

IC 27-2-21

Chapter 21. Use of Credit Information

IC 27-2-21-0.1

Application of chapter

Sec. 0.1. The addition of this chapter by P.L.201-2003 applies to a personal insurance policy:

- (1) application that is submitted; or
- (2) that is issued, delivered, amended, or renewed;

after December 31, 2003.

As added by P.L.220-2011, SEC.429.

IC 27-2-21-1

"Adverse action"

Sec. 1. As used in this chapter, "adverse action" means:

- (1) a denial or cancellation of;
- (2) an increase in a charge for; or
- (3) a reduction or other adverse or unfavorable change in the terms of coverage or amount of;

insurance in connection with the underwriting of a personal insurance policy.

As added by P.L.201-2003, SEC.1.

IC 27-2-21-2

"Affiliate"

Sec. 2. As used in this chapter, "affiliate" means a company that controls, is controlled by, or is under common control with another company.

As added by P.L.201-2003, SEC.1.

IC 27-2-21-3

"Applicant"

Sec. 3. As used in this chapter, "applicant" means an individual who has applied with an insurer for coverage under a personal insurance policy.

As added by P.L.201-2003, SEC.1.

IC 27-2-21-4

"Commissioner"

Sec. 4. As used in this chapter, "commissioner" refers to the insurance commissioner appointed under IC 27-1-1-2.

As added by P.L.201-2003, SEC.1.

IC 27-2-21-5

"Consumer"

Sec. 5. As used in this chapter, "consumer" means an:

- (1) insured whose:
 - (A) credit information is used; or

(B) insurance score is calculated;
in the underwriting or rating of a personal insurance policy; or
(2) applicant for a personal insurance policy.
As added by P.L.201-2003, SEC.1.

IC 27-2-21-6

"Consumer reporting agency"

Sec. 6. As used in this chapter, "consumer reporting agency" means a person that, for a monetary fee or dues or on a cooperative nonprofit basis, regularly engages in the practice of assembling or evaluating consumer credit information or other information concerning consumers for the purpose of furnishing consumer reports to third parties.

As added by P.L.201-2003, SEC.1.

IC 27-2-21-7

"Credit information"

Sec. 7. As used in this chapter, "credit information" means credit related information:

- (1) derived from a credit report;
- (2) found on a credit report; or
- (3) provided on an application for a personal insurance policy.

The term does not include information that is not credit related, regardless of whether the information is contained in a credit report or in an application or is used to calculate an insurance score.

As added by P.L.201-2003, SEC.1.

IC 27-2-21-8

"Credit report"

Sec. 8. As used in this chapter, "credit report" means a written, an oral, or another communication of information by a consumer reporting agency concerning a consumer's creditworthiness, credit standing, or credit capacity that is used or expected to be used or collected as a factor to determine personal insurance policy premiums, eligibility for coverage, or tier placement.

As added by P.L.201-2003, SEC.1.

IC 27-2-21-9

"Department"

Sec. 9. As used in this chapter, "department" refers to the department of insurance created by IC 27-1-1-1.

As added by P.L.201-2003, SEC.1.

IC 27-2-21-10

"Insurance producer"

Sec. 10. As used in this chapter, "insurance producer" has the meaning set forth in IC 27-1-15.6-2.

As added by P.L.201-2003, SEC.1. Amended by P.L.11-2011,

SEC.24.

IC 27-2-21-11

"Insurance score"

Sec. 11. As used in this chapter, "insurance score" means a number or rating that is derived from an algorithm, computer application, model, or other process that is based on credit information for the purpose of predicting the future insurance loss exposure of an individual consumer.

As added by P.L.201-2003, SEC.1.

IC 27-2-21-12

"Insured"

Sec. 12. As used in this chapter, "insured" means an individual entitled to coverage under a personal insurance policy.

As added by P.L.201-2003, SEC.1.

IC 27-2-21-13

"Insurer"

Sec. 13. As used in this chapter, "insurer" refers to an insurer (as defined in IC 27-1-2-3) that issues a personal insurance policy.

As added by P.L.201-2003, SEC.1.

