

108TH CONGRESS
1ST SESSION

H. R. 1473

To amend the Fair Credit Reporting Act to provide disclosures of credit-based insurance scoring information by insurers and credit reporting agencies, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 27, 2003

Mr. GUTIERREZ introduced the following bill; which was referred to the
Committee on Financial Services

A BILL

To amend the Fair Credit Reporting Act to provide disclosures of credit-based insurance scoring information by insurers and credit reporting agencies, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Insurance Credit Score
5 Disclosure and Reporting Act”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—The Congress finds as follows:

1 (1) According to the Insurance Information In-
2 stitute, 90 percent of property insurers now use in-
3 surance credit scoring in some way in their under-
4 writing decisions.

5 (2) According to Consumer Reports, 70 percent
6 of consumer reports have some kind of error and 29
7 percent have at least 1 major error.

8 (3) Since insurance credit scores are based on
9 credit bureau data, the accuracy of the data is es-
10 sential to achieving accurate scores.

11 (4) No insurance credit scoring modeling com-
12 pany has been able to identify the exact relationship
13 between credit characteristics and loss ratios.

14 (5) In January 2002, the Florida Task Force
15 on the Use of Credit Reports in Underwriting Auto-
16 mobile and Homeowners Insurance concluded that
17 the use of consumer reports has a negative impact
18 on young people, minorities and people with low in-
19 comes.

20 (6) The Fair Credit Reporting Act requires that
21 insurers disclose the specific credit criteria used to
22 raise rates or to render a consumer ineligible for a
23 discounted premium.

24 (7) Corporate research conducted by Fair, Isaac
25 & Company found that residents of ZIP codes with

1 high minority populations scored substantially lower
2 than residents than residents of other ZIP codes.

3 (b) PURPOSES.—The purposes of this Act are as fol-
4 lows:

5 (1) To protect insurance applicants and policy-
6 holders from insurers taking adverse action regard-
7 ing insurance coverage and premiums based solely
8 on credit history or insurance credit score.

9 (2) To require insurers to disclose the use of in-
10 surance credit scoring to insurance applicants and
11 policyholders prior to original application and to dis-
12 close the insurance credit scoring criteria used by in-
13 surers to assess risk of applicant.

14 (3) To enhance the availability and affordability
15 of insurance products and services to individuals and
16 small businesses of all economic circumstances and
17 in all geographic areas.

18 (4) To facilitate the enforcement of Federal and
19 State laws that prohibit illegally discriminatory in-
20 surance practices.

21 **SEC. 3. ESTABLISHMENT OF GENERAL REQUIREMENTS.**

22 (a) DISCLOSURE OF USE OF INSURANCE CREDIT
23 SCORE AND CONSUMER REPORT.—An insurer who uses,
24 or may use, a consumer report or insurance credit score
25 as a factor in underwriting an insurance application or

1 policy in a designated line of insurance shall disclose to
2 the applicant for such insurance, including a person re-
3 newing an existing policy of insurance, at the time of the
4 original application for the policy or the renewal of the
5 policy that—

6 (1) the insurer will, or will not, gather credit in-
7 formation, as the case may be; and

8 (2) the cost, coverage, and availability of insur-
9 ance policy will, or will not, be affected by the con-
10 sumer report or the insurance credit score of the ap-
11 plicant, as the case may be.

12 (b) INFORMATION CONCERNING USE OF CONSUMER
13 REPORTS AND INSURANCE CREDIT SCORES.—An insurer
14 who uses, or may use, a consumer report or insurance
15 credit score as a factor in underwriting an insurance appli-
16 cation for, or the renewal of, an insurance policy for a
17 designated line of insurance shall provide to the applicant
18 or policyholder all relevant information on the use of such
19 report or scores and the relationship between the use of
20 insurance credit scores or any other risk scores or predic-
21 tors and the cost and the scope of the coverage of such
22 insurance to the applicant or policy holder, including the
23 following:

24 (1) A clear, concise, and detailed summary of
25 how the scores and predictors are derived.

1 (2) All factors taken into account in deriving a
2 score or predictor.

3 (3) How such factors are applied to the appli-
4 cant or policyholder.

5 (4) How the applicant or policyholder scored on
6 all factors.

