



Kansas Insurance Department

Sandy Praeger COMMISSIONER OF INSURANCE

Bulletin 2004-10

TO: All Companies Using Credit Information to Underwrite or Rate Risks

FROM: Sandy Praeger
Commissioner of Insurance

DATE: December 10, 2004

RE: Implementation of the Kansas Insurance Score Act
K.S.A. 2003 Supp. 40-5101, et seq. & K.A.R. 40-1-50

INTRODUCTION

The Kansas Insurance Department (Department) has received information which indicates the need to assist in the understanding and implementation of the Kansas Insurance Score Act (Act), K.S.A. 2003 Supp. 40-5101, *et seq.* The purpose of this bulletin is to provide such assistance and is designed to answer the questions most often received by the Department. This bulletin does not replace, modify or amend existing statutes or regulations.

A public hearing on the above reference subject was held on September 17, 2004. Comments, both written and oral, were received and considered.

The Act applies only to "personal insurance." See K.S.A. 2003 Supp. 40-5102. "Personal insurance" means private passenger automobile, homeowners, motorcycle, mobile homeowners and non-commercial dwelling fire insurance policies and boat, personal watercraft, snowmobile, recreational vehicle policies and individually underwritten policies of farmowners. See K.S.A. 2003 Supp. 40-5102 (1).

No insurer shall take any "adverse action" based solely upon credit information. See K.S.A. 2003 Supp. 40-5104 (c) & (d).

As to applicants (see K.S.A. 2003 Supp. 40-5103(d), in that the information provided to the company by the applicant is new, and represents a change in the companies previous knowledge, it is not possible that a company's "adverse action" regarding an applicant consumer is based solely on credit information.

As to non-applicant consumers, the rule is that a non-applicant consumer with the worst credit history is entitled to the same treatment as the non-applicant consumer with the best credit history. Only factors having nothing to do with credit information, allows insurers to offer different treatment to different non-applicant consumers. If there is a non-credit information reason to take an "adverse action," then and only then can a non-applicant consumer's credit information be considered.

An "adverse action" is any of the following:

Denial or cancellation of coverage;

Anything other than the best possible rate;

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. See K.S.A. 2003 Supp. 40-5103(a)(1-3).

Under the Act, the insurer must furnish both the applicant and non-applicant consumer with written notification of an adverse action based on credit information. See K.S.A. 2003 Supp. 40-5107. The notification must inform the consumer that the adverse action was taken in accordance with the requirements of 15 U.S.C. 1681m(a), a copy of which is attached to this bulletin. Further, the notice must explain the reason for such adverse action. If the insurer is of the opinion that the adverse action was not based solely on credit information, the insurer must explain the non-credit information reason for the adverse action.

Merely relying on a credit score number, the factual basis of which the insured does not know, will not satisfy the Kansas Act. See K.S.A. 2003 Supp. 40-5107(b) & (c). The approval of new base rates by the Department, will not serve as an independent non-credit reason for taking action based solely on credit information.

The Act requires that the insurer must give certain disclosures and notices. See K.S.A. 2003 Supp. 40-5106 & 5107. **Failure to comply with disclosure and notice requirements will result in administrative actions by the Department.**

The sections of **Fair Credit Reporting Act**, 15 U.S.C. § 1681, *et seq.* are incorporated in the Kansas Act. If a company is not familiar with those provisions it will be unable to comply with Kansas law. All insurers are advised to read and follow the federal law. A copy of the incorporated provisions of 15 U.S.C. § 1681 (l & m) is attached to this bulletin.

Consumers have a right of appeal when an insurers' "adverse actions" have any basis in credit information. Denial of that right is a violation of federal and state law. Reviews of "adverse actions," based in whole or in part on credit information, shall be provided in a procedure developed by the insurer. Said procedures shall be consistent with the provisions of K.S.A. 40-2,112.

The Act requires those insurers, who used credit information to underwrite and rate risk, to file insurance scoring models and procedures with the Department, before using them. See K.S.A. 2003 Supp. 40-5108.

**DISCLOSURE REQUIREMENTS
(K.S.A. 2003 Supp. 40-5106)**

If an insurer uses credit information in underwriting or rating a consumer it **shall**:

Disclose to the consumer that it may obtain credit information in connection with such application

Notify the consumer that an internal appeal process exists

Disclosures **shall** be made:

Either on the insurance application; or

At the time the insurance application is taken

Such disclosures may be either written or provided to the applicant in the same medium as the application.

The insurer need not provide the disclosure statement on a renewal policy if the consumer has previously been provided a disclosure statement.

**NOTICE OF ADVERSE ACTION
(K.S.A. 2003 Supp. 40-5107)**

An insurer **shall not** use credit information or an insurance score that has an adverse premium or coverage impact on an insured unless all of the following conditions are met:

The insurer has considered applicable factors other than credit

The insurer has documented the factors considered

The insurer provides the insured with each reason for the change in premium or coverage.

See K.S.A. 2003 Supp. 40-5107(a)(2) & K.A.R. 40-1-50(8)(b)

The Act incorporates portions of the Fair Credit Reporting Act, specifically 15 U.S.C. § 1681, as it existed on July 1, 2003. Under that law, when an insurer provides a notice of adverse action to a consumer, that notice must contain the following:

The name, address, and telephone number of the consumer reporting agency (including a toll-free telephone number established by the agency if the agency

compiles and maintains files on consumers on a nationwide basis) that furnished the report to the person; and

A statement that the consumer reporting agency did not make the decision to take the adverse action and is unable to provide the consumer the specific reasons why the adverse action was taken; and

A statement of the consumer's right to obtain, under section 15 U.S.C. §1681j of this title, a free copy of a consumer report on the consumer from the consumer reporting agency within 60 days, and

A statement that under section 15 U.S.C. §1681i of this title, of the right to dispute with a consumer reporting agency the accuracy or completeness of any information in a consumer report furnished by the agency.

FILING REQUIREMENTS

The Act requires those insurers who used credit information to underwrite and rate risk to file insurance scoring models and procedures with the Department, before using them. See K.S.A. 2003 Supp. 40-5108. **UNDERWRITING** is defined in the regulations as the means of examining, accepting, or rejecting insurance risks." See K.A.R. 40-1-50. If an insurer takes an "adverse action" against a consumer, the insurer shall provide underwriting guidelines to the department upon request. See K.A.R. 40-1-50(d)(3).

As to **RATING**, each insurer using credit information for the purpose of rating shall have specific, written criteria governing how the insurer in underwriting, tier placement and insurance scoring utilizes credit information. See K.A.R. 40-1-50(8)(c). No insurer shall use credit information or an insurance score that has an adverse premium or coverage impact on an insured unless all of the following conditions are met:

The insurer has considered applicable factors other than credit; and

The insurer has documented the factors considered; and

The insurer provides the insured with each reason for the change in premium or coverage. See K.A.R. 40-1-50(8)(b) & K.S.A. 2003 Supp. 40-5107(a)(2) which explains the reasons for adverse action.

CONSUMER APPEALS (K.S.A. 2003 Supp. 40-5107(b))

The Act requires that the appeal procedure to be consistent with the provisions of K.S.A. 40-2,112, which requires:

Specific reason or reasons for the adverse decision in writing; or

Advise such person that upon written request they may receive the specific reason or reasons in writing; and

The insurer shall furnish the consumer the specific reason or reasons for the adverse decision, in writing, within twenty-one (21) business days.

Within sixty (60) days of the mailing of the notice of adverse action the consumer may appeal;

If you have questions regarding this Bulletin, please contact Hsing-Kan Chiang at 420 S.W. 9th Street, Topeka, Kansas, 66612, by telephone at 785-296-7874, or email at hchiang@ksinsurance.org

FAIR CREDIT REPORTING ACT
(Sections cited in Kansas Insurance Score Act)

§ 1681i. Procedure in case of disputed accuracy [FCRA § 611]

(a) Reinvestigations of disputed information

(5) Treatment of inaccurate or unverifiable information. --

(A) In general. --If, after any reinvestigation under paragraph (1) of any information disputed by a consumer, an item of the information is found to be inaccurate or incomplete or cannot be verified, the consumer reporting agency shall promptly delete that item of information from the consumer's file or modify that item of information, as appropriate, based on the results of the reinvestigation.

(B) Requirements relating to reinsertion of previously deleted material. --

(i) Certification of accuracy of information. --If any information is deleted from a consumer's file pursuant to subparagraph (A), the information may not be reinserted in the file by the consumer reporting agency unless the person who furnishes the information certifies that the information is complete and accurate.

(ii) Notice to consumer. --If any information that has been deleted from a consumer's file pursuant to subparagraph (A) is reinserted in the file, the consumer reporting agency shall notify the consumer of the reinsertion in writing not later than 5 business days after the reinsertion or, if authorized by the consumer for that purpose, by any other means available to the agency.

(iii) Additional information. --As part of, or in addition to, the notice under clause (ii), a consumer reporting agency shall provide to a consumer in writing not later than 5 business days after the date of the reinsertion--

(I) A statement that the disputed information has been reinserted;

(II) The business name and address of any furnisher of information contacted and the telephone number of such furnisher, if reasonably available, or of any furnisher of information that contacted the consumer reporting agency, in connection with the reinsertion of such information; and

(III) A notice that the consumer has the right to add a statement to the consumer's file disputing the accuracy or completeness of the disputed information.

(C) Procedures to prevent reappearance. --A consumer reporting agency shall maintain reasonable procedures designed to prevent the reappearance in a consumer's file, and in consumer reports on the consumer, of information that is deleted pursuant to this paragraph (other than information that is reinserted in accordance with subparagraph (B)(i)).

(D) Automated reinvestigation system. --Any consumer reporting agency that compiles and maintains files on consumers on a nationwide basis shall implement an automated system through which furnishers of information to that consumer-reporting agency may report the results of a reinvestigation that finds incomplete or inaccurate information in a consumer's file to other such consumer reporting agencies.

§ 1681m. Requirements on users of consumer reports [FCRA § 615]

(a) Duties of users taking adverse actions on the basis of information contained in consumer reports

If any person takes any adverse action with respect to any consumer that is based in whole or in part on any information contained in a consumer report, the person shall--

(1) Provide oral, written, or electronic notice of the adverse action to the consumer;

(2) Provide to the consumer orally, in writing, or electronically--

(A) The name, address, and telephone number of the consumer reporting agency (including a toll-free telephone number established by the agency if the agency compiles and maintains files on consumers on a nationwide basis) that furnished the report to the person; and

(B) A statement that the consumer reporting agency did not make the decision to take the adverse action and is unable to provide the consumer the specific reasons why the adverse action was taken; and

(3) Provide to the consumer an oral, written, or electronic notice of the consumer's right--

(A) To obtain, under section 1681j of this title, a free copy of a consumer report on the consumer from the consumer reporting agency referred to in paragraph (2), which notice shall include an indication of the 60-day period under that section for obtaining such a copy; and

(B) To dispute, under section 1681i of this title, with a consumer reporting agency the accuracy or completeness of any information in a consumer report furnished by the agency.