

## Bulletin 130

### THE USE OF CREDIT INFORMATION IN UNDERWRITING AND RATING INSURANCE POLICIES

May 26, 2005

This Bulletin is directed to all insurance companies, as defined by IC 27-1-2-3, that write personal lines property and casualty products in this state. The Department issued Bulletin 123 on December 5, 2003, regarding the use of credit information. In May 2004, the Attorney General's office reviewed the Department's Bulletin 123 and opined that the interpretation of the word "solely" therein placed restrictions on insurers that were not intended by the Indiana General Assembly. On February 9, 2005, the Attorney General affirmed this opinion as a formal opinion. *See; AG Op 2004-8*. The Commissioner has reviewed the statute, supporting information, and the opinion of the Attorney General. The Commissioner believes that the Indiana General Assembly through its duly elected members is responsible for setting the public policy for the state of Indiana. When the General Assembly passes a statute that is clear and unambiguous the Department of Insurance, as an agency of state government, is charged with implementing the clear meaning of that statute. The Attorney General has stated that IC 27-2-21 is not ambiguous in its use of the term "solely". Therefore, the Commissioner hereby issues this Bulletin 130 and withdraws Bulletin 123.

IC 27-2-21 prescribes the use of credit information by insurance companies. An insurer may use credit information in underwriting or rating a consumer. If an insurer chooses to use credit information the insurer must disclose its intention to use credit information to the consumer. The insurance scoring model must be filed with the Department of Insurance. This filing is confidential under IC 5-14-3-4(a)(1) and IC 27-2-21-20(d) and not available for public inspection. Companies should identify their filings as made pursuant to IC 27-2-21 and should separate all confidential documents and clearly identify them as confidential as described in Bulletin 111. Pursuant to IC 27-2-21-20 the scoring model and other scoring processes are confidential.

As outlined in IC 27-2-21-22, a consumer reporting agency, as defined at IC 27-2-21-6, may not provide or sell data or lists that include information submitted in conjunction with an insurance inquiry about a consumer's credit information or a request for a credit report or insurance score. This includes the expiration dates of an insurance policy. The restrictions contained in IC 27-2-21-22 do not apply to data or lists that a consumer reporting agency supplies to: (1) an insurance producer from whom the information was received; or (2) an insurer (including any affiliates and/or parent company) on behalf of which the insurance producer acted.

The insurer shall not deny, cancel, decline to renew an insurance policy, or base a renewal rate solely on the basis of credit information. The absence of credit information or the inability to calculate an insurance score may not be considered unless the insurer either treats the consumer as having neutral credit information or persuades the Department that the absence or the inability to calculate relates to the risk for the insurer. In such an event the insurer shall treat the consumer in a manner approved by the Commissioner. Any adverse action by an insurer must be based upon a credit report or score that was obtained no longer than ninety (90) days from the date the insurance policy is first written or a renewal is issued. The insurance score or credit report must be updated as outlined in IC 27-2-21-16(7).

An insurer shall not use an insurance score that is calculated using income, gender, address, ZIP code, ethnic group, religion, marital status, or nationality of the consumer as a factor. A credit inquiry not initiated by the consumer or a credit inquiry requested by the consumer for the consumer's own credit information can not be used as a negative factor in the insurance score. A credit inquiry related to

insurance coverage may not be used as a negative factor. Multiple lender inquiries, made within thirty (30) days of one another, related to a home mortgage or multiple lender inquiries, made within thirty (30) days of one another, related to the automobile lending industry may not be used as a negative factor. A collection account with a medical industry code may not be used as a negative factor in a credit score.

In addition to specific guidance on credit scoring the insurance laws provide other protections that insurers should be aware of when developing and using insurance scores. IC 27-1-22-25 states that a motor vehicle insurance rating plan or the premium rate charged may not establish a higher rate for a policyholder based on the fact that the policyholder has filed a voluntary petition under the federal bankruptcy law. Therefore, an insurer that writes motor vehicle insurance may not use an insurance score that uses bankruptcy as a factor. Pursuant to IC 27-2-17, an insurer may not may not cancel or refuse to issue or renew a policy of property or casualty insurance based solely on the geographical location of the risk within Indiana. And under IC 27-1-22-3(a)(4), property and casualty premium rates shall not be unfairly discriminatory. An insurer that violates any of these provisions is subject to administrative proceedings under IC 27-4-1-4 as an unfair and deceptive act or practice in the business of insurance and subject to penalties including monetary fines and suspension or revocation of the insurer's certificate of authority.

INDIANA DEPARTMENT OF INSURANCE  
James Atterholt, Commissioner