IC 27-2-21-14

"Personal insurance policy"

Sec. 14. As used in this chapter, "personal insurance policy" means a policy that:

- (1) provides one (1) or more of the kinds of insurance described in Class 2 or Class 3 of IC 27-1-5-1; and
- (2) is underwritten on an individual basis for personal, family, or household use.

As added by P.L.201-2003, SEC.1.

IC 27-2-21-15

Applicability

Sec. 15. This chapter does not apply to commercial insurance.

As added by P.L.201-2003, SEC.1.

IC 27-2-21-16

Requirements for insurer use of credit information

Sec. 16. (a) An insurer that uses credit information to underwrite or rate risks shall not do the following:

- (1) Use an insurance score that is calculated using income, gender, address, ZIP code, ethnic group, religion, marital status, or nationality of the consumer as a factor.
- (2) Deny, cancel, or decline to renew a personal insurance policy solely on the basis of credit information.
- (3) Base an insured's renewal rate for a personal insurance

policy solely on credit information.

(4) Take an adverse action against a consumer solely because the consumer does not have a credit card account.

(5) Consider an absence of credit information or an inability to calculate an insurance score in underwriting or rating a personal insurance policy, unless the insurer does one (1) of the following:

(A) Presents to the commissioner information that the absence or inability relates to the risk for the insurer and treats the consumer as approved by the commissioner.

(B) Treats the consumer as if the consumer had neutral credit information, as defined by the insurer.

(6) Take an adverse action against a consumer based on credit information unless the insurer obtains and uses:

(A) a credit report issued; or

(B) an insurance score calculated;

not more than ninety (90) days before the date the personal insurance policy is first written or the renewal is issued.

(7) Use the following as a negative factor in an insurance scoring methodology or in reviewing credit information for the purpose of underwriting or rating a personal insurance policy:

(A) A credit inquiry:

(i) not initiated by the consumer; or

(ii) requested by the consumer for the consumer's own credit information.

(B) A credit inquiry relating to insurance coverage.

(C) A late payment or a collection account with a medical industry code on the consumer's credit report.

(D) Multiple lender inquiries:

(i) coded by the consumer reporting agency on the consumer's credit report as being from the home mortgage industry; and

(ii) made within thirty (30) days of one another.

(E) Multiple lender inquiries:

(i) coded by the consumer reporting agency on the consumer's credit report as being from the automobile lending industry; and

(ii) made within thirty (30) days of one another.

(b) An insurer that uses credit information to underwrite or rate risks shall, at annual renewal upon the request of an insured or an insured's agent, re-underwrite and re-rate the insured's personal insurance policy based on a current credit report or insurance score unless one (1) of the following applies:

(1) The insurer's treatment of the consumer is otherwise approved by the commissioner.

(2) The insured is in the most favorably priced tier of the insurer, within a group of affiliated insurers.

(3) Credit information was not used for underwriting or rating

the insured when the personal insurance policy was initially written.

(4) The insurer reevaluates the insured at least every thirty-six (36) months after a personal insurance policy is issued based on underwriting or rating factors other than credit information.

(5) The insurer has re-underwritten and re-rated the insured's personal insurance policy based on a credit report obtained or an insurance score recalculated less than twelve (12) months before the date of the request by the insured or the insured's agent.

(c) An insurer that uses credit information to underwrite or rate risks may obtain current credit information upon the renewal of a personal insurance policy when renewal occurs more frequently than every thirty-six (36) months if consistent with the insurer's underwriting guidelines.

As added by P.L.201-2003, SEC.1. Amended by P.L.84-2009, SEC.1.

IC 27-2-21-17

Incorrect or incomplete credit information; notice; remedy

Sec. 17. (a) If:

(1) a determination is made through the dispute resolution process set forth in the federal Fair Credit Reporting Act, 15 U.S.C. 1681i(a)(5), that the credit information of a current insured was incorrect or incomplete; and

(2) the insurer receives notice of the determination from the consumer reporting agency or the insured;

the insurer shall re-underwrite and re-rate the insured not more than thirty (30) days after receiving the notice.

