methods of competition and unfair or
29 deceptive acts or practices defined.—

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30 (1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE
31 ACTS.—The following are defined as unfair methods of competition
32 and unfair or deceptive acts or practices:

33 (o) *Illegal dealings in premiums; excess or reduced charges*
34 *for insurance.—*

35 1. Knowingly collecting any sum as a premium or charge for
36 insurance, which is not then provided, or is not in due course
37 to be provided, subject to acceptance of the risk by the
38 insurer, by an insurance policy issued by an insurer as
39 permitted by this code.

40 2. Knowingly collecting as a premium or charge for
41 insurance any sum in excess of or less than the premium or
42 charge applicable to such insurance, in accordance with ~~the~~
43 applicable classifications and rates as filed with and approved
44 by the office, and as specified in the policy; or, in cases
45 where ~~when~~ classifications, premiums, or rates are not required
46 by this code to be so filed and approved, premiums and charges
47 collected from a state ~~Florida~~ resident in excess of or less
48 than those specified in the policy and as fixed by the insurer.
49 This provision does ~~shall~~ not be ~~deemed to~~ prohibit the charging
50 and collection, by surplus lines agents licensed under part VIII
51 of this chapter, of the amount of applicable state and federal
52 taxes, or fees as authorized by s. 626.916(4), in addition to
53 the premium required by the insurer or the charging and
54 collection, by licensed agents, of the exact amount of any
55 discount or other such fee charged by a credit card facility in
56 connection with the use of a credit card, as authorized by
57 subparagraph (q)3., in addition to the premium required by the
58 insurer. This subparagraph does ~~shall~~ not be ~~construed to~~

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59 prohibit collection of a premium for a universal life or a
60 variable or indeterminate value insurance policy made in
61 accordance with the terms of the contract.

62 3.a. Imposing or requesting an additional premium for a
63 policy of motor vehicle liability, personal injury protection,
64 medical payment, or collision insurance or any combination
65 thereof or refusing to renew the policy solely because the
66 insured was involved in a motor vehicle accident unless the
67 insurer's file contains information from which the insurer in
68 good faith determines that the insured was substantially at
69 fault in the accident.

70 b. An insurer that ~~which~~ imposes and collects such a
71 surcharge or ~~which~~ refuses to renew such policy shall, in
72 conjunction with the notice of premium due or notice of
73 nonrenewal, notify the named insured that he or she is entitled
74 to reimbursement of such amount or renewal of the policy under
75 the conditions listed below and will subsequently reimburse him
76 or her or renew the policy, if the named insured demonstrates
77 that the operator involved in the accident was:

78 (I) Lawfully parked;

79 (II) Reimbursed by, or on behalf of, a person responsible
80 for the accident or has a judgment against such person;

81 (III) Struck in the rear by another vehicle headed in the
82 same direction and was not convicted of a moving traffic
83 violation in connection with the accident;

84 (IV) Hit by a "hit-and-run" driver, if the accident was
85 reported to the proper authorities within 24 hours after
86 discovering the accident;

87 (V) Not convicted of a moving traffic violation in

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88 connection with the accident, but the operator of the other
89 automobile involved in such accident was convicted of a moving
90 traffic violation;

91 (VI) Finally adjudicated not to be liable ~~by a court of~~
92 ~~competent jurisdiction;~~

93 (VII) In receipt of a traffic citation that ~~which~~ was
94 dismissed or nolle prossed; or

95 (VIII) Not at fault as evidenced by a written statement
96 from the insured establishing facts demonstrating lack of fault
97 which are not rebutted by information in the insurer's file from
98 which the insurer in good faith determines that the insured was
99 substantially at fault.

100 c. In addition to the other provisions of this
101 subparagraph, an insurer may not fail to renew a policy if the
102 insured has had only one accident in which he or she was at
103 fault within the current 3-year period. However, an insurer may
104 nonrenew a policy for reasons other than accidents in accordance
105 with s. 627.728. This subparagraph does not prohibit nonrenewal
106 of a policy under which the insured has had three or more
107 accidents, regardless of fault, during the most recent 3-year
108 period.

