

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2003

S

3

SENATE BILL 771  
Commerce Committee Substitute Adopted 4/23/03  
House Committee Substitute Favorable 5/28/03

Short Title: Credit Scoring Limitation.

(Public)

Sponsors:

Referred to:

April 3, 2003

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROHIBIT THE USE OF A PERSON'S CREDIT HISTORY AS A  
3 SOLE BASIS FOR TERMINATING INSURANCE COVERAGE OR  
4 SUBJECTING A POLICY TO CONSENT TO RATE.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. Article 36 of Chapter 58 of the General Statutes is amended by  
7 adding a new section to read:

8 **"§ 58-36-90. Prohibitions on using credit scoring to rate noncommercial private**  
9 **passenger motor vehicle and residential property insurance; exceptions.**

10 (a) Definitions. – As used in this section:

11 (1) "Adverse action" has the same meaning as in section 1681a(k) of the  
12 federal Fair Credit Reporting Act and includes a denial or cancellation  
13 of, an increase in any charge for, or a reduction or other adverse or  
14 unfavorable change in the terms of coverage or amount of any  
15 insurance, existing or applied for, in connection with the underwriting  
16 of insurance.

17 (2) "Credit report" means any written, oral, or other communication of any  
18 information by a consumer reporting agency that bears on a  
19 consumer's credit worthiness, credit standing, or credit capacity. Credit  
20 report does not include accident or traffic violation records as  
21 maintained by the North Carolina Division of Motor Vehicles or any  
22 other law enforcement agency, a property loss report or claims history  
23 that does not include information that bears on a consumer's credit  
24 worthiness, credit standing, or credit capacity, or any report containing  
25 information solely as to transactions or experiences between the  
26 consumer and the person making the report.

1           (3)    "Credit score" means a score that is derived by utilizing data from an  
2                    individual's credit report in an algorithm, computer program, model, or  
3                    other process that reduces the data to a number or rating.

4           (4)    "Noncommercial private passenger motor vehicle" means a "private  
5                    passenger motor vehicle," as defined by G.S. 58-40-10, that is neither  
6                    insured under a commercial policy nor used for commercial purposes.

7           (5)    "Private passenger motor vehicle" has the same meaning as set forth in  
8                    G.S. 58-40-10.

9           (6)    "Residential property" means real property with not more than four  
10                   housing units located in this State, the contents thereof and valuable  
11                   interest therein, and insurance coverage written in connection with the  
12                   sale of that property. It also includes mobile homes, modular homes,  
13                   townhomes, condominiums, and insurance on contents of apartments  
14                   and rental property used for residential purposes.

15       (b)    Prohibitions; Exceptions. – In the rating and underwriting of noncommercial  
16            private passenger motor vehicle and residential property insurance coverage, insurers  
17            shall not use credit scoring as the sole basis for terminating an existing policy or any  
18            coverage in an existing policy or subjecting a policy to consent to rate as specified in  
19            G.S. 58-36-30(b) without consideration of any other risk factors, but insurers may use  
20            credit scoring as the sole basis for discounting rates. For purposes of this subsection  
21            only, "existing policy" means a policy that has been in effect for more than 60 days.

22       (c)    Notification. – If a credit report is used in conjunction with other criteria to  
23            take an adverse action, the insurer shall provide the applicant or policyholder with  
24            written notice of the action taken, in a form approved by the Commissioner. The  
25            notification shall include, in easily understandable language:

26           (1)    The specific reason for the adverse action and, if the adverse action  
27                    was based upon a credit score, a description of the factors that were the  
28                    primary influence on the score.

29           (2)    The name, address, and toll-free telephone number of the credit bureau  
30                    that provided the insurer with the credit-based information.

31           (3)    The fact that the consumer has the right to obtain a free copy of the  
32                    consumer's credit report from the appropriate credit bureau.

33           (4)    The fact that the consumer has the right to challenge information  
34                    contained in the consumer's credit report.

35       (d)    Disputed Credit Report Information. – If it is determined through the dispute  
36            resolution process set forth in the federal Fair Credit Reporting Act, 15 U.S.C. §  
37            1681i(a)(5), that the credit information of a current insured was incorrect or incomplete  
38            and if the insurer receives notice of such determination from either the consumer  
39            reporting agency or from the insured, the insurer shall re-underwrite or re-rate the  
40            consumer within 30 days of receiving the notice. After re-underwriting or re-rating the  
41            insured, the insurer shall make any adjustments necessary, consistent with its  
42            underwriting guidelines. If an insurer determines the insured has overpaid premium, the  
43            insurer shall refund to the insured the amount of overpayment calculated back to the  
44            shorter of either the last 12 months of coverage or the actual policy period.

1       (e) Indemnification. – An insurer shall indemnify, defend, and hold agents  
2 harmless from and against all liability, fees, and costs arising out of or relating to the  
3 actions, errors, or omissions of an agent who obtains or uses credit information or  
4 insurance scores for an insurer, provided the agent follows the instructions or  
5 procedures established by the insurer and complies with any applicable law or  
6 regulation. Nothing in this subsection shall be construed to provide a consumer or other  
7 insured with a cause of action that does not exist in the absence of this subsection.

8       (f) Filing. – Insurers that use insurance scores to underwrite and rate risks shall  
9 file their scoring models, or other scoring processes, with the Department. A filing that  
10 includes insurance scoring may include loss experience justifying the applicable  
11 surcharge or credit. A filer may request that its credit score data be considered a trade  
12 secret and may designate parts of its filings accordingly."

13       **SECTION 2.** This act becomes effective January 1, 2004, and applies to  
14 policies issued or renewed on or after that date and to applications for coverage made on  
15 or after that date.