7 (5) The relative weight given to each factor.

8 (6) The manner and extent to which such fac-
9 tors raise or lower the score or predictor.

10 (c) PROHIBITION ON USE OF ADVERSE INFORMA-
11 TION IN DISPUTE.—

12 (1) IN GENERAL.—An insurer may not take any
13 type of adverse action with respect to any applica-
14 tion for, or renewal of, an insurance policy in a des-
15 ignated line of insurance that takes into account an
16 insurance credit score or credit information con-
17 tained in a consumer report that the insurer knows
18 to be in dispute.

19 (2) DISCLOSURE OF MAXIMUM POSSIBLE AND
20 ACTUAL INSURANCE CREDIT SCORE.—Additionally,
21 for each industry trade line total, an insurer shall
22 disclose to the applicant or policy holder—

23 (A) the highest insurance credit score that
24 it is possible to achieve for each such line; and

1 (B) the actual insurance credit score deter-
2 mined for the applicant or policy holder for
3 such line pursuant to the insurance credit scor-
4 ing model.

5 (3) REDETERMINATION OF UNDERWRITING
6 FOLLOWING CORRECTION OF CONSUMER REPORT.—
7 If an insurer has taken adverse action with respect
8 to any insurance policy in a designated line of insur-
9 ance based on inaccurate information contained in a
10 consumer report or utilized in computing an insur-
11 ance credit score, and that inaccurate information is
12 subsequently corrected, the insurer shall re-under-
13 write the impacted policy and refund any premium
14 decrease to the insured retroactive to the inception
15 date of the policy.

16 (d) PROHIBITION ON USE OF LOW INSURANCE
17 CREDIT SCORES RESULTING FROM MEDICAL EMER-
18 GENCIES OR OTHER SPECIAL CIRCUMSTANCES.—An in-
19 surer may not make an adverse inference in underwriting
20 an insurance application or policy in a designated line of
21 insurance based on a low insurance credit score as a result
22 of little or no credit information, unusually high bills asso-
23 ciated with medical emergencies, or other special cir-
24 cumstances.

1 (e) ACTIONS REQUIRED IN CASE OF ADVERSE AC-
2 TION BASED ON CONSUMER REPORT OR INSURANCE
3 CREDIT SCORES.—If the use of a consumer report or in-
4 surance credit score in underwriting an insurance applica-
5 tion or policy in a designated line of insurance results in
6 an adverse action to an applicant or policyholder, the in-
7 surer shall—

8 (1) inform the applicant or policyholder that a
9 consumer report or insurance credit score adversely
10 affected the underwriting of the insurance applica-
11 tion or policy;

12 (2) provide the applicant or policyholder with a
13 copy of the consumer report used by the insurer on
14 which the action was based, together with a detailed
15 explanation, in easy to understand terminology, of—

16 (A) the specific detailed credit characteris-
17 tics on which the adverse action was based; and

18 (B) the specific actions the applicant or
19 policyholder can take to improve the insurance
20 credit score;

21 (3) ensure that the consumer report provided to
22 applicant or policy holder has the name, address,
23 and a toll-free telephone number of the consumer re-
24 porting agency that furnished the credit information;

1 (4) inform the applicant or policyholder of his
2 or her right to verify any credit information with
3 that consumer reporting agency (and include the
4 names of any other consumer reporting agencies
5 which provided information in the consumer report
6 used by the insurer and provide the applicant or pol-
7 icyholder with the addresses and toll-free telephone
8 numbers of such other consumer reporting agencies);
9 and

10 (5) inform the applicant or policyholder of his
11 or her right to lodge a dispute with a consumer re-
12 porting agency in order to have any erroneous or in-
13 complete information corrected in accordance with
14 the Fair Credit Reporting Act.

15 (f) PREMIUM PAYMENT PLAN REQUIREMENTS.—

16 (1) BASED ON INSURANCE PAYMENT HIS-
17 TORY.—An insurer that offers premium payment
18 plans to applicants and policyholders in a designated
19 line of insurance may not deny or condition such
20 payment plans on anything other than the payment
21 history of such applicant or policyholder with that
22 insurance company.

23 (2) EVENHANDED REPORTING OF PAYMENT
24 HISTORY.—An insurer that offers premium payment
25 plans to applicants and policy holders in a des-

1 ignated line of insurance shall report both the favor-
2 able and unfavorable payment history of the insured
3 to a nationally recognized consumer reporting agen-
4 cy at least monthly, quarterly, semi-annually, or an-
5 nually pursuant to policy requirements.

6 (3) RECORDKEEPING REQUIREMENT.—An in-
7 surer shall compile and maintain, in accordance with
8 regulations, a record of the information provided by
9 applicant or policyholder with respect to a des-
10 ignated line of insurance, together with the credit
11 history or consumer report obtained by insurer and
12 used in underwriting.

13 (4) INSURANCE CREDIT SCORERS.—

14 (A) IN GENERAL.—Any person involved in
15 creating, compiling, or providing insurance
16 credit scores to or on behalf of an insurer relat-
17 ing to a designated line of insurance shall not
18 provide or sell to any party, other than the in-
19 surer, information or mailing lists that include
20 an insurance credit score or any other informa-
21 tion that, in whole or in part, is generated or
22 derived from credit inquiries or consumer re-
23 ports of insured persons or insurance appli-
24 cants.

1 (B) SCOPE OF APPLICATION.—The infor-
2 mation to which subparagraph (A) applies in-
3 cludes information that may identify time peri-
4 ods during which an insurance policy of the ap-
5 plicant or insured in a designated line of insur-
6 ance may expire or an estimated range within
7 which the credit score of a person may fall.

8 (C) CERTAIN INFORMATION NOT SUBJECT
9 TO THIS PARAGRAPH.—This paragraph shall
10 not be construed as limiting or prohibiting the
11 exchange of information that is specifically au-
12 thorized under the Fair Credit Reporting Act or
13 this Act.

14 **SEC. 4. ESTABLISHMENT OF GENERAL REQUIREMENTS TO**
15 **SUBMIT INSURANCE CREDIT SCORING MOD-**
16 **ELS AND INSURANCE CREDIT SCORES USED**
17 **BY INSURERS IN UNDERWRITING.**

18 The Federal Trade Commission shall, by regulation,
19 establish requirements for insurers to compile and submit
20 insurance credit score information with respect to des-
21 ignated lines of insurance to the Commission for each an-
22 nual reporting period, in accordance with this Act.

1 **SEC. 5. REPORT ON RELATIONSHIP BETWEEN CREDIT AND**
2 **INSURANCE CREDIT SCORES AND THE RACE,**
3 **INCOME, GEOGRAPHIC LOCATION AND AGE**
4 **OF INSURANCE APPLICANTS AND POLICY-**
5 **HOLDERS.**

6 (a) STUDY REQUIRED.—The Federal Trade Commis-
7 sion shall conduct a comprehensive investigation of the re-
8 lationship between use by insurers of credit information
9 and insurance credit scores, with respect to designated
10 lines of insurance, and risk factor of loss, including the
11 impact by race, income, geographic location and age.

12 (b) REPORT REQUIRED.—Before the end of the 15-
13 month period beginning on the date of the enactment of
14 this Act, the Commission shall submit a report to the Con-
15 gress of the findings and conclusions of the Commission
16 with regard to the study under subsection (a), together
17 with such recommendations for legislative or administra-
18 tive action as the Commission may determine to be appro-
19 priate.

20 **SEC. 6. DESIGNATIONS.**

21 (a) DESIGNATION OF LINES OF INSURANCE.—

22 (1) IN GENERAL.—For purposes of this Act,
23 the Commission shall, by regulation, designate lines
24 of insurance as designated lines of insurance as fol-
25 lows:

1 (A) AUTOMOBILE.—The Commission shall
2 designate private passenger automobile insur-
3 ance and shall also designate any sublines and
4 coverage types of private passenger automobile
5 insurance that the Commission considers appro-
6 priate, after comparing the availability, afford-
7 ability, and type of coverage in such lines by ge-
8 ographic area.

9 (B) NONCOMMERCIAL INSURANCE FOR
10 RESIDENTIAL PROPERTY.—

11 (i) IN GENERAL.—The Commission
12 shall designate homeowners insurance, in-
13 cluding mobile homeowners, manufactured
14 homeowners, condominium owners, and
15 renters' coverage, dwelling fire and allied
16 lines, earthquake coverage for a residence
17 or personal property, personal liability and
18 theft coverage, mechanical breakdown cov-
19 erage for personal auto or home appli-
20 ances, and shall distinguish the coverage
21 types in such lines by the perils covered
22 and by market or replacement value.

23 (ii) NATURE OF OFFERING.—With re-
24 spect to lines of insurance designated
25 under clause (i), the Commission shall also

1 require insurers to inform the Commission
2 as to whether the insurance is offered vol-
3 untarily or in conjunction with a residual
4 market mechanism.

5 (C) SMALL BUSINESS.—The Commission
6 shall designate as designated lines of insurance
7 any lines of small business insurance, and any
8 sublines and coverage types of small business
9 insurance, that the Commission determines to
10 be appropriate after comparing the availability,
11 affordability, and type of coverage in such lines
12 by geographic area.

13 (2) REPORT ON NONDESIGNATED LINES.—At
14 any time the Commission determines that any line
15 of insurance not described in paragraph (1) should
16 be a designated line because disparities in coverage
17 provided under such line exist among geographic
18 areas having different income levels or racial com-
19 position, the Commission shall submit a report rec-
20 ommending designating such line of insurance as a
21 designated line for purposes of this Act to the Com-
22 mittee on Financial Services of the House of Rep-
23 resentatives and to the Senate.

24 (b) DURATION OF DESIGNATION.—

1 (1) IN GENERAL.—Except as provided in para-
2 graph (2), the Commission shall make the designa-
3 tions under this section once every 5 years, by regu-
4 lation.

5 (2) ALTERATION OF DESIGNATION.—During
6 any 5-year period referred to in paragraph (1) in
7 which designations are in effect, the Commission
8 may amend or revise the designated lines, sublines,
9 and coverage types only by regulation and only in
10 accordance with the requirements of this section.

11 (c) NOTICE OF DESIGNATIONS.—Before the end of
12 the 90-day period beginning on the date a designation of
13 a line of insurance is made under this section, the Com-
14 mission shall notify any person who has an interest in or
15 is affected by such designation of the designation.

16 (d) OBTAINING INFORMATION.—The Commission
17 may require insurers to submit to the Commission such
18 information as the Commission considers necessary to
19 make designations specifically required under this Act.

20 **SEC. 7. ENFORCEMENT.**

21 (a) CIVIL PENALTIES.—Any insurer who is deter-
22 mined by the Commission, after providing opportunity for
23 a hearing on the record, to have violated any requirement
24 of this Act or any regulation prescribed under this Act

1 shall be subject to a civil penalty of not to exceed \$5,000
2 for each day during which such violation continues.

3 (b) INJUNCTION.—The Commission may bring an ac-
4 tion in an appropriate United States district court for ap-
5 propriate declaratory and injunctive relief against any in-
6 surer who violates the requirements of this Act.

7 (c) INSURER LIABILITY.—An insurer shall be respon-
8 sible under this section for any violation of a statistical
9 agent acting on behalf of the insurer.

10 **SEC. 8. RELATION TO OTHER LAWS.**

11 (a) STATE LAW.—No provision of this Act shall be
12 construed as annulling, altering, or affecting the laws of
13 any State or any political subdivision of a State relating
14 to public disclosure, submission of information, and record
15 keeping or exempting any insurer subject to this Act from
16 any obligation under, or an obligation to comply with, any
17 such law.

18 (b) OTHER FEDERAL LAW.—This Act relates specifi-
19 cally to the business of insurance.

20 **SEC. 9. REGULATIONS.**

21 (a) IN GENERAL.—The Commission shall prescribe,
22 after notice and opportunity for comment, such regula-
23 tions as may be necessary to carry out this Act and pre-
24 vent evasions of this Act and such regulations.

1 (b) FACTORS TO BE CONSIDERED.—In prescribing
2 regulations under this Act, the Commission shall take into
3 consideration the administrative, paperwork, and other
4 burdens on insurance agents, including independent insur-
5 ance agents, involved in complying with the requirements
6 of this Act and shall minimize the burdens imposed by
7 such requirements with respect to such agents.

