

**BEFORE THE COMMISSIONER OF INSURANCE
OF THE STATE OF KANSAS**

FINAL ORDER Effective: 7/12/05

In the Matter of)
Farm Bureau Mutual) Docket No. 3470-SO

SUMMARY ORDER

(Pursuant to K.S.A. 2003 Supp.40-2,125, K.S.A. 2003 Supp.40-5101 et. seq.,
and K.S.A. 77-537)

Pursuant to the authority conferred to the Commissioner of Insurance in The Kansas Insurance Score Act, K.S.A. (2004 Supp.) 40-5101 through 40-5115, K.S.A. (2004 Supp.) 40-2,125, and by invoking K.S.A. 77-537, the Commissioner hereby admonishes and assesses a fine against Farm Bureau Mutual Insurance Company for its violation of the Kansas Insurance Score Act, K.S.A. (2004 Supp.) 40-5101, et., seq..

FINDING OF FACT

1. Farm Bureau Insurance Company (hereinafter, "Farm Bureau"), located at 5400 University Avenue, West Des Moines, IA 50266 and has been authorized and continuously engaged in transacting insurance business in the state of Kansas since December 23, 2002.

2. On or about January 19, 2004 Farm Bureau sent an insurance policy renewal notice to Joe McLeland of Wichita, Kansas. The notice contained an acknowledgement of Advantage Plus Discount and Notice of Adverse Action (hereinafter, "the notice"). The notice provided that Mr. McLeland did not qualify for the best advantage plus discount as a result of the "Number of Accounts Reported in Last12 months", "Lack of Reported information on Oil

Company Accounts” and “Number of Personal Finance Accounts”.

(Attachment A, Farm Bureau’s correspondence, dated January 19, 2004, Joe &/or Jennifer McLeland.)

3. On or about February 17, 2004 Farm Bureau sent an insurance policy renewal notice to Jean M. Hasting of Berryton, Kansas. The Notice contained an acknowledgement of Advantage Plus Discount and Notice of Adverse Action (hereinafter, “the notice”). The notice provided that Ms. Hasting did not qualify for the best advantage plus discount as a result of the: “Number of retail Accounts”; “number of Department Store Accounts”; “Percent of Bank Revolving Accounts to Total Accounts reported in Last 12 Mos”; “Percent of Sales Finance accts to Total accts reported in the Last 12 Months.”

(Attachment C, Farm Bureau’s correspondence, dated December 22, 2003, to Jean M. Hastings.)

4. On or about December 22, 2003, Farm Bureau sent an insurance policy renewal notice to Marjean & James H. Shenk, of Mayetta, Kansas. The notice contained an acknowledgement of Advantage Plus Discount and Notice of Adverse Action (hereinafter, “the notice”). The notice provided that the Shenk’s did not qualify for the best advantage plus discount as a result of the “Length of Time Accounts have been Established”; “Total Amounts of balances on Accounts”; “Numb of Sales Finance Accounts with High Percent of Balance to High Credit”; “Num of Installment bank Accts Currently or in Past reported as Bad Debt”. (Attachment C, Farm Bureau’s correspondence, dated December 22, 2003, to Marjean & James H. Shenk.)

5. On or about, February 12, 2004, Farm Bureau sent an insurance policy renewal notice to Michael &/or Cynthia Kelsay of Oskaloosa, Kansas. The Notice contained an acknowledgement of Advantage Plus Discount and Notice of Adverse Action (hereinafter, "the notice"). The notice provided that the Kelsay's did not qualify for the best advantage plus discount as a result of the: "Number of Accounts reported in the last 12 Months"; "Num of Inquiries for transactions Initiated by Consumer in the Last 6 Months"; "Lack of Reported information on Oil Company Accounts" and, "Num of Inquiries w/ Finance Companies Initiated by Consumer in the Last 24 Mos ". (Attachment D, Farm Bureau's correspondence, dated February 12, 2004, to Michael &/or Cynthia Kelsay.)
6. On or about, February 23, 2004, Farm Bureau sent an insurance policy renewal notice to Denise St. James, of Kansas City, Kansas. The notice contained an acknowledgement of Advantage Plus Discount and Notice of Adverse Action (hereinafter, "the notice"). The notice provided that Ms. James did not qualify for the best advantage plus discount as a result of the: "Num of Inquiries for Transactions Initiated by Consumer in the Last 6 Months"; "Number of Accounts Opened in Last 24 Months"; "Lack of Reported information on Oil Company Accounts"; "Length of Time Bank Revolving Accounts have been Established". (Attachment E, Farm Bureau's correspondence, dated February 12, 2004, to Denise St. James.)
7. On or about, February 02, 2004, Farm Bureau sent an insurance policy renewal notice to Roland Teare of Atchison, Kansas. The Notice contained an

acknowledgement of Advantage Plus Discount and Notice of Adverse Action (hereinafter, “the notice”). The notice provided that Mr. Teare did not qualify for the best advantage plus discount as a result of the: “Number of Vehicle Related Accounts Reported in the Last 12 Months”; “Percent of vehicle related Accts to Total Accts reported in Last 12 Months”; “Number of Accounts reported in Last 12 Months” and, “Lack of Reported information on Oil Company Accounts”. (Attachment F, Farm Bureau’s correspondence, dated February 02, 2004, to Roland Teare.)

8. On or about, January 15, 2004, Farm Bureau sent an insurance policy renewal notice to Steven Cooper of Wichita, Kansas. The Notice contained an acknowledgement of Advantage Plus Discount and Notice of Adverse Action (hereinafter, “the notice”). The notice provided that Mr. Cooper did not qualify for the best advantage plus discount as a result of because: “Account with Current Delinquency Reported”; “Number of Accounts Reported in the Last 12 Months”; “Number of Retail Accounts”, “Lack of reported Information on Bank revolving Accounts”. (Attachment G, Farm Bureau’s correspondence, dated January 15, 2004, to Steve Cooper.)
9. On or about, February 16, 2004, Farm Bureau sent an insurance policy renewal notice to Dale &/or Wanda Cantrell of Overland Park, Kansas. The Notice contained an acknowledgement of Advantage Plus Discount and Notice of Adverse Action (hereinafter, “the notice”). The notice provided that Mr. &/or Mrs. Cantrell did not qualify for the best advantage plus discount as a result of the: “Num of Inquiries for Transactions Initiated by Consumer in

Last 6 Mos”; “Lack of reported Information on Oil Company Accounts”; “Num of Inquiries w/Finance Companies Initiated by Consumer in Last 2 Mos”; and “Number of Personal Finance Accounts”. (Attachment H, Farm Bureau’s correspondence, dated February 16, 2004, to Dale &/or Wanda Cantrell.)

10. All of the Notices referred to above, state that Farm Bureau relied upon “a third party”, ChoicePoint, to “help determine the level of discount for which you are eligible”. (See attachments A, B, C, D, E, F, G, and H.)
11. ChoicePoint is a reseller of credit reports and is considered a Consumer reporting agency and/or a Nationwide specialty consumer reporting agency, as defined by the Fair Credit Reporting Act (hereinafter the “FCRA”) and.or the Fair and Accurate Credit Transactions Act.
12. ChoicePoint delivers credit reports from the credit bureaus (Equifax, Experian, and Transunion) to the insurance industry and also compiles its own information.
13. ChoicePoint maintains that it is not able to correct or otherwise alter the information contained on a credit bureau credit report. However, if a consumer’s credit report was ordered by ChoicePoint, on behalf of an insurance company, it can facilitate the dispute of information that is inaccurate, incomplete or out of date on a consumers credit bureau credit report.
14. Between January 1, 2004 and March 2004 Farm Bureau sent Five Thousand Six Hundred Forty Four (5,644) adverse actions notices to Kansas citizens.

15. Between January 1, 2004 and March 2004 the form used by Farm Bureau to notify Kansas citizens of adverse actions taken by Farm Bureau is exemplified by Attachments A, B, C, D, E, F, G, and H.
16. In March of 2004, after meetings with staff of the Kansas Insurance Department, Farm Bureau modified its adverse action notices and began using a different adverse action form, as is exemplified by Exhibit I attached hereto.

APPLICABLE LAW

17. On July 1, 2003, the Kansas “Insurance Score Act”, K.S.A. 40-5101 et., seq., (Hereinafter “the act”) became law.
18. K.S.A. (2003 Supp) 40-5107, of the act, provides as follows:

“(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.”

History: L. 2003, ch. 88, § 8; July 1.
19. As set forth above, in paragraph 18, the Kansas Insurance Score Act incorporates 15 USC 1681m(a) by reference in K.S.A (2003 Supp) 40-5107.

20. 15 U.S.C.A. § 1681m, as set out below, of The Fair Credit Reporting Act read, during the relevant period of time, as follows:

§ 1681m. Requirements on users of consumer reports

”(a) Duties of users taking adverse actions on 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....”

21. K.S.A. 40-5112 provides:

40-5112. Powers of commissioner.

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.

History: L. 2003, ch. 88, § 13; July 1.

22. K.S.A. 40-2,125 provides, in relevant part, as follows:

“Violation of insurance laws; failure to file reports; penalties; emergency temporary cease and desist orders; definitions.

(a) If the commissioner determines after notice and opportunity for a hearing that any person has engaged or is engaging in any act or practice constituting a violation of any provision of Kansas insurance statutes or any rule and regulation

or order thereunder, the commissioner may in the exercise of discretion, order any one or more of the following:

(1) Payment of a monetary penalty of not more than \$1,000 for each and every act or violation, unless the person knew or reasonably should have known such person was in violation of the Kansas insurance statutes or any rule and regulation or order thereunder, in which case the penalty shall be not more than \$2,000 for each and every act or violation;

(2) suspension or revocation of the person's license or certificate if such person knew or reasonably should have known that such person was in violation of the Kansas insurance statutes or any rule and regulation or order thereunder; or

(3) that such person cease and desist from the unlawful act or practice and take such affirmative action as in the judgment of the commissioner will carry out the purposes of the violated or potentially violated provision.