(b) After an insurer re-underwrites or re-rates an insured as described in subsection (a), the insurer shall:

(1) make necessary adjustments, consistent with the insurer's underwriting and rating guidelines; and

(2) if the insurer determines that the insured has overpaid a premium, refund to the insured the amount of overpayment calculated back to the shorter of the:

(A) immediately preceding twelve (12) month period of coverage; or

(B) actual policy period.

As added by P.L.201-2003, SEC.1.

IC 27-2-21-18

Disclosure of use of credit information

Sec. 18. (a) If an insurer uses credit information in underwriting or rating a consumer, the insurer or the insurer's agent shall disclose, either on the insurance application or at the time the insurance application is taken, that the insurer may obtain credit information in connection with the application. The disclosure must be:

(1) written; or

(2) provided to the consumer in the same medium as the application for insurance.

The insurer is not required to provide the disclosure statement required under this section to an insured on a renewal policy if the insured has previously been provided a disclosure statement.

(b) Use of the following sample disclosure statement constitutes compliance with this section: "In connection with this application for insurance, we may review your credit report or obtain or use a credit based insurance score based on the information contained in that credit report. We may use a third party in connection with the development of your insurance score.".

As added by P.L.201-2003, SEC.1.

IC 27-2-21-19

Adverse action based on credit information; notice

Sec. 19. (a) If an insurer takes an adverse action based on credit information, the insurer shall:

(1) provide notice to the consumer that an adverse action has been taken, in accordance with the requirements of the federal Fair Credit Reporting Act, 15 U.S.C. 1681m(a); and

(2) provide notice to the consumer explaining the reason for the adverse action.

(b) The reason provided under subsection (a)(2) must be provided in sufficiently clear and specific language so that an individual can identify the basis for the insurer's decision to take an adverse action. The notice must include a description of all factors up to four (4) primary factors that were the primary influences of the adverse action. The use of generalized terms such as "poor credit history", "poor credit rating", or "poor insurance score" does not meet requirements of this subsection. A standardized credit explanation provided by a consumer reporting agency or other third party vendor meets the requirements of this section.

As added by P.L.201-2003, SEC.1.

IC 27-2-21-20

Filings

Sec. 20. (a) An insurer that uses an insurance score to underwrite and rate risks shall file the insurer's scoring models or other scoring processes with the department.

(b) A third party may file a scoring model or scoring process on behalf of an insurer.

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

(d) A filing related to credit information is confidential.

As added by P.L.201-2003, SEC.1.

IC 27-2-21-21

Insurance producer indemnification, defense, and hold harmless

Sec. 21. (a) An insurer shall indemnify and defend an insurance producer and hold an insurance producer harmless from and against liability, fees, and costs arising out of or related to the actions, errors, or omissions of the insurance producer relating to a use of credit information if the insurance producer:

- (1) obtains or uses credit information or insurance scores for the insurer;
- (2) follows the instructions of or procedures established by the insurer; and
- (3) complies with applicable laws and regulations.

(b) This section does not provide a consumer with a cause of action that does not exist in the absence of this section.

As added by P.L.201-2003, SEC.1.

IC 27-2-21-22

Consumer reporting agency prohibitions

Sec. 22. (a) A consumer reporting agency may not provide or sell data or lists that include information submitted in conjunction with:

- (1) an insurance inquiry about a consumer's credit information;
- or
- (2) a request for a credit report or insurance score;

including the expiration dates of an insurance policy or other information that may identify periods during which a consumer's insurance expires and the terms and conditions of the consumer's insurance coverage.

(b) The restrictions under subsection (a) do not apply to data or lists a consumer reporting agency supplies to an:

- (1) insurance producer from whom the information was received;
- (2) insurer on behalf of which the insurance producer described in subdivision (1) acted; or
- (3) affiliate or holding company of the insurer described in subdivision (2).

(c) This section does not prohibit an insurer from obtaining a claim history report or a motor vehicle report.

As added by P.L.201-2003, SEC.1.

IC 27-2-21-23

Violations

Sec. 23. A violation of this chapter by an insurer is an unfair and deceptive act and practice in the business of insurance under IC 27-4-1-4.

As added by P.L.201-2003, SEC.1.