109 4. Imposing or requesting an additional premium for, or
110 refusing to renew, a policy for motor vehicle insurance solely
111 because the insured committed a noncriminal traffic infraction
112 as described in s. 318.14 unless the infraction is:

113 a. A second infraction committed within an 18-month period,
114 or a third or subsequent infraction committed within a 36-month
115 period.

116 b. A violation of s. 316.183 if, ~~when~~ such violation is a

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117 result of exceeding the lawful speed limit by more than 15 miles
118 per hour.

119 5. Upon the request of the insured, the insurer and
120 licensed agent shall supply to the insured the complete proof of
121 fault or other criteria that ~~which~~ justifies the additional
122 charge or cancellation.

123 6. An ~~No~~ insurer may not ~~shall~~ impose or request an
124 additional premium for motor vehicle insurance, cancel or refuse
125 to issue a policy, or refuse to renew a policy because the
126 insured or the applicant is a ~~handicapped or~~ physically disabled
127 person ~~if, so long as~~ such ~~handicap or~~ physical disability does
128 not substantially impair such person's mechanically assisted
129 driving ability.

130 7. An ~~No~~ insurer may not cancel or otherwise terminate an
131 ~~any~~ insurance contract or coverage, or require execution of a
132 consent to rate endorsement, during the stated policy term for
133 the purpose of offering to issue, or issuing, a similar or
134 identical contract or coverage to the same insured with the same
135 exposure at a higher premium rate or continuing an existing
136 contract or coverage with the same exposure at an increased
137 premium.

138 8. An ~~No~~ insurer may not issue a nonrenewal notice on any
139 insurance contract or coverage, or require execution of a
140 consent to rate endorsement, for the purpose of offering to
141 issue, or issuing, a similar or identical contract or coverage
142 to the same insured at a higher premium rate or continuing an
143 existing contract or coverage at an increased premium without
144 meeting any applicable notice requirements.

145 9. An ~~No~~ insurer may not ~~shall~~, with respect to premiums

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146 charged for motor vehicle insurance, unfairly discriminate
 147 solely on the basis of age, sex, marital status, or scholastic
 148 achievement.

149 10. An insurer may not, with respect to premiums charged
 150 for motor vehicle insurance, use any rate, rating schedule,
 151 rating manual, or underwriting rule that is not contained in a
 152 rating manual and that is determined in whole or in part on the
 153 basis of any of the following as they relate to an insured:

154 a. Educational level.

155 b. Trade, business, occupation, profession, or any lawful
 156 form of employment that does not directly involve the use of one
 157 or more vehicles specifically insured or identified in the
 158 insurance policy.

159 c. Credit report or credit score as defined in s. 626.9741.

160 11.10. Imposing or requesting an additional premium for
 161 motor vehicle comprehensive or uninsured motorist coverage
 162 solely because the insured was involved in a motor vehicle
 163 accident or was convicted of a moving traffic violation.

164 12.11. ~~An~~ ~~insurer~~ may not ~~shall~~ cancel or issue a
 165 nonrenewal notice on any insurance policy or contract without
 166 complying with any applicable cancellation or nonrenewal
 167 provision required under the Florida Insurance Code.

168 13.12. ~~An~~ ~~insurer~~ may not ~~shall~~ impose or request an
 169 additional premium, cancel a policy, or issue a nonrenewal
 170 notice on any insurance policy or contract because of any
 171 traffic infraction if ~~when~~ adjudication has been withheld and ~~no~~
 172 points have not been assessed pursuant to s. 318.14(9) and (10).
 173 However, this subparagraph does not apply to traffic infractions
 174 involving accidents in which the insurer has incurred a loss due

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175 to the fault of the insured.

