

HOUSE BILL No. 2071

AN ACT concerning insurance; relating to group health policies; relating to the use of credit scores in issuing certain policies; amending K.S.A. 2002 Supp. 40-2258 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2002 Supp. 40-2258 is hereby amended to read as follows: 40-2258. (a) An accident and sickness insurer which offers coverage through a group policy providing hospital, medical or surgical expense benefits pursuant to K.S.A. 40-2209 and amendments thereto which includes mental health benefits shall be subject to the following requirements:

(1) If the policy does not include an aggregate lifetime limit on substantially all hospital, medical and surgical expense benefits, the policy may not impose any aggregate lifetime limit on mental health benefits;

(2) if the policy includes an aggregate lifetime limit on substantially all hospital, medical and surgical expense benefits the plan shall either: (A) Apply the applicable lifetime limit both to the hospital, medical and surgical expense benefits to which it otherwise would apply and to mental health benefits and not distinguished in the application of such limit between such hospital, medical and surgical expense benefits and mental health benefits; or (B) not include any aggregate lifetime limit on mental health benefits that is less than the applicable lifetime limit on hospital, medical and surgical expense benefits;

(3) if the policy does not include an annual limit on substantially all hospital, medical and surgical expense benefits, the plan or coverage may not impose any annual limit on mental health benefits; and

(4) if the policy includes an annual limit on substantially all hospital, medical and surgical expense benefits the policy shall either: (A) Apply the applicable annual limit both to hospital, medical and surgical expense benefits to which it otherwise would apply and to mental health benefits and not distinguish in the application of such limit between such hospital, medical and surgical expense benefits and mental health benefits; or (B) not include any annual limit on mental health benefits that is less than the applicable annual limit.

(b) If the group policy providing hospital, medical or surgical expense benefits is not otherwise covered by subsection (a) and either does not apply a lifetime or annual benefit or applies different lifetime or annual benefits to different categories of hospital, medical and surgical expense benefits, the commissioner may adopt rules and regulations under which subsections (a)(2) and (a)(4) are applied to such policies with respect to mental health benefits by substituting for the applicable lifetime or annual limits an average limit that is computed taking into account the weighted average of the lifetime or annual limits applicable to such categories.

(c) Nothing in this section shall be construed as either:

(1) Requiring an accident and sickness policy to offer mental health benefits except as otherwise required by K.S.A. 40-2,105 and amendments thereto; or

(2) affecting any terms and conditions of a policy which does include mental health benefits including provisions regarding cost sharing, limits on the number of visits or days of coverage, requirements relating to medical necessity, requirements relating to the amount, duration or scope of mental health benefits under the plan or coverage, except as specifically provided in subsection (a).

(d) This section shall not apply to any group accident and health insurance policy which is sold to a small employer as defined in K.S.A. 40-2209 and amendments thereto.

(e) This section shall not apply with respect to a group policy providing hospital, medical or surgical expense benefits if the application of this section will result in an increase in the cost under the plan of at least 1%.

(f) In the case of a group policy providing hospital, medical or surgical expense benefits that offers an eligible employee, member or dependent two or more benefit package options under the policy, subsections (a) and (b) shall be applied separately with respect to each such option.

(g) As used in this section:

(1) "Aggregate lifetime limit" means, with respect to benefits under a group policy providing hospital, medical or surgical expense benefits, a dollar limitation on the total amount that may be paid with respect to such benefits under the policy with respect to an eligible employee, member or dependent;

(2) “annual limit” means, with respect to benefits under a group policy providing hospital, medical or surgical expense benefits, a dollar limitation on the total amount of benefits that may be paid with respect to such benefits in a 12-month period under the policy with respect to an eligible employee, member or dependent;

(3) “hospital, medical or surgical expense benefits” means benefits with respect to hospital, medical or surgical services, as defined under the terms of the policy, but does not include mental health benefits;

(4) “mental health benefits” means benefits with respect to mental health services, as defined under the terms of the policy, but does not include benefits with respect to treatment of substance abuse or chemical dependency.

(h) This section shall be effective for group policies providing hospital, medical or surgical expense benefits which are entered into or renewed after January 1, 1998. This section shall not apply to benefits for services furnished on or after December 31, ~~2002~~ 2003.

(i) The commissioner is hereby authorized to adopt such rules and regulations as may be necessary to carry out the provisions of this section.

New Sec. 2. Sections 2 through 15, and amendments thereto, shall be known as the Kansas insurance score act.

New Sec. 3. (a) This act shall apply only to personal insurance and not to commercial insurance. A personal insurance policy must be individually underwritten for personal, family or household use. No other type of insurance shall be included as personal insurance for the purpose of this act.

