

# HOUSE . . . . . No. 1091

By Mr. Spellane of Worcester, petition of Robert P. Spellane relative to the use of credit based insurance scoring for underwriting and rating of insurance. Financial Services.

## The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

AN ACT RELATIVE TO THE USE OF CREDIT BASED INSURANCE SCORING FOR UNDERWRITING AND RATING OF INSURANCE.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 The General Laws, as appearing in the 2002 Official Edition,  
2 are hereby amended by inserting after Chapter 175J the following  
3 Chapter:—

### 4 CHAPTER 175K.

5 Section 1. The following words, as used in this chapter, unless  
6 the context otherwise requires or a different meaning is specifi-  
7 cally prescribed, shall have the following meanings:—

8 “Adverse Determination”, means a denial, cancellation, termi-  
9 nation or non-renewal of insurance coverage, an increase in any  
10 charge for insurance coverage, placement into a Page 2 lower tier,  
11 or any other unfavorable change in the terms of coverage or  
12 amount of any existing or applied for insurance.

13 “Affiliate”, means any company that controls, is controlled by,  
14 or is under common control with another company.

15 “Applicant”, means an individual who has applied to be cov-  
16 ered by a personal lines insurance policy with an insurer.

16 “Consumer”, means an insured whose credit information is  
17 used or whose insurance score is calculated in the underwriting or  
18 rating of a personal lines insurance policy or an applicant for such  
19 a policy.

20 “Commissioner”, means the Commissioner of the Massachu-  
22 setts Division of Insurance, appointed pursuant to G.L. CH. 26,  
23 Section. 6, or his or her designee.

24 “Consumer Report”, means any written, oral or other communi-  
25 cation of any information by a consumer reporting agency bearing  
26 on a consumer’s credit worthiness, credit standing or credit  
27 capacity which is used or expected to be used or collected in  
28 whole or in part for the purpose of service as a factor in estab-  
29 lishing the consumer’s eligibility for

30 (1) credit or insurance to be used primarily for personal, family,  
31 or household purposes, or

32 (2) employment purposes, or

33 (3) other purposes authorized under Section fifty-one of  
34 Chapter ninety-three of the Massachusetts General Laws. The  
35 term does not include any report containing information solely as  
36 to transactions or experiences between the consumer and the  
37 person making the report, any authorization or approval of a spe-  
38 cific extension of credit directly or indirectly by the issuer of a  
39 credit card or similar device, or any report in which a person who  
40 has been re2quested by a third party to make a specific extension  
41 of credit directly or indirectly to a consumer conveys his decision  
42 with respect to such request, if the third party advises the con-  
43 sumer of the name and address of the person to whom the request  
44 was made and such person makes the disclosures to the consumer  
45 required under Section sixty-two of Chapter ninety-three of the  
46 Massachusetts General Laws.

47 “Consumer Reporting Agency”, means any person who means  
48 any person which, for monetary fees, dues, or on a cooperative  
49 nonprofit basis, regularly engages in whole or in part in the prac-  
50 tice of assembling or evaluating consumer credit information or  
51 other information on consumers for the purpose of furnishing con-  
52 sumer reports to third parties.

53 “Credit Information”, means any credit related information  
54 whether obtained as a credit history, a credit report, a consumer  
55 report, a credit score, an insurance score or any other compilation  
56 or collection of a person’s credit.

57 “Credit Report”, means any written, oral, or other communica-  
58 tions of information by a consumer reporting agency bearing on a  
59 consumer’s credit worthiness, credit standing or credit capacity

60 which is used or expected to be used or collected in whole or in  
61 part for the purpose of serving as a factor to determine personal  
62 lines insurance premiums, eligibility for coverage, or tier place-  
63 ment.

64 “FCRA”, refers to the Fair Credit and Reporting Act, 15  
65 U.S.C.S. Section 1681 et seq.

66 “Insurance Score”, means a numerical designation intended to  
67 quantify the insurance risk a person presents by using such per-  
68 son’s credit information in a formula designed to objectively rate  
69 insurance risk of loss.

70 “Personal Lines Insurance”, Means property/.casualty insurance  
71 coverage sold to individuals and families pursuant to Chapter  
72 174A and Chapter 175A of the General Laws.

73 “Rating Plan”, means a plan that establishes the base rates,  
74 classification factors, modifications to rates or factors and pre-  
75 mium costs of insurance coverage.

76 “Tier Placement Plan”, means the practice of placing a person  
77 with a specific affiliate or subsidiary company based on the per-  
78 son’s risk factors, or the practice of placing a person within a spe-  
79 cific tier within the same company.

80 Section 2. (1) Any insurer that used credit information,  
81 including insurance scores, in its rating plan or tier placement plan  
82 shall file with the Commissioner written standards governing the  
83 insurer’s use of credit information. An insurer’s written standards  
84 shall:—

85 (a) Indicate how credit information is relevant to the insurer’s  
86 rating plan or tier placement plan. This requirement may be satis-  
87 fied by applying the insurer’s insurance scoring model to the  
88 insurer’s past experience.

