

1 A bill to be entitled
 2 An act relating to the prohibition of discriminatory
 3 rating practices; amending s. 626.9541, F.S.; revising
 4 unfair methods of competition and unfair or deceptive acts
 5 or practices to prohibit use of education, occupation,
 6 credit report, or credit score by insurers in making
 7 rating determinations; amending s. 626.9741, F.S.;
 8 prohibiting use of credit reports or credit scores by
 9 insurers in making rating determinations; deleting
 10 provisions regulating and limiting uses of credit reports
 11 and credit scores by insurers for certain purposes for
 12 certain types of insurance; providing an effective date.

13
 14 WHEREAS, the use of credit reports or credit scores by
 15 insurers in making rating determinations during this time of
 16 economic hardship has had an adverse impact on policyholders by
 17 affecting the affordability of insurance for Florida's citizens,
 18 and

19 WHEREAS, the use of credit reports, credit scores,
 20 occupation, and education in making rating determinations has an
 21 adverse and disproportionate effect on Florida's citizens based
 22 on race, color, national origin, and income, and

23 WHEREAS, prohibiting the use of credit reports, credit
 24 scores, occupation, and education in making rating
 25 determinations would prevent the harm done to Florida's
 26 policyholders, NOW, THEREFORE,

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 28 Be It Enacted by the Legislature of the State of Florida:

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Section 1. Paragraphs (o) and (x) of subsection (1) of section 626.9541, Florida Statutes, are amended to read:

626.9541 Unfair methods of competition and unfair or deceptive acts or practices defined.--

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

(o) Illegal dealings in premiums; excess or reduced charges for insurance.--

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

2. Knowingly collecting as a premium or charge for insurance any sum in excess of or less than the premium or charge applicable to such insurance, in accordance with the applicable classifications and rates as filed with and approved by the office, and as specified in the policy; or, in cases when classifications, premiums, or rates are not required by this code to be so filed and approved, premiums and charges collected from a Florida resident in excess of or less than those specified in the policy and as fixed by the insurer. This provision shall not be deemed to prohibit the charging and collection, by surplus lines agents licensed under part VIII of this chapter, of the amount of applicable state and federal taxes, or fees as authorized by s. 626.916(4), in addition to

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57 | the premium required by the insurer or the charging and
58 | collection, by licensed agents, of the exact amount of any
59 | discount or other such fee charged by a credit card facility in
60 | connection with the use of a credit card, as authorized by
61 | subparagraph (q)3., in addition to the premium required by the
62 | insurer. This subparagraph shall not be construed to prohibit
63 | collection of a premium for a universal life or a variable or
64 | indeterminate value insurance policy made in accordance with the
65 | terms of the contract.

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

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

82 | (I) Lawfully parked;

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

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

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

91 (V) Not convicted of a moving traffic violation in
92 connection with the accident, but the operator of the other
93 automobile involved in such accident was convicted of a moving
94 traffic violation;

95 (VI) Finally adjudicated not to be liable by a court of
96 competent jurisdiction;

97 (VII) In receipt of a traffic citation which was dismissed
98 or nolle prossed; or

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

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

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

117 a. A second infraction committed within an 18-month
118 period, or a third or subsequent infraction committed within a
119 36-month period.

120 b. A violation of s. 316.183, when such violation is a
121 result of exceeding the lawful speed limit by more than 15 miles
122 per hour.

123 5. Upon the request of the insured, the insurer and
124 licensed agent shall supply to the insured the complete proof of
125 fault or other criteria which justifies the additional charge or
126 cancellation.

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

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

140 contract or coverage with the same exposure at an increased
 141 premium.

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

149 9. An ~~No~~ insurer may not ~~shall~~, with respect to premiums
 150 charged for motor vehicle insurance, unfairly discriminate
 151 solely on the basis of age, sex, marital status, or scholastic
 152 achievement.

153 10. Imposing or requesting an additional premium for motor
 154 vehicle comprehensive or uninsured motorist coverage solely
 155 because the insured was involved in a motor vehicle accident or
 156 was convicted of a moving traffic violation.

