

## Substitute for HOUSE BILL No. 2390

By Committee on Insurance

2-26

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9 AN ACT concerning insurance; relating to the use of credit information;  
10 amending K.S.A. 2009 Supp. 40-5103 and 40-5104 and repealing the  
11 existing sections.  
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13 *Be it enacted by the Legislature of the State of Kansas:*

14 New Section 1. (a) (1) Notwithstanding any other law, rule or reg-  
15 ulation, an insurer that uses credit information shall, upon written request  
16 from an applicant for insurance coverage or an insured, provide reason-  
17 able exceptions to the insurer's rates, rating classifications, company or  
18 tier placement, or underwriting rules or guidelines for a consumer who  
19 has experienced and whose credit information has been directly influ-  
20 enced by an extraordinary life circumstance.

21 (2) As used in this section "extraordinary life circumstance" means:

22 (A) Catastrophic event, as declared by the federal or any state  
23 government;

24 (B) serious illness or injury to the consumer or such consumer's im-  
25 mediate family member;

26 (C) the death of a spouse, child or parent of the insured;

27 (D) divorce or involuntary interruption of legally-owed alimony or  
28 support payments;

29 (E) identity theft;

30 (F) temporary loss of employment for a period of three months or  
31 more, if it results from involuntary termination;

32 (G) overseas military deployment; or

33 (H) other events as determined by the insurer.

34 (b) If a consumer submits a request for an exception under subsection  
35 (a), an insurer may, in its sole discretion:

36 (1) Require the consumer to provide reasonable written and inde-  
37 pendently verifiable documentation of the event;

38 (2) require the consumer to demonstrate that the event had a direct  
39 and meaningful impact on the consumer's credit information; and

40 (3) require such request be made no more than 60 days from the date  
41 of the application for insurance or the policy renewal.

42 (c) An insurer shall not be deemed to be out of compliance with any  
43 law, rule or regulation relating to underwriting, rating or rate filing as a

1 result of granting an exception under this section. Nothing in this section  
2 shall be construed to provide a consumer or other insured with a cause  
3 of action that does not exist in the absence of this section.

4 (d) The insurer shall provide notice to consumers that reasonable  
5 exceptions are available and information about how the consumer may  
6 inquire further.

7 (e)(1) Within 30 days of the insurer's receipt of sufficient documen-  
8 tation of an extraordinary life circumstance as the insurer may request  
9 under subsection (b), the insurer shall inform the consumer of the out-  
10 come of their request for a reasonable exception.

11 (2) The insurer may grant an exception despite the consumer not  
12 providing the initial request for an exception in writing or grant an ex-  
13 ception where the consumer asks for consideration of repeated circum-  
14 stances or the insurer has considered this circumstance previously.

15 (3) The insurer shall inform the consumer of the outcome of their  
16 request in writing.

17 (f) This section shall be part of and supplemental to the Kansas in-  
18 surance score act.

19 Sec. 2. K.S.A. 2009 Supp. 40-5103 is hereby amended to read as  
20 follows: 40-5103. As used in this act:

21 (a) "Adverse action" means any of the following in connection with  
22 the underwriting of personal insurance:

23 (1) A denial or cancellation of coverage;

24 ~~(2) anything other than the best possible rate; or~~

25 ~~(2)~~ (2) a reduction or other adverse or unfavorable change in the  
26 terms of coverage of any insurance regardless of whether such insurance  
27 is in existence or has been applied for.

28 (b) "Affiliate" means any company that controls, is controlled by, or  
29 is under common control with another company.

30 (c) "Agent" shall have the meaning ascribed to it in subsection (k) of  
31 K.S.A. 2009 Supp. 40-4902, and amendments thereto, unless the context  
32 requires otherwise.

33 (d) "Applicant" means an individual who has applied to an insurer to  
34 be covered by a personal insurance policy.

35 (e) "Commissioner" means the commissioner of insurance and any  
36 authorized designee of the commissioner.

37 (f) "Consumer" means an insured whose credit information is used  
38 or whose insurance score is calculated in the underwriting or rating of a  
39 personal insurance policy. "Consumer" also includes an applicant for a  
40 personal insurance policy.

41 (g) "Consumer reporting agency" means any person which, for mon-  
42 etary fees, dues, or on a cooperative nonprofit basis, regularly engages,  
43 in whole or in part, in the practice of assembling or evaluating consumer

1 credit information or other information on consumers for the purpose of  
2 furnishing consumer reports to third parties.

3 (h) "Credit information" means any credit related information de-  
4 rived from a credit report, found on a credit report itself, or provided on  
5 an application for personal insurance. Credit information shall not include  
6 any information which is not credit related, regardless of whether such  
7 information is contained in a credit report or in an application or is used  
8 to calculate an insurance score.

9 (i) "Credit report" means any written, oral, or other communication  
10 of information by a consumer reporting agency bearing on a consumer's  
11 credit worthiness, credit standing or credit capacity which is used or ex-  
12 pected to be used or collected in whole or in part for the purpose of  
13 serving as a factor to determine personal insurance premiums, eligibility  
14 for coverage, or tier placement.

15 (j) "Department" means the insurance department established by  
16 K.S.A. 40-102 and amendments thereto.

