



**ARKANSAS INSURANCE DEPARTMENT**  
**LEGAL DIVISION**  
1200 West Third Street  
Little Rock, AR 72201-1904  
501-371-2820  
FAX 501-371-2639

**June 3, 2002**

**DIRECTIVE 2 -2002**

**TO: ALL LICENSED INSURANCE COMPANIES WRITING PERSONAL LINES INSURANCE; TRADE ASSOCIATIONS; NAIC AND OTHER INTERESTED PARTIES**

**FROM: ARKANSAS INSURANCE DEPARTMENT**

**SUBJECT: REQUIREMENTS FOR INSURERS USING CONSUMER REPORTS OR CREDIT SCORING**

The purpose of this Directive is to assist insurers that use, or plan to use, consumer reports or credit scores for underwriting, rate-determinations or both when writing insurance in Arkansas.

A. This Directive applies only to personal lines of property and casualty insurance and shall apply to underwriting, re-underwriting, rating, and quoting. Use of the requirements set forth in this Directive are mandatory. The requirements are issued pursuant to Ark. Code. Ann. 23-61-103, regarding the powers of the Commissioner, Ark. Code Ann. §23-67-208, regarding rate standards, Ark. Code Ann. §23-67-209, regarding rating criteria, Ark. Code Ann. §23-67-210, regarding rating plans, Ark. Code Ann. §23-67-211, regarding the filing of rates and other rating information, and Ark. Code Ann. §23-66-317 regarding the effect of a consumer report on issuance or renewal of coverage, and Rule and Regulation 23, regarding property, casualty, surety and marine rate and form filings.

B. Definitions.

(1) A "consumer report" is a written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for insurance and other purposes authorized by the federal Fair Credit Reporting Act. A consumer report shall also mean a credit score or insurance score derived from the application of a mathematical formula to any data contained in a consumer report. The terms "insurance score" and "credit score" are synonymous for purposes of this Directive and the use of the term "credit score" shall mean "insurance score" if the context requires. An "insurance score" usually differs from a credit score only to the extent it may measure slightly different credit characteristics. A consumer report does not include the actual motor vehicle records or claims records.

(2) An "applicant" shall mean any person applying for or inquiring about the availability of insurance or the cost thereof.

C. No insurer shall refuse to issue or renew coverage or limit the amount of coverage on a risk in this state based solely upon the insurer's knowledge of the insured's or applicant's consumer report, unless:

- (1) The consumer report of the insured or applicant identifies characteristics that substantially increase the risk of loss at or after policy issuance or renewal;
- (2) The insurer or its agent sends a notice of cancellation, refusal to renew, or declination to the insured or applicant which contains a statement which advises that the cancellation, nonrenewal,

or declination is based on information contained in a consumer report relating to an applicant or insured or other resident of the household; and

- (3) The insurer or its agent makes available to the applicant or insured the name and address of the source from which the insurer obtained the consumer report and advises the applicant or insured that if more detail on the credit information which formed the basis of the decision is desired, a free copy of the consumer report may be obtained by making a written request or by appearing in person at the credit reporting agency or such other party as the insurer shall identify in the notice, not more than ten (10) days after the date on which the notice of cancellation, nonrenewal, or declination was mailed to the insured or applicant.

D. If the insurer is relying upon a credit scoring system or model to underwrite or rate any applicant or person inquiring about insurance, or re-underwrite or re-rate any existing class or subclass of insureds, or offer insurance pursuant to 15 U.S.C. 1681(c), the insurer shall, before its use on any consumer risk:

- (1) File the credit scoring system with the Insurance Commissioner. This filing shall include the factors or characteristics from a consumer report that are utilized in determining a credit score, and the algorithm, computer program, model, or other process used in determining a credit score. The underlying support, including statistical validation, for the development of the algorithm, computer program, model, or other process that is used in determining a credit score shall also be filed;
- (2) File the disclosure form or forms to be provided the applicant or existing insured. These forms shall provide for the disclosure of the four major factors determined by the model to have had the greatest impact on the actual score produced by the model and shall contain all statements and disclosures required by the federal Truth in Lending Act and the federal Fair Credit Reporting Act, 15 USC 1681;
- (3) File the descriptions of all the major factors that may be furnished to an applicant or insured on the form described in paragraph (2);
- (4) File and obtain approval for any application for insurance that contains the disclosures required in (3) above; and
- (5) File its guidelines on the use of consumer reports or the consumer report scoring system or model.

E. The credit scoring system filing shall contain sufficient detail to verify that:

- (1) The insurer will apply the same criteria to all applicants or insureds in the same class or subclass of business;
- (2) The system identifies characteristics which substantially increase the risk of loss at or after policy issuance or renewal;
- (3) The insurer considers each risk on an individual basis; and
- (4) If used to place a risk within a rating tier or with an affiliated insurer and such assignment results in a rate differential, the insurer does not further use credit as a rate characteristic within the tier or affiliate to which the risk is assigned.