176 (x) *Refusal to insure.*—In addition to other provisions of
177 this code, the refusal to insure, or continue to insure, any
178 individual or risk solely because of:

179 1. Race, color, religion ~~ereed~~, marital status, sex, or
180 national origin;

181 2. The residence or, age, ~~or lawful occupation~~ of the
182 individual or the location of the risk, unless there is a
183 reasonable relationship between the residence or, age, ~~or lawful~~
184 ~~occupation~~ of the individual or the location of the risk and the
185 coverage issued or to be issued;

186 3. The individual's educational level, trade, business,
187 occupation, profession, any form of lawful employment, or credit
188 report or credit score as defined in s. 626.9741;

189 ~~4.3.~~ The insured's or applicant's failure to agree to place
190 collateral business with any insurer, unless the coverage
191 applied for provides ~~would provide~~ liability coverage that ~~which~~
192 is greater than ~~excess over~~ that provided in policies maintained
193 on property or motor vehicles;

194 ~~5.4.~~ The insured's or applicant's failure to purchase
195 noninsurance services or commodities, including automobile
196 services as defined in s. 624.124;

197 ~~6.5.~~ The fact that the insured or applicant is a public
198 official; or

199 ~~7.6.~~ The fact that the insured or applicant had been
200 previously refused insurance coverage by any insurer if, ~~when~~
201 such refusal to insure or continue to insure for this reason
202 occurs with such frequency as to indicate a general business
203 practice.

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204 Section 2. Section 626.9741, Florida Statutes, is amended
205 to read:

206 626.9741 Use of credit reports and credit scores by
207 insurers.—An insurer may not use credit reports or credit scores
208 in making rating determinations. For purposes of this section,
209 the term:

210 ~~(1) The purpose of this section is to regulate and limit~~
211 ~~the use of credit reports and credit scores by insurers for~~
212 ~~underwriting and rating purposes. This section applies only to~~
213 ~~personal lines motor vehicle insurance and personal lines~~
214 ~~residential insurance, which includes homeowners, mobile home~~
215 ~~owners' dwelling, tenants, condominium unit owners, cooperative~~
216 ~~unit owners, and similar types of insurance.~~

217 ~~(2) As used in this section, the term:~~

218 ~~(a) "Adverse decision" means a decision to refuse to issue~~
219 ~~or renew a policy of insurance; to issue a policy with~~
220 ~~exclusions or restrictions; to increase the rates or premium~~
221 ~~charged for a policy of insurance; to place an insured or~~
222 ~~applicant in a rating tier that does not have the lowest~~
223 ~~available rates for which that insured or applicant is otherwise~~
224 ~~eligible; or to place an applicant or insured with a company~~
225 ~~operating under common management, control, or ownership which~~
226 ~~does not offer the lowest rates available, within the affiliate~~
227 ~~group of insurance companies, for which that insured or~~
228 ~~applicant is otherwise eligible.~~

229 (1)(b) "Credit report" means any written, oral, or other
230 communication of any information by a consumer reporting agency,
231 as defined in the federal Fair Credit Reporting Act, 15 U.S.C.
232 ss. 1681 et seq., bearing on a consumer's credit worthiness,

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233 credit standing, or credit capacity, which is used or expected
234 to be used or collected as a factor in establishing ~~to establish~~
235 a person's eligibility for credit or insurance, or any other
236 purpose authorized pursuant to the applicable provision of the
237 ~~such~~ federal act. A credit score alone, as calculated by a
238 credit reporting agency or by or for the insurer, may not be
239 considered a credit report.

240 (2)-(e) "Credit score" means a score, grade, or value that
241 is derived by using any or all data from a credit report in any
242 type of model, method, or program, whether electronically, in an
243 algorithm, computer software or program, or any other process,
244 for the purpose of grading or ranking credit report data.

245 ~~(d) "Tier" means a category within a single insurer into~~
246 ~~which insureds with substantially similar risk, exposure, or~~
247 ~~expense factors are placed for purposes of determining rate or~~
248 ~~premium.~~

249 ~~(3) An insurer must inform an applicant or insured, in the~~
250 ~~same medium as the application is taken, that a credit report or~~
251 ~~score is being requested for underwriting or rating purposes. An~~
252 ~~insurer that makes an adverse decision based, in whole or in~~
253 ~~part, upon a credit report must provide at no charge, a copy of~~
254 ~~the credit report to the applicant or insured or provide the~~
255 ~~applicant or insured with the name, address, and telephone~~
256 ~~number of the consumer reporting agency from which the insured~~
257 ~~or applicant may obtain the credit report. The insurer must~~
258 ~~provide notification to the consumer explaining the reasons for~~
259 ~~the adverse decision. The reasons must be provided in~~
260 ~~sufficiently clear and specific language so that a person can~~
261 ~~identify the basis for the insurer's adverse decision. Such~~

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262 ~~notification shall include a description of the four primary~~
263 ~~reasons, or such fewer number as existed, which were the primary~~
264 ~~influences of the adverse decision. The use of generalized terms~~
265 ~~such as "poor credit history," "poor credit rating," or "poor~~
266 ~~insurance score" does not meet the explanation requirements of~~
267 ~~this subsection. A credit score may not be used in underwriting~~
268 ~~or rating insurance unless the scoring process produces~~
269 ~~information in sufficient detail to permit compliance with the~~
270 ~~requirements of this subsection. It shall not be deemed an~~
271 ~~adverse decision if, due to the insured's credit report or~~
272 ~~credit score, the insured continues to receive a less favorable~~
273 ~~rate or placement in a less favorable tier or company at the~~
274 ~~time of renewal except for renewals or reunderwriting required~~
275 ~~by this section.~~

276 ~~(4) (a) An insurer may not request a credit report or score~~
277 ~~based upon the race, color, religion, marital status, age,~~
278 ~~gender, income, national origin, or place of residence of the~~
279 ~~applicant or insured.~~

280 ~~(b) An insurer may not make an adverse decision solely~~
281 ~~because of information contained in a credit report or score~~
282 ~~without consideration of any other underwriting or rating~~
283 ~~factor.~~

284 ~~(c) An insurer may not make an adverse decision or use a~~
285 ~~credit score that could lead to such a decision if based, in~~
286 ~~whole or in part, on:~~

287 ~~1. The absence of, or an insufficient, credit history, in~~
288 ~~which instance the insurer shall:~~

289 ~~a. Treat the consumer as otherwise approved by the Office~~
290 ~~of Insurance Regulation if the insurer presents information that~~

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291 ~~such an absence or inability is related to the risk for the~~
292 ~~insurer;~~

293 ~~b. Treat the consumer as if the applicant or insured had~~
294 ~~neutral credit information, as defined by the insurer;~~

295 ~~e. Exclude the use of credit information as a factor and~~
296 ~~use only other underwriting criteria;~~

297 ~~2. Collection accounts with a medical industry code, if so~~
298 ~~identified on the consumer's credit report;~~

299 ~~3. Place of residence; or~~

300 ~~4. Any other circumstance that the Financial Services~~
301 ~~Commission determines, by rule, lacks sufficient statistical~~
302 ~~correlation and actuarial justification as a predictor of~~
303 ~~insurance risk.~~

304 ~~(d) An insurer may use the number of credit inquiries~~
305 ~~requested or made regarding the applicant or insured except for:~~

306 ~~1. Credit inquiries not initiated by the consumer or~~
307 ~~inquiries requested by the consumer for his or her own credit~~
308 ~~information.~~

309 ~~2. Inquiries relating to insurance coverage, if so~~
310 ~~identified on a consumer's credit report.~~

311 ~~3. Collection accounts with a medical industry code, if so~~
312 ~~identified on the consumer's credit report.~~

313 ~~4. Multiple lender inquiries, if coded by the consumer~~
314 ~~reporting agency on the consumer's credit report as being from~~
315 ~~the home mortgage industry and made within 30 days of one~~
316 ~~another, unless only one inquiry is considered.~~

317 ~~5. Multiple lender inquiries, if coded by the consumer~~
318 ~~reporting agency on the consumer's credit report as being from~~
319 ~~the automobile lending industry and made within 30 days of one~~

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320 another, unless only one inquiry is considered.

321 ~~(c) An insurer must, upon the request of an applicant or~~
322 ~~insured, provide a means of appeal for an applicant or insured~~
323 ~~whose credit report or credit score is unduly influenced by a~~
324 ~~dissolution of marriage, the death of a spouse, or temporary~~
325 ~~loss of employment. The insurer must complete its review within~~
326 ~~10 business days after the request by the applicant or insured~~
327 ~~and receipt of reasonable documentation requested by the~~
328 ~~insurer, and, if the insurer determines that the credit report~~
329 ~~or credit score was unduly influenced by any of such factors,~~
330 ~~the insurer shall treat the applicant or insured as if the~~
331 ~~applicant or insured had neutral credit information or shall~~
332 ~~exclude the credit information, as defined by the insurer,~~
333 ~~whichever is more favorable to the applicant or insured. An~~
334 ~~insurer shall not be considered out of compliance with its~~
335 ~~underwriting rules or rates or forms filed with the Office of~~
336 ~~Insurance Regulation or out of compliance with any other state~~
337 ~~law or rule as a result of granting any exceptions pursuant to~~
338 ~~this subsection.~~

339 ~~(5) A rate filing that uses credit reports or credit scores~~
340 ~~must comply with the requirements of s. 627.062 or s. 627.0651~~
341 ~~to ensure that rates are not excessive, inadequate, or unfairly~~
342 ~~discriminatory.~~

343 ~~(6) An insurer that requests or uses credit reports and~~
344 ~~credit scoring in its underwriting and rating methods shall~~
345 ~~maintain and adhere to established written procedures that~~
346 ~~reflect the restrictions set forth in the federal Fair Credit~~
347 ~~Reporting Act, this section, and all rules related thereto.~~

348 ~~(7)(a) An insurer shall establish procedures to review the~~

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349 ~~credit history of an insured who was adversely affected by the~~
350 ~~use of the insured's credit history at the initial rating of the~~
351 ~~policy, or at a subsequent renewal thereof. This review must be~~
352 ~~performed at a minimum of once every 2 years or at the request~~
353 ~~of the insured, whichever is sooner, and the insurer shall~~
354 ~~adjust the premium of the insured to reflect any improvement in~~
355 ~~the credit history. The procedures must provide that, with~~
356 ~~respect to existing policyholders, the review of a credit report~~
357 ~~will not be used by the insurer to cancel, refuse to renew, or~~
358 ~~require a change in the method of payment or payment plan.~~

359 ~~(b) However, as an alternative to the requirements of~~
360 ~~paragraph (a), an insurer that used a credit report or credit~~
361 ~~score for an insured upon inception of a policy, who will not~~
362 ~~use a credit report or score for reunderwriting, shall~~
363 ~~reevaluate the insured within the first 3 years after inception,~~
364 ~~based on other allowable underwriting or rating factors,~~
365 ~~excluding credit information if the insurer does not increase~~
366 ~~the rates or premium charged to the insured based on the~~
367 ~~exclusion of credit reports or credit scores.~~

368 ~~(8) The commission may adopt rules to administer this~~
369 ~~section. The rules may include, but need not be limited to:~~

370 ~~(a) Information that must be included in filings to~~
371 ~~demonstrate compliance with subsection (3).~~

372 ~~(b) Statistical detail that insurers using credit reports~~
373 ~~or scores under subsection (5) must retain and report annually~~
374 ~~to the Office of Insurance Regulation.~~

375 ~~(c) Standards that ensure that rates or premiums associated~~
376 ~~with the use of a credit report or score are not unfairly~~
377 ~~discriminatory, based upon race, color, religion, marital~~

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378 ~~status, age, gender, income, national origin, or place of~~
379 ~~residence.~~

380 ~~(d) Standards for review of models, methods, programs, or~~
381 ~~any other process by which to grade or rank credit report data~~
382 ~~and which may produce credit scores in order to ensure that the~~
383 ~~insurer demonstrates that such grading, ranking, or scoring is~~
384 ~~valid in predicting insurance risk of an applicant or insured.~~

385 Section 3. This act shall take effect July 1, 2011.