17 (k) "Insurance score" means a number or rating that is derived from  
18 an algorithm, computer application, model, or other process that is based,  
19 in whole or in part, on credit information for the purposes of predicting  
20 the future insurance loss exposure of an individual applicant or insured.

21 (l) "Personal insurance" means private passenger automobile, hom-  
22 eowners, motorcycle, mobile homeowners and non-commercial dwelling  
23 fire insurance policies and boat, personal water craft, snowmobile and  
24 recreational vehicle policies. For the strict purposes of this act, personal  
25 insurance shall also include individually underwritten policies of  
26 farmowners.

27 Sec. 3. K.S.A. 2009 Supp. 40-5104 is hereby amended to read as  
28 follows: 40-5104. No insurer authorized to do business in the state of  
29 Kansas which uses credit information to underwrite or rate risks, shall:

30 (a) Use an insurance score that is calculated using income, address,  
31 zip code, race, religion, color, sex, disability, national origin, ancestry or  
32 marital status of the consumer as a factor.

33 (b) Without consideration of any other applicable underwriting factor  
34 independent of credit information and not expressly prohibited by sub-  
35 section (a), refuse to quote, deny, cancel or refuse to renew any policy of  
36 personal insurance solely on the basis of credit information.

37 (c) Without consideration of any other applicable factor independent  
38 of credit information, base an insured's renewal rates for personal insur-  
39 ance solely upon credit information.

40 (d) Without consideration of any other applicable factor independent  
41 of credit information, take an adverse action against a consumer solely  
42 because such consumer does not have a credit card account.

43 (e) Consider an absence of credit information or an inability to cal-

- 1 calculate an insurance score in underwriting or rating personal insurance,  
2 unless the insurer does one of the following:
- 3 (1) Treat the consumer as if the applicant or insured had neutral  
4 credit information, as defined by the insurer; or
- 5 (2) exclude the use of credit information as a factor and use only other  
6 underwriting criteria.
- 7 (f) Take an adverse action against a consumer based on credit infor-  
8 mation, unless an insurer obtains and uses a credit report issued or an  
9 insurance score calculated within 90 days from the date the personal  
10 insurance policy is first written or notice of renewal is issued.
- 11 ~~(g) (1) Except as provided in paragraphs (2) and (3), use credit in-~~  
12 ~~formation unless not later than every 36 months following the last time~~  
13 ~~that the insurer obtained current credit information for the insured, the~~  
14 ~~insurer recalculates the insurance score or obtains an updated credit~~  
15 ~~report.~~
- 16 ~~(2)~~ The insurer shall:
- 17 (A) Re-underwrite and re-rate the consumer's personal insurance  
18 policy, at the annual renewal of such policy, based upon a current credit  
19 report or insurance score for such consumer, if requested by the con-  
20 sumer. Such consumer's current credit report or insurance score shall be  
21 used if the result of the re-underwrite and re-rate reduces the consumer's  
22 rate. Such consumer's current credit report or insurance score shall not  
23 be used to increase the consumer's rate. The insurer shall not be found  
24 to be in violation of rate filings by adjusting an insured's rate in accordance  
25 with this subparagraph. Nothing in this subparagraph shall require an  
26 insurer to recalculate a consumer's insurance score or obtain the updated  
27 credit report of a consumer more frequently than once in a twelve-month  
28 period.
- 29 (B) Have the discretion to obtain current credit information upon  
30 any renewal before the 36 months, if consistent with such insurer's un-  
31 derwriting guidelines.
- 32 ~~(3)~~ (2) No insurer shall be required to obtain current credit infor-  
33 mation for an insured, if:
- 34 (A) The insured is in the most favorably-priced tier of the insurer,  
35 within a group of affiliated insurers. However, the insurer shall have the  
36 discretion to order such report, if consistent with such insurer's under-  
37 writing guidelines;
- 38 (B) credit was not used for underwriting or rating such insured when  
39 the policy was initially written. However, the insurer shall have the dis-  
40 cretion to use credit for underwriting or rating such insured upon re-  
41 newal, if consistent with such insurer's underwriting guidelines; or
- 42 (C) The insurer re-evaluates the insured beginning no later than 36  
43 months after inception and thereafter based upon other underwriting or

- 1 rating factors, excluding credit information.
- 2 (h) Use any of the following as a negative factor against a consumer  
3 in any insurance scoring methodology or in reviewing credit information  
4 for the purpose of underwriting or rating a policy of personal insurance:
- 5 (1) Any credit inquiry not initiated by the consumer or any inquiry  
6 requested by the consumer for such consumer's own credit information;
- 7 (2) any inquiry relating to insurance coverage, if so identified on a  
8 consumer's credit report;
- 9 (3) any collection account with a medical industry code, if so identi-  
10 fied on the consumer's credit report; or
- 11 (4) any additional lender inquiry beyond the first such inquiry related  
12 to the same loan purpose, if coded by the consumer reporting agency on  
13 the consumer's credit report as being from the given loan industry and  
14 made within 30 days of one another.
- 15 Sec. 4. K.S.A. 2009 Supp. 40-5103 and 40-5104 are hereby repealed.
- 16 Sec. 5. This act shall take effect and be in force from and after its  
17 publication in the statute book.