8 **SEC. 10. DEFINITIONS.**

9 For purposes of this Act, the following definitions
10 shall apply:

11 (1) ADVERSE ACTION.—The term “adverse ac-
12 tion”—

13 (A) means a denial or cancellation of, an
14 increase in any charge for, or a reduction or
15 other adverse or unfavorable change in the
16 terms of coverage or amount of, any insurance,
17 existing or applied for, in connection with the
18 underwriting of insurance; and

19 (B) includes the nonrenewal of an existing
20 insurance policy.

21 (2) COMMISSION.—The term “Commission”
22 means the Federal Trade Commission.

23 (3) CONSUMER REPORTING AGENCY.—The term
24 “consumer reporting agency” has the same meaning

1 as in section 603(f) of the Fair Credit Reporting
2 Act.

3 (4) CONSUMER REPORT.—The term “consumer
4 report”—

5 (A) when used in connection with insur-
6 ance issued primarily for personal, family, or
7 household purposes, has the same meaning as
8 in section 603(d) of the Fair Credit Reporting
9 Act; and

10 (B) when used in connection with small
11 business insurance, has the meaning given such
12 term by the Commission in regulations.

13 (5) INSURANCE APPLICATION.—The term “in-
14 surance application” means an application for insur-
15 ance, as determined by the Commission, made by
16 any means, including in writing, orally, and by elec-
17 tronic means.

18 (6) INSURANCE CREDIT SCORE.—The term “in-
19 surance credit score” means a numerical representa-
20 tion of the insurance risk a person presents using
21 the person’s attributes derived from a consumer re-
22 port or credit information in a formula to assess in-
23 surance risk on an actuarial or statistical basis.

1 (7) INSURANCE POLICY.—The term “insurance
2 policy” means a policy, contract, or certificate or evi-
3 dence of insurance.

4 (8) INSURER.—The term “insurer”—

5 (A) means any corporation, association, so-
6 ciety, order, firm, company, mutual, partner-
7 ship, individual, aggregation of individuals, or
8 any other legal entity that is authorized to
9 transact the business of property or casualty in-
10 surance in any State or that is engaged in a
11 property or casualty insurance business; and

12 (B) does not include an individual or entity
13 which represents an insurer as agent solely for
14 the purpose of selling or which represents a
15 consumer as a broker solely for the purpose of
16 buying insurance.

17 (9) RESIDUAL MARKET MECHANISM.—The term
18 “residual market mechanism” means any assigned
19 risk plan, private insurance placement facility, joint
20 underwriting association, or similar mechanism es-
21 tablished by a State or pursuant to any State law
22 to provide property and casualty insurance for prop-
23 erty owners who are unable to obtain such coverage
24 in the voluntary market. Such term includes each
25 State-wide plan of any State to assure fair access to

1 insurance requirements under part A of title XII of
2 the National Housing Act.

3 (10) SMALL BUSINESS.—The term “small busi-
4 ness” means any business that meets the criteria es-
5 tablished under and pursuant to section 3 of the
6 Small Business Act for a small-business concern.

7 (11) SMALL BUSINESS INSURANCE.—The term
8 “small business insurance”—

9 (A) means property and casualty insurance
10 specifically covering loss of, or damage to, the
11 small business property, including insurance
12 against loss of income or extra expense incurred
13 because of loss of, or damage to, property, and
14 insurance against third party liability claims
15 caused by negligence or imposed by statute or
16 contract; and

17 (B) does not include workers’ compensa-
18 tion, professional liability, or title insurance.

19 (12) UNDERWRITING.—The term “under-
20 writing” means the selection of the risk that will be
21 assumed by the insurer on a contract, and specifi-
22 cally the decision whether to accept, deny, renew,
23 not renew, reduce, or increase the amount of bene-
24 fits payable or types of coverages under the contract.

1 **SEC. 11. EFFECTIVE DATE OF REGULATIONS.**

2 Except as otherwise provided in this Act, regulations
3 necessary to implement the requirements of this Act, and
4 prevent evasions of the Act and regulations prescribed
5 under this Act, shall be prescribed in final form before
6 the end of the 18-month period beginning on the date of
7 the enactment of this Act.

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