(b) This act shall apply to all personal insurance policies either written to be effective or renewed on or after January 1, 2004.

New Sec. 4. As used in this act:

(a) “Adverse action” means any of the following in connection with the underwriting of personal insurance:

(1) A denial or cancellation of coverage;

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

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

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

(c) “Agent” shall have the meaning ascribed to it in subsection (k) of K.S.A. 2002 Supp. 40-4902, and amendments thereto, unless the context requires otherwise.

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

(e) “Commissioner” means the commissioner of insurance and any authorized designee of the commissioner.

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

(g) “Consumer reporting agency” means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages, in whole or in part, in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.

(h) “Credit information” means any credit related information derived from a credit report, found on a credit report itself, or provided on an application for personal insurance. Credit information shall not include any information which is not credit related, regardless of whether such information is contained in a credit report or in an application or is used to calculate an insurance score.

(i) “Credit report” means any written, oral, or other communication of information by a consumer reporting agency bearing on a consumer’s credit worthiness, credit standing or credit capacity which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor to determine personal insurance premiums, eligibility for coverage, or tier placement.

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

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

(l) “Personal insurance” means private passenger automobile, homeowners, motorcycle, mobile homeowners and non-commercial dwelling fire insurance policies and boat, personal water craft, snowmobile and recreational vehicle policies. For the strict purposes of this act, personal insurance shall also include individually underwritten policies of farm-owners.

New Sec. 5. No insurer authorized to do business in the state of Kansas which uses credit information to underwrite or rate risks, shall:

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

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

(c) Without consideration of any other applicable factor independent of credit information, base an insured’s renewal rates for personal insurance solely upon credit information.

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

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

(1) Treat the consumer as if the applicant or insured had neutral credit information, as defined by the insurer; or

(2) exclude the use of credit information as a factor and use only other underwriting criteria.

(f) Take an adverse action against a consumer based on credit information, unless an insurer obtains and uses a credit report issued or an insurance score calculated within 90 days from the date the personal insurance policy is first written or notice of renewal is issued.

(g) (1) Except as provided in paragraphs (2) and (3), use credit information unless not later than every 36 months following the last time that the insurer obtained current credit information for the insured, the insurer recalculates the insurance score or obtains an updated credit report.

(2) The insurer shall:

(A) Re-underwrite and re-rate the consumer’s personal insurance policy, at the annual renewal of such policy, based upon a current credit report or insurance score for such consumer, if requested by the consumer. Such consumer’s current credit report or insurance score shall be used if the result of the re-underwrite and re-rate reduces the consumer’s rate. Such consumer’s current credit report or insurance score shall not be used to increase the consumer’s rate. The insurer shall not be found to be in violation of rate filings by adjusting an insured’s rate in accordance with this subparagraph. Nothing in this subparagraph shall require an insurer to recalculate a consumer’s insurance score or obtain the updated credit report of a consumer more frequently than once in a twelve-month period.

(B) Have the discretion to obtain current credit information upon any renewal before the 36 months, if consistent with such insurer’s underwriting guidelines.

(3) No insurer shall be required to obtain current credit information for an insured, if:

(A) The insured is in the most favorably-priced tier of the insurer, within a group of affiliated insurers. However, the insurer shall have the discretion to order such report, if consistent with such insurer’s underwriting guidelines;

(B) credit was not used for underwriting or rating such insured when the policy was initially written. However, the insurer shall have the discretion to use credit for underwriting or rating such insured upon renewal, if consistent with such insurer’s underwriting guidelines; or

(C) The insurer re-evaluates the insured beginning no later than 36 months after inception and thereafter based upon other underwriting or rating factors, excluding credit information.

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

(1) Any credit inquiry not initiated by the consumer or any inquiry requested by the consumer for such consumer's own credit information;

(2) any inquiry relating to insurance coverage, if so identified on a consumer's credit report;

(3) any collection account with a medical industry code, if so identified on the consumer's credit report; or

(4) any additional lender inquiry beyond the first such inquiry related to the same loan purpose, if coded by the consumer reporting agency on the consumer's credit report as being from the given loan industry and made within 30 days of one another.

New Sec. 6. (a) If it is determined through the dispute resolution process set forth in the federal fair credit reporting act, 15 USC 1681i(a)(5), that the credit information of a current insured was incorrect or incomplete and if the insurer receives notice of such determination from either the consumer reporting agency or from the insured, the insurer shall re-underwrite and re-rate the consumer within 30 days of receiving the notice. After re-underwriting or re-rating the insured, the insurer shall make any adjustments necessary, consistent with such insurer's underwriting and rating guidelines.