157 11. An ~~No~~ insurer may not ~~shall~~ cancel or issue a
 158 nonrenewal notice on any insurance policy or contract without
 159 complying with any applicable cancellation or nonrenewal
 160 provision required under the Florida Insurance Code.

161 12. An ~~No~~ insurer may not ~~shall~~ impose or request an
 162 additional premium, cancel a policy, or issue a nonrenewal
 163 notice on any insurance policy or contract because of any
 164 traffic infraction when adjudication has been withheld and no
 165 points have been assessed pursuant to s. 318.14(9) and (10).
 166 However, this subparagraph does not apply to traffic infractions

167 involving accidents in which the insurer has incurred a loss due
 168 to the fault of the insured.

169 13. An insurer may not, with respect to premiums charged
 170 for motor vehicle insurance, use any rate, rating schedule,
 171 rating manual, or underwriting rule not contained in a rating
 172 manual that is determined in whole or in part on the basis of an
 173 insured's:

174 a. Educational level;

175 b. Lawful employment, trade, business, occupation, or
 176 profession; or

177 c. Credit report or credit score as defined in s.
 178 626.9741.

179 (x) Refusal to insure.--In addition to other provisions of
 180 this code, the refusal to insure, or continue to insure, any
 181 individual or risk based upon the individual's educational
 182 level; lawful employment, trade, business, occupation, or
 183 profession; or credit report or credit score as defined in s.
 184 626.9741 or solely based upon ~~because of:~~

185 1. Race, color, creed, marital status, sex, or national
 186 origin;

187 2. The residence ~~or~~, age, ~~or lawful occupation~~ of the
 188 individual or the location of the risk, unless there is a
 189 reasonable relationship between the residence ~~or~~, age, ~~or lawful~~
 190 ~~occupation~~ of the individual or the location of the risk and the
 191 coverage issued or to be issued;

192 3. The insured's or applicant's failure to agree to place
 193 collateral business with any insurer, unless the coverage
 194 applied for would provide liability coverage which is excess

195 over that provided in policies maintained on property or motor
 196 vehicles;

197 4. The insured's or applicant's failure to purchase
 198 noninsurance services or commodities, including automobile
 199 services as defined in s. 624.124;

200 5. The fact that the insured or applicant is a public
 201 official; or

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

206 Section 2. Section 626.9741, Florida Statutes, is amended
 207 to read:

208 626.9741 Use of credit reports and credit scores by
 209 insurers.--

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

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

220 (a) ~~"Adverse decision" means a decision to refuse to issue~~
 221 ~~or renew a policy of insurance; to issue a policy with~~
 222 ~~exclusions or restrictions; to increase the rates or premium~~

223 ~~charged for a policy of insurance; to place an insured or~~
 224 ~~applicant in a rating tier that does not have the lowest~~
 225 ~~available rates for which that insured or applicant is otherwise~~
 226 ~~eligible; or to place an applicant or insured with a company~~
 227 ~~operating under common management, control, or ownership which~~
 228 ~~does not offer the lowest rates available, within the affiliate~~
 229 ~~group of insurance companies, for which that insured or~~
 230 ~~applicant is otherwise eligible.~~

231 (a)~~(b)~~ "Credit report" means any written, oral, or other
 232 communication of any information by a consumer reporting agency,
 233 as defined in the federal Fair Credit Reporting Act, 15 U.S.C.
 234 ss. 1681 et seq., bearing on a consumer's credit worthiness,
 235 credit standing, or credit capacity, which is used or expected
 236 to be used or collected as a factor to establish a person's
 237 eligibility for credit or insurance, or any other purpose
 238 authorized pursuant to the applicable provision of such federal
 239 act. A credit score alone, as calculated by a credit reporting
 240 agency or by or for the insurer, may not be considered a credit
 241 report.

