

INSURANCE CODE

TITLE 5. PROTECTION OF CONSUMER INTERESTS

SUBTITLE C. DECEPTIVE, UNFAIR, AND PROHIBITED PRACTICES

CHAPTER 559. CREDIT SCORING AND CREDIT INFORMATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 559.001. DEFINITIONS. In this chapter:

(1) "Adverse effect" means an action taken by an insurer in connection with the underwriting of insurance for a consumer that results in the denial of coverage, the cancellation or nonrenewal of coverage, or the offer to and acceptance by a consumer of a policy form, premium rate, or deductible other than the policy form, premium rate, or deductible for which the consumer specifically applied.

(2) "Agent" means a person licensed or required to be licensed as a general property and casualty insurance agent or a personal lines property and casualty agent under Chapter 4051.

(3) "Applicant for insurance coverage" means an individual who has applied to an insurer for coverage under a personal insurance policy.

(4) "Consumer" means an individual whose credit information is used or whose credit score is computed in the underwriting or rating of a personal insurance policy. The term includes an applicant for insurance coverage.

(5) "Consumer reporting agency" means any person that, for monetary fees or dues or on a cooperative nonprofit basis, regularly engages 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.

(6) "Credit information" means any credit-related information derived from a credit report, found in a credit report itself, or provided in an application for personal insurance. The term does not include information that is not credit-related, regardless of whether that information is contained in a credit report or in an application for insurance coverage or is used to compute a credit score.

(7) "Credit report" means any written, oral, or other communication of information by a consumer reporting agency that:

(A) bears on a consumer's creditworthiness, credit standing, or credit capacity; and

(B) is used or expected to be used or collected in whole or in part to serve as a factor to determine personal insurance premiums, eligibility for coverage, or tier placement.

(8) "Credit score" or "insurance score" means a number or rating derived from an algorithm, computer application, model, or other process that is:

(A) based on credit information; and

(B) used to predict the future insurance loss exposure of a consumer.

(9) "Insured" means a consumer who has purchased an insurance policy from an insurer.

(10) "Insurer" means an insurer authorized to write property and casualty insurance in this state, including an insurance company, reciprocal or interinsurance exchange, mutual insurance company, capital stock company, county mutual insurance company, association, Lloyd's plan, or other entity writing personal insurance in this state. The term includes an affiliate, as described by this code, if that affiliate is authorized to write personal insurance in this state. The term does not include a farm mutual insurance company or an eligible surplus lines insurer under this code.

(11) "Personal insurance" means:

(A) a personal automobile insurance policy;

(B) a residential property insurance policy;

(C) a residential fire and allied lines insurance policy; or

(D) a noncommercial insurance policy covering a boat, personal watercraft, snowmobile, or recreational vehicle.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. [2018](#)), Sec. 11.020(a), eff. September 1, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 548 (S.B. [1263](#)), Sec. 2.05, eff. September 1, 2007.

Sec. 559.002. APPLICABILITY OF CHAPTER. This chapter applies to an insurer that writes personal insurance coverage and uses credit information or credit reports for the underwriting or rating of that coverage.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.020(a), eff. September 1, 2005.

Sec. 559.003. INFORMATION PROVIDED TO PUBLIC. The department shall:

(1) update insurer profiles maintained on the department's Internet website to provide information to consumers stating whether or not an insurer uses credit scoring; and

(2) post the report required under former Section 15, Article 21.49-2U, on the department's Internet website.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.020(a), eff. September 1, 2005.

Sec. 559.004. RULES. (a) The commissioner may adopt rules necessary to implement this chapter.

(b) The commissioner shall adopt rules that prescribe the allowable differences in rates charged by insurers due solely to the difference in credit scores.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.020(a), eff. September 1, 2005.

SUBCHAPTER B. USE OF CREDIT SCORING AND CREDIT INFORMATION

Sec. 559.051. PERMISSIBLE USE OF CREDIT SCORING. An insurer may use credit scoring, except for factors that constitute unfair discrimination, to develop rates, rating classifications, or underwriting criteria regarding lines of insurance subject to this chapter.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.020(a), eff. September 1, 2005.

Sec. 559.052. PROHIBITED USE OF CREDIT INFORMATION. (a) An

insurer may not:

(1) use a credit score that is computed using factors that constitute unfair discrimination;

(2) deny, cancel, or nonrenew a policy of personal insurance solely on the basis of credit information without considering any other applicable underwriting factor independent of credit information; or

(3) take an action that results in an adverse effect against a consumer because the consumer does not have a credit card account without considering any other applicable factor independent of credit information.

(b) An insurer may not consider an absence of credit information or an inability to determine credit information for an applicant for insurance coverage or for an insured as a factor in underwriting or rating an insurance policy unless the insurer:

(1) has statistical, actuarial, or reasonable underwriting information that:

(A) is reasonably related to actual or anticipated loss experience; and

(B) shows that the absence of credit information could result in actual or anticipated loss differences;

(2) treats the consumer as if the applicant for insurance coverage or insured had neutral credit information, as defined by the insurer; or

(3) excludes the use of credit information as a factor in underwriting and uses only other underwriting criteria.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.020(a), eff. September 1, 2005.

Sec. 559.053. DISCLOSURE TO CONSUMER REGARDING USE OF CREDIT SCORING. (a) An insurer that uses credit scoring in the underwriting or rating of insurance subject to this chapter shall disclose to each applicant for insurance coverage that the applicant's credit report may be used in the underwriting or rating of the applicant's policy. The disclosure must be provided at the time of application by the insurer or agent and may be given orally, in writing, or electronically.

(b) If a policy is issued to the applicant for insurance coverage, an insurer or agent is not required to make the disclosure required under Subsection (a) on any subsequent renewal of the coverage.

(c) An insurer or its agent shall disclose to its customers, on a form adopted by the commissioner, whether credit information will be obtained on an applicant for insurance coverage or insured or on any other member or members of the applicant's or insured's household and used as part of the insurance credit scoring process.

(d) If credit information is obtained or used on an applicant for insurance coverage or insured, or on any member of the applicant's or insured's household, the insurer shall disclose to the applicant or insured the name of each person on whom credit information was obtained or used and how each person's credit information was used to underwrite or rate the policy.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.020(a), eff. September 1, 2005.

Sec. 559.054. NOTICE OF ACTION RESULTING IN ADVERSE EFFECT.

(a) If, based in whole or in part on information contained in a credit report, an insurer takes an action resulting in an adverse effect with respect to an applicant for insurance coverage or insured, the insurer shall provide to the applicant or insured within 30 days:

(1) written or electronic notice of the action resulting in an adverse effect and the reasons for that action;

(2) the name, address, and telephone number of the consumer reporting agency, including a toll-free number established by the agency and the agency's Internet website, if applicable;

(3) written or electronic notice that the consumer reporting agency did not make the decision to take the action resulting in an adverse effect and will be unable to provide the applicant or insured the specific reasons why the action was taken; and

(4) written or electronic notice of the applicant's or insured's right to:

(A) obtain a free copy of the consumer's credit report from the consumer reporting agency during the 60-day period after the date of the notice; and

(B) dispute with the consumer reporting agency the accuracy or completeness of any information in the consumer's credit report furnished by the agency.

(b) In the notice described by Subsection (a)(1), an insurer shall include a description of not more than four factors that were the primary influences of the action resulting in the adverse effect.

(c) The use by an insurer of a generalized term such as "poor credit history," "poor credit rating," or "poor credit score" does not constitute sufficient notice under this section of the action resulting in the adverse effect.

(d) Standardized credit explanations provided by a consumer reporting agency or other third-party vendor are also sufficient to comply with this section.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.020(a), eff. September 1, 2005.

Sec. 559.055. DISPUTE RESOLUTION; ERROR CORRECTION. (a) If it is determined through the dispute resolution process established under Section 611(a)(5), Fair Credit Reporting Act (15 U.S.C. Section 1681i), as amended, that the credit information of a current insured was inaccurate or incomplete or could not be verified and the insurer receives notice of that determination from the consumer reporting agency or from the insured, the insurer shall re-underwrite and re-rate the insured not later than the 30th day after the date the insurer receives the notice.

(b) After re-underwriting or re-rating an insured under Subsection (a), an insurer shall make any adjustments necessary within 30 days, consistent with the insurer's underwriting and rating guidelines. If an insurer determines that the insured has overpaid premium, the insurer shall credit the insured the amount of overpayment. The insurer shall compute the overpayment back to the shorter of:

(1) the last 12 months of coverage; or

(2) the actual policy period.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.020(a), eff. September 1, 2005.