(b) If any person fails to file any report or other information with the commissioner as required by statute or fails to respond to any proper inquiry of the commissioner, the commissioner, after notice and opportunity for hearing, may impose a penalty of up to \$500 for each violation or act, along with an additional penalty of up to \$100 for each week thereafter that such report or other information is not provided to the commissioner....”

History: L. 1989, ch. 132, § 1; L. 1997, ch. 24, § 1; July 1.

CONCLUSIONS OF LAW

Farm Bureau is subject to the regulatory authority conferred to the Commissioner of Kansas by the Kansas insurance statutes and regulations promulgated thereto. The Commissioner has jurisdiction over the subject matter of this proceeding and this proceeding is held in the public interest. K.S.A. 40-103; K.S.A. 40-105. The Commissioner finds:

- I. FARM BUREAU VIOLATED K.S.A. 40-5107 OF THE KANSAS INSURANCE SCORE ACT BY FAILING TO CONFROM ITS ADVERS ACTION NOTICES TO THE REQUIREMEMNTS OF 15 U.S.C. 1681m(a).**

The adverse action notices sent by Farm Bureau to Kansas Consumers between January 1, 2004 and March 2004. (Exhibits A through H, are attached and are examples of the form used by Farm Bureau during the relevant period of time) The notice form violates K.S.A. 40-5107 and 15 U.S.C. 1681m(a); by failing to contain the address of ChoicePoint (15 U.S.C. 1681m(a)(2)(A)); by failing to state that Choice Point 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 (15 U.S.C. 1681m(a)(2)(B)); and that the notices did not contain a statement that the consumer could obtain a free copy of their credit report from ChoicePoint (15 U.S.C. 1681m(a)(3)(A)).

IT IS THEREFORE ORDERED THAT:

- (a) Farm Bureau is hereby ordered to pay an administrative fine in the amount of One Hundred Dollars (\$100.00) for violation of **40-5107 and 15 U.S.C. 1681m(a)** and pursuant to K.S.A. 40-2407(a)(1), and the Commissioner hereby orders that Farm Bureau immediately cease and desist from violating **40-5107 and 15 U.S.C. 1681m(a)**.
- (b) The fine, in the total amount of one Hundred Dollars (\$100.00), assessed in the above-stated paragraph (a) is due and payable to the Commissioner of Insurance, State of Kansas, from the date of receipt of this Order.
- (c) Farm Bureau is herein further ordered to comply with all applicable provisions set forth in K.S.A. 2004 Supp. 40-5101

through 5114 and amendments thereto, "The Insurance Score Act".

(d) **IT IS SO ORDERED THIS 24th DAY OF JUNE, 2005, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, AND STATE OF KANSAS.**



/s/ Sandy Praeger _____
Sandy Praeger
Commissioner of Insurance
BY:

/s/ John W. Campbell _____
John W. Campbell
General Counsel

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served the above and foregoing Summary Order on this 24th day of June, 2005, by causing the same to be deposited in the United States Mail, first class postage prepaid, addressed to the following:

Craig C. Lang
President
Farm Bureau Insurance Company
5400 University Avenue
West Des Moines, IA 50266

And
David Hansen
Law offices of Glenn, Cornish, Hansen,
& Karns
800 SW Jackson Street, Suite 900
Topeka, KS 66612-1259

/s/ Robert E. Hiatt _____
Robert E. Hiatt, Staff Attorney

NOTICE OF RIGHTS

Farm Bureau Insurance Company (“Farm Bureau”) is entitled to a hearing pursuant to K.S.A. §77-537, the Kansas Administrative Procedure Act. If Farm Bureau desires a hearing, the company must file a written request for a hearing with:

John W. Campbell, General Counsel
Kansas Insurance Department
420 S.W. 9th Street
Topeka, Kansas 66612

This request must be filed within fifteen (15) days from the date of service of this Order. If Farm Bureau requests a hearing, the Kansas Insurance Department will notify the company of the time and place of the hearing and information on the procedures, right of representation, and other rights of parties relating to the conduct of the hearing, before commencement of same.

If a hearing is not requested in the time and manner stated above, this Summary Order shall become effective as a Final Order upon the expiration of time for requesting a hearing, pursuant to K.S.A. §77-613. In the event that Farm Bureau files a petition for judicial review, pursuant to K.S.A. §77-613(e), the agency officer to be served on behalf of the Kansas Insurance Department is:

John W. Campbell, General Counsel
Kansas Insurance Department
420 S.W. 9th Street
Topeka, Kansas 66612

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served the above and foregoing Notice of Rights on this __24th__ day of June, 2005, by causing the same to be deposited in the United States Mail, first class postage prepaid, addressed to the following:

Craig C. Lang
President
Farm Bureau Insurance Company
5400 University Avenue
West Des Moines, IA 50266

And

David Hansen
Law offices of Glenn, Cornish, Hansen,
& Karns
800 SW Jackson Street, Suite 900
Topeka, KS 66612-1259

_ /s/ Robert E. Hiatt _____
Robert E. Hiatt, Staff Attorney