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

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

251 ~~(3) An insurer must inform an applicant or insured, in the~~
252 ~~same medium as the application is taken, that a credit report or~~
253 ~~score is being requested for underwriting or rating purposes. An~~
254 ~~insurer that makes an adverse decision based, in whole or in~~
255 ~~part, upon a credit report must provide at no charge, a copy of~~
256 ~~the credit report to the applicant or insured or provide the~~
257 ~~applicant or insured with the name, address, and telephone~~
258 ~~number of the consumer reporting agency from which the insured~~
259 ~~or applicant may obtain the credit report. The insurer must~~
260 ~~provide notification to the consumer explaining the reasons for~~
261 ~~the adverse decision. The reasons must be provided in~~
262 ~~sufficiently clear and specific language so that a person can~~
263 ~~identify the basis for the insurer's adverse decision. Such~~
264 ~~notification shall include a description of the four primary~~
265 ~~reasons, or such fewer number as existed, which were the primary~~
266 ~~influences of the adverse decision. The use of generalized terms~~
267 ~~such as "poor credit history," "poor credit rating," or "poor~~
268 ~~insurance score" does not meet the explanation requirements of~~
269 ~~this subsection. A credit score may not be used in underwriting~~
270 ~~or rating insurance unless the scoring process produces~~
271 ~~information in sufficient detail to permit compliance with the~~
272 ~~requirements of this subsection. It shall not be deemed an~~
273 ~~adverse decision if, due to the insured's credit report or~~
274 ~~credit score, the insured continues to receive a less favorable~~
275 ~~rate or placement in a less favorable tier or company at the~~
276 ~~time of renewal except for renewals or reunderwriting required~~
277 ~~by this section.~~

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

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

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

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

291 ~~a. Treat the consumer as otherwise approved by the Office~~
 292 ~~of Insurance Regulation if the insurer presents information that~~
 293 ~~such an absence or inability is related to the risk for the~~
 294 ~~insurer;~~

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

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

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

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

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

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

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

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

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

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

319 ~~5. Multiple lender inquiries, if coded by the consumer~~
320 ~~reporting agency on the consumer's credit report as being from~~
321 ~~the automobile lending industry and made within 30 days of one~~
322 ~~another, unless only one inquiry is considered.~~

323 ~~(e) An insurer must, upon the request of an applicant or~~
324 ~~insured, provide a means of appeal for an applicant or insured~~
325 ~~whose credit report or credit score is unduly influenced by a~~
326 ~~dissolution of marriage, the death of a spouse, or temporary~~
327 ~~loss of employment. The insurer must complete its review within~~
328 ~~10 business days after the request by the applicant or insured~~
329 ~~and receipt of reasonable documentation requested by the~~
330 ~~insurer, and, if the insurer determines that the credit report~~
331 ~~or credit score was unduly influenced by any of such factors,~~
332 ~~the insurer shall treat the applicant or insured as if the~~
333 ~~applicant or insured had neutral credit information or shall~~

334 ~~exclude the credit information, as defined by the insurer,~~
335 ~~whichever is more favorable to the applicant or insured. An~~
336 ~~insurer shall not be considered out of compliance with its~~
337 ~~underwriting rules or rates or forms filed with the Office of~~
338 ~~Insurance Regulation or out of compliance with any other state~~
339 ~~law or rule as a result of granting any exceptions pursuant to~~
340 ~~this subsection.~~

341 ~~(5) A rate filing that uses credit reports or credit~~
342 ~~scores must comply with the requirements of s. 627.062 or s.~~
343 ~~627.0651 to ensure that rates are not excessive, inadequate, or~~
344 ~~unfairly discriminatory.~~

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

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

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

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

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

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

377 ~~(c) Standards that ensure that rates or premiums~~
 378 ~~associated with the use of a credit report or score are not~~
 379 ~~unfairly discriminatory, based upon race, color, religion,~~
 380 ~~marital status, age, gender, income, national origin, or place~~
 381 ~~of residence.~~

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

387 Section 3. This act shall take effect July 1, 2009.