Sec. 559.056. INDEMNIFICATION OF AGENT. (a) An insurer shall indemnify, defend, and hold its agent harmless from and against all liability, fees, and costs that arise out of or relate to the actions, errors, or omissions of an agent who obtains or uses credit information or credit scores for the insurer if the agent:

(1) follows the instructions of or procedures established by the insurer; and

(2) complies with any applicable law or rule.

(b) This section may not be construed to establish a cause of action that does not exist in the absence of this section.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.020(a), eff. September 1, 2005.

Sec. 559.057. SALE OF POLICY TERM INFORMATION BY CONSUMER REPORTING AGENCY PROHIBITED. (a) A consumer reporting agency may not 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 credit score, including:

(1) the expiration dates of an insurance policy or any other information that may identify periods during which a consumer's insurance may expire; and

(2) the terms and conditions of the consumer's insurance coverage.

(b) The restriction under Subsection (a) does not apply to data or lists that the consumer reporting agency provides to:

(1) the agent from whom information was received;

(2) the insurer on whose behalf the agent acted; or

(3) that insurer's affiliates.

(c) This section may not be construed to restrict the ability of an insurer to obtain a claims history report or a report regarding a motor vehicle.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.020(a),

eff. September 1, 2005.

SUBCHAPTER C. COMPUTING CREDIT SCORE; EVALUATING CREDIT
INFORMATION

Sec. 559.101. NEGATIVE FACTORS. An insurer may not use any of the following as a negative factor in any credit scoring methodology or in reviewing credit information to underwrite or rate a policy of personal insurance:

(1) a credit inquiry that is not initiated by the consumer;

(2) an inquiry relating to insurance coverage, if so identified on a consumer's credit report; or

(3) a collection account with a medical industry code, if so identified on the consumer's credit report.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.020(a), eff. September 1, 2005.

Sec. 559.102. MULTIPLE LENDER INQUIRIES. (a) An insurer shall consider multiple lender inquiries made within 30 days of a prior inquiry, if coded by the consumer reporting agency on the consumer's credit report as from the home mortgage industry, as only one inquiry.

(b) An insurer shall consider multiple lender inquiries made within 30 days of a prior inquiry, if coded by the consumer reporting agency on the consumer's credit report as from the motor vehicle lending industry, as only one inquiry.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.020(a), eff. September 1, 2005.

Sec. 559.103. EXTRAORDINARY EVENTS. (a) Notwithstanding any other law, an insurer shall, on written request from an applicant for insurance coverage or an insured, provide reasonable exceptions to the insurer's rates, rating classifications, or underwriting rules for a consumer whose credit information has been directly influenced by:

(1) a catastrophic illness or injury;

- (2) the death of a spouse, child, or parent;
- (3) temporary loss of employment;
- (4) divorce; or
- (5) identity theft.

(b) In a situation described by Subsection (a), an insurer:

(1) may consider only credit information not affected by the event; or

(2) shall assign a neutral credit score.

(c) An insurer may require reasonable written and independently verifiable documentation of the event and the effect of the event on the person's credit before granting an exception. An insurer is not required to consider repeated events or events the insurer reconsidered previously as an extraordinary event.

(d) An insurer may also consider granting an exception to an applicant for insurance coverage or an insured for an extraordinary event not listed in Subsection (a).

(e) An insurer is not out of compliance with any law or rule relating to underwriting, rating, or rate filing as a result of granting an exception under this section.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.020(a), eff. September 1, 2005.

SUBCHAPTER D. FILING OF CREDIT SCORING MODELS

Sec. 559.151. FILING REQUIRED. (a) An insurer that uses credit scores to underwrite and rate risks shall file the insurer's credit scoring models or other credit scoring processes with the department.

(b) Another entity may file credit scoring models on behalf of an insurer.

(c) A filing that includes credit scoring may include loss experience justifying the use of credit information.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.020(a), eff. September 1, 2005.

Sec. 559.152. PUBLIC INFORMATION. A credit scoring model

filed to comply with this chapter, as of the date the filing is received by the department:

- (1) is public information;
- (2) is not subject to any exceptions to disclosure under Chapter 552, Government Code; and
- (3) cannot be withheld from disclosure under any other law.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.020(a), eff. September 1, 2005.

SUBCHAPTER E. ENFORCEMENT

Sec. 559.201. VIOLATION. An insurer that violates this chapter or a rule adopted under this chapter commits an unfair practice in violation of Chapter 541 and is subject to sanctions under Chapter 82.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.020(a), eff. September 1, 2005.