89 (b) Provide the circumstances under which credit information  
90 will be requested on an applicant and/or policyholder, including a  
91 statement that the decision to request credit information on an  
92 applicant and/or policyholder shall not be based in whole or in  
93 part on race, color, religious creed, sex, age, ancestry, sexual ori-  
94 entation, children, veteran status, national origin, marital status,  
95 place or residency, income, receipt of public assistance, blindness  
96 or any other physical handicap or disability.

97 (c) Prohibit obtaining an insurance score for any arbitrary,  
98 capricious, or unfairly discriminatory reason.

99 (d) Outline the use of credit information in an insurer's rating  
100 plan and/or tier placement plan.

101 (e) Illustrate that the insurer's use of credit information in the  
102 rating plan or tier placement plan will not result in rates that are  
103 excessive, inadequate or unfairly discriminatory.

104 (2) An insurer shall not utilize credit information in its rating  
105 plan or tier placement plan until such time as the insurer has filed  
106 the written standards with the Commissioner pursuant to  
107 paragraph (1).

108 (3) An insurer shall utilize credit information in its rating plan  
109 or tier placement plan in accordance with the insurer's written  
110 standards filed with the Commission pursuant to Paragraph (1).

111 Section 3. (1) An insurer that utilized credit information,  
112 including insurance scores, in its rating plan or tier placement plan  
113 shall not use such credit information as the sole basis for a deci-  
114 sion to deny, cancel, or non-renew any person's insurance cov-  
115 erage.

116 (2) An insurer that utilizes credit information, including insur-  
117 ance scores, in its rating plan or tier placement plan shall not sue  
118 such credit information for any rating or tier placement decision  
119 without also considering other applicable factor(s) independent of  
120 credit information.

121 (3) An insurer shall not consider the following credit informa-  
122 tion in the development of a rating plan or tier placement plan:—

123 (a) An applicant's or policyholder's unavailability of credit  
124 information;

125 (b) Inquiries not initiated by the consumer and contained on a  
126 consumer report; (c) Collection accounts or delinquency reports  
127 identified with a medical industry code;

128 (d) Credit information which has been adversely impacted by a  
129 documented incident of identity fraud;

130 (4) An insurer that utilizes credit information, including insur-  
131 ance scores, in its rating plan or tier placement plan shall treat all  
132 similar credit lines or transactions similarly and may not distin-  
133 guish between similar credit lines or transactions based on such  
134 characterizations as "conventional," "sub-prime," "personal  
135 finance," or other characterizations based on a lender's primary  
136 marketing niche.

137 (5) An insurer that utilizes credit information, including insur-  
138 ance scores, in its rating plan or tier placement plan shall consider  
139 multiple credit inquiries made by lenders within 30 days of one  
140 another on the same subject matter as a single credit inquire.

141 (6) An insurer that utilizes credit information, including insur-  
142 ance scores, in its rating plan for renewal business or tier place-  
143 ment plan for renewal business shall update a policyholder's  
144 credit information every three years or at the request of the policy-  
145 holder, whichever is sooner, and adjust any rate or tier placement  
146 decisions accordingly at such time. All notice requirements under  
147 this regulation shall be complied with each time credit informa-  
148 tion is utilized by the insurer.

149 Section 4. (1) (a) An insurer that utilized credit information,  
150 including insurance scores, in its rating plan or tier placement plan  
151 shall provide notice to an applicant or policyholder within 48  
152 hours of taking the application and in the same medium as appli-  
153 cation information is received, and each time credit information is  
154 utilized thereafter. Such notice shall:

155 i) Stating that the insurer will be requesting credit information  
156 on the applicant or policyholder and explaining the significant  
157 characteristics of credit information and how it will impact the  
158 applicant's or policyholder's insurance.

159 ii) Informing the applicant or policyholder of his/her rights  
160 under FCRA and G.L. CH. 93, Section 50 et seq.; and

161 iii) Explaining that any premium quote given prior to receiving  
162 an applicant's credit information is subject to change.

163 (b) An insurer may satisfy this notice requirement through a  
164 duly licensed insurance producer, when applicable.

165 (2) An insurer that utilizes credit information, including insur-  
166 ance scores, in its rating plan or tier placement plan shall annually  
167 provide to the policyholder an educational brochure produced by  
168 the Massachusetts Division of Insurance on the subject of credit  
169 information and insurance.

170 (3) An insurer that utilizes credit information, including insur-  
171 ance scores, in its rating plan or tier placement plan shall, upon  
172 making an adverse determination based upon cre4dit information,  
173 provide the applicant or policyholder with:—

174 (a) An explanation, which is reasonably understandable to the  
175 applicant or policyholder; of the specific credit factor(s) that

176 result in the adverse determination. Standardized credit explana-  
177 tions provided by consumer reporting agencies or other third-party  
178 vendors shall comply with this subsection;

179 (b) The identity, telephone number, and address of any con-  
180 sumer reporting agency from which credit information was  
181 obtained; and

182 (c) Notice of the applicant's or policyholder's right to dispute  
183 any incorrect or inaccurate information found on the consumer  
184 report, and the procedure for doing so as set forth in the FCRA  
185 and G.L. ch.93, Section 50 et seq.

186 (d) Use of one of the following example disclosure statements  
187 constitutes compliance with this section:—

188 (i) “In connection with this insurance, we may review your  
189 credit report or obtain or use a credit based insurance score based  
190 on the information contained in that report. An insurance score  
191 uses information from your credit report to help predict how often  
192 you are likely to file claims and how expensive those claims will  
193 be. Typical items from a credit report that could affect a score  
194 include, but are not limited to, the following:— payment history,  
195 number of revolving accounts, number of new accounts, the pres-  
196 ence of collection accounts, bankruptcies and foreclosures. The  
197 information used to develop the insurance score comes from  
198 (insert name.)”; or

199 (ii) Use of the following example disclosure statement for  
200 renewal business constitutes compliance with this section:—

201 “In connection with this insurance, we previously used a credit  
202 report or obtained or used a credit based insurance score based on  
203 information contained in that report. We may obtain or use credit  
204 information again provided, however, that upon renewal such  
205 information may only be used to reduce premiums. An insurance  
206 score uses information from your credit report to help predict how  
207 often you are likely to file claims and how expensive those claims  
208 will be. Typical items from a credit report that could affect a score  
209 include, but are not limited to, the following:— payment history,  
210 number of revolving accounts, number of new accounts, the pres-  
211 ence of collection accounts, bankruptcies and foreclosures. The  
212 information used to develop the insurance score comes from  
213 (insert name)”.

214 (4) An insurer that utilizes credit information, including insur-  
215 ance scores, in its rating plan or tier placement plan, upon  
216 receiving documentation that credit information has been disputed  
217 pursuant to the FCRA and G.L.CH. 93, Section 50 et seq., from  
218 either the applicant or policyholder or from a consumer reporting  
219 agency, shall not use the disputed information in any rating plan  
220 or tier placement until such time as the disputed information is  
221 investigated and found to be correct and accurate, or investigated  
222 and corrected.

223 (5) If it is determined that an insurer used incorrect credit infor-  
224 mation or documented disputed information, the insurer shall uti-  
225 lize the correct information in its rating plan or tier placement  
226 plan and make any necessary adjustments as to rate or placement  
227 effective as of the date the incorrect or disputed credit information  
228 was used to rate or place the applicant or policyholder. In no event  
229 shall the insurer be required to make an adjustment beyond the  
230 current policy term and the twelve months immediately preceding  
231 the current policy term.

232 Section 5. An insurer that utilizes credit information including  
233 insurance scores, in its rating plan or tier placement plan and that  
234 makes a rate filing with the Division pursuant to Chapters 174A  
235 and 175A of the General Laws shall include in such filing the  
236 rating factor and the credit information associated with the rating  
237 factor.

238 Section 6. (a) No consumer reporting agency shall provide or  
239 sell data or lists that include any information that in whole or in  
240 part was submitted in conjunction with an insurance inquiry about  
241 a consumer's credit information or a request for a credit report or  
242 insurance score. Such information includes, but is not limited to,  
243 the expiration dates of an insurance policy or any other informa-  
244 tion that may identify time period during which a consumer's  
245 insurance may expire and the terms and conditions of the con-  
246 sumer's insurance coverage.

247 (b) The restrictions provided in subsection (a) of this section do  
248 not apply to data or lists the consumer reporting agency supplies  
249 to the insurance agent or broker from whom information was  
250 received, the insurer on whose behalf such agent or broker acted,  
251 or sub insurer's affiliates or holding companies.

252 (c) Nothing in this section shall be construed to restrict any  
253 insurer from being able to obtain a claims history report or a  
254 motor vehicle report.

255 Section 7. An insurer shall indemnify, defend and hold agents  
256 harmless from and against all liability, fees and costs arising out  
257 of or relating to the actions, errors or omissions of the agent  
258 resulting from obtaining or using credit information and/or insur-  
259 ance scores for an insurer, provided the agent follows the instruc-  
260 tions of or procedures established by the insurer, works within the  
261 authority granted by the insurer to the agent and complies with  
262 any applicable law or regulation. Nothing in this section shall be  
263 construed to provide a consumer or other insured with a cause of  
264 action that does not exist in the absence of this section.

265 Section 8. If any provision of the chapter or the applicability  
266 thereof to any person or entity or circumstance is held invalid by a  
267 court, the remainder of this chapter or the applicability of such  
268 provisions to other persons, entities or circumstances shall not be  
269 affected thereby.

270 Section 9. Non-compliance with the provisions of this chapter  
271 may result in the imposition of sanctions pursuant to section 17 of  
272 Chapter 174A and section 18 of Chapter 175A, and any other  
273 applicable laws and regulations.