F. Any proprietary consumer report scoring system or model filed with the Commissioner under this section shall remain confidential and cannot be utilized or incorporated into any other filing made by a non-affiliate of the insurer. Credit scoring models shall only be accepted from the insurer or its insurance affiliate that proposes to use it.

G. Prohibited uses of consumer reports and credit scoring:

- (1) Refusing to insure, electing to cancel, or electing to non-renew a policy based solely on the applicant or insured's consumer report or credit score that is inaccurate. Information contained in a credit report shall not be considered inaccurate or incomplete simply because an applicant or insured has protested that information unless the credit reporting agency determines that the information is inaccurate;
- (2) Using a consumer report or a credit score for any arbitrary, capricious, or unfairly discriminatory reason;
- (3) Using consumer report or a credit score based wholly or partially on, residence, sex, race, color, creed, occupation, income, physical handicap or disability of an applicant or insured or that serves as a proxy for any of those characteristics;
- (4) Penalizing an applicant or insured for having a limited, inadequate, or no credit history. If a credit report is unavailable ("no-hit") or incomplete ("thin file") for any applicant, inquirer or insured, the insurer shall use either a credit report from another vendor or additional underwriting criteria filed with the Commissioner to determine placement which reflects credit as a neutral characteristic; or
- (5) Refusing to issue or renew a policy solely because the applicant or insured does not possess a credit card.

H. Affirmative Duties of Insurer when using consumer reports or credit scoring:

- (1) If it is determined by the credit reporting agency that the credit history or credit score is incorrect due to erroneous information contained in the credit report, an insurer must properly rate, and provide a refund, if warranted, within thirty (30) days of notification by either the credit reporting agency or insured. The refund shall be calculated back to the last twelve (12) months of coverage by the insurer, or the actual period of coverage, whichever is shorter; and
- (2) An insurer has the option of rechecking an insured's credit history or credit score prior to renewal. However, the insurer must recheck a credit report or credit score, if requested in writing by the insured, no more than once every twelve (12) months.

I. Any rejection, refusal to quote or quote extended over the Internet, by telephone, or in person shall comply with the notice requirements of 15 U.S.C. §1681. Insurers shall respond quickly to any consumer requesting an explanation to provide to a lender explaining the reason for any inquiry made by the insurer or its agent for insurance purposes whether the transaction was initiated by the consumer, the insurer or its agent.

J. For purposes of the notices required by the Fair Credit Reporting Act, 15 USC 1681, an adverse action includes any act detrimental to the consumer based upon the information contained in or derived from a consumer report and may include by way of illustration any of the following actions:

- (1) Refusing to write an insurance policy for a consumer;
- (2) Refusing to quote a premium;
- (3) Cancellation of or limitation of existing coverages of an existing policy;
- (4) Non-renewal of an existing policy;
- (5) Any increase in an existing premium;

- (6) Any premium for an initial policy or quote of insurance that is higher than the premium that otherwise would have been paid if not for the information in or derived from a consumer report; or
- (7) Any firm offer of insurance made to a consumer who has not requested the offer that is solely, or in part, based upon a consumer report.

K. If an insurer takes any type of adverse action that is based at least in part on information contained in a consumer report, the insurer is required by 15 USC 1681 to notify the consumer. The notification may be done in writing, orally, or by electronic means. It must include the following:

- (1) The name, address, and telephone number of the credit reporting agency (including a toll-free telephone number if it is a nationwide credit reporting agency) that provided the report.
- (2) A statement that the credit reporting agency did not make the adverse decision and is not able to explain why the decision was made.
- (3) A statement setting forth the consumer's right to obtain a free disclosure of the consumer's file from the credit reporting agency.
- (4) A statement setting forth the consumer's right to dispute directly with the credit reporting agency the accuracy or completeness of any information provided by the credit reporting agency.

L. Any insurer currently using a credit scoring system shall file for compliance or re-compliance as provided for herein within ninety (90) days of the effective date of this directive. All existing credit scoring systems are disapproved for use on the 91<sup>st</sup> day after the date of this Directive.

M. Failure to comply or willful violation of this Directive may subject the violator to any fines, penalties, suspension, or revocation of certificate of authority as may be applicable under the Insurance Code.

**Insurers are asked to provide a copy of this Directive to their appointed agents.**

If you have questions concerning this bulletin, please contact Ashley Fisher, Associate Counsel, 501-371-2820, [ashley.fisher@mail.state.ar.us](mailto:ashley.fisher@mail.state.ar.us), or William R. Lacy, Director, Property and Casualty Division, 501-371-2800, [bill.lacy@mail.state.ar.us](mailto:bill.lacy@mail.state.ar.us).

---

MIKE PICKENS INSURANCE COMMISSIONER