(b) If an insurer determines that the insured has overpaid the premium, the insurer shall refund to the insured the amount of overpayment calculated back to the shorter of either the last 12 months of coverage or the actual policy period.

New Sec. 7. If an insurer writing personal insurance uses credit information in underwriting or rating a consumer, the insurer or its agent shall disclose that it may obtain credit information in connection with such application. The insurer shall further notify such consumer that an internal appeal process exists as provided by paragraph (b) of section 8 and amendments thereto. The disclosure shall be made either on the insurance application or at the time the insurance application is taken. Such disclosure shall be either written or provided to an applicant in the same medium as the application for insurance. The insurer need not provide the disclosure statement required under this section to any insured on a renewal policy if such consumer has previously been provided a disclosure statement.

New Sec. 8. (a) If an insurer takes an adverse action based upon credit information, the insurer shall provide written notification to the consumer a notice that:

(1) An adverse action has been taken, in accordance with the requirements of the federal fair credit reporting act as set forth in, 15 USC 1681m(a); and

(2) explains the reason for such adverse action.

(b) Each reason must be provided in sufficiently clear and specific language so that a person can identify the basis for the insurer's decision to take such adverse action. An insurer shall provide a procedure whereby a consumer may review an adverse action based on credit information. Such procedure shall be consistent with the provisions of K.S.A. 40-2,112 and amendments thereto. The insurer and the insurer's agent shall be immune from any action arising from information provided to the insured through such process. The insurer shall not be found in violation of rate filings by adjusting an insured's rate in such a manner.

(c) The use of generalized terms such as "poor credit history," "poor credit rating," or "poor insurance score" shall be deemed not to comply with requirements of this section.

New Sec. 9. (a) Each insurer that uses insurance scores to underwrite and rate risks shall file the procedure required by paragraph (b) of section 8, and amendments thereto, and such insurer's insurance scoring models or other insurance scoring processes with the insurance department. A third party may file with the insurance department such third party's scoring models or other scoring processes used on behalf of an

insurer. Any filing that includes insurance scoring may include loss experience justifying the use of credit information.

(b) Except for the procedure required by paragraph (b) of section 8, and amendments thereto, any filing relating to insurance scoring models or other insurance scoring processes shall be considered to be a trade secret and confidential under the open records act.

New Sec. 10. (a) The commissioner of insurance shall gather data, hold public hearings, make inquiries and publish studies relating to the purpose of this act.

(b) The commissioner shall report to the president and minority leader of the senate and the speaker and minority leader of the house of representatives by January 26, 2005, on issues relating to the use of credit history in the underwriting and rating of personal insurance and the implementation of this act.

New Sec. 11. (a) An insurer shall indemnify, defend, and hold agents harmless from and against all liability, fees, and costs arising out of or relating to the actions, errors, or omissions of an agent who obtains or uses credit information or insurance scores, or both, for an insurer.

(b) The provisions of subsection (a) shall not be available whenever the agent fails to:

(1) Follow the instructions of or procedures established by the insurer; and

(2) comply with any applicable law or regulation.

(c) Nothing in this section shall be construed to provide a consumer or other insured with a cause of action that does not exist in the absence of this section.

New Sec. 12. (a) No consumer reporting agency shall provide or sell data or lists that include any information, in whole or in part, which was submitted in conjunction with an insurance inquiry about a consumer's credit information or a request for a credit report or insurance score. Such information includes, but is not limited to:

(1) The expiration date of an insurance policy or any other information that may identify any time period during which a consumer's insurance may expire; and

(2) the terms and conditions of the consumer's insurance coverage.

(b) The restrictions provided in subsection (a) of this section do not apply to:

(1) Any data or list the consumer reporting agency supplies to the insurance agent from whom information was received;

(2) the insurer for whom such agent acted; or

(3) such insurer's affiliates or holding companies.

(c) Nothing in this section shall be construed to prohibit or restrict any insurer from obtaining a claims history report or a motor vehicle report.

New Sec. 13. Whenever an insurer is found to be in violation of any provision of this act, the commissioner shall proceed under K.S.A. 40-2,125 and amendments thereto.

New Sec. 14. The commissioner of insurance is hereby authorized to adopt such rules and regulations as may be necessary to carry out the provisions of this act.

New Sec. 15. (a) If any provision of this act is declared invalid due to an interpretation of or a future change in the federal fair credit reporting act, the remaining portions of the act shall be deemed to be severable and shall remain in full force and effect.

(b) If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Sec. 16. K.S.A. 2002 Supp. 40-2258 is hereby repealed.

Sec. 17. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

HOUSE concurred in
SENATE amendments _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.