

SENATE BILL No. 739

September 7, 2005, Introduced by Senator SWITALSKI and referred to the Committee on Banking and Financial Institutions.

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
(MCL 500.100 to 500.8302) by adding chapter 21A.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER 21A CREDIT INFORMATION AND CREDIT SCORES

SEC. 2151. AS USED IN THIS CHAPTER:

(A) "ADVERSE ACTION" MEANS A DENIAL OR CANCELLATION OF, AN
INCREASE IN ANY CHARGE FOR, OR A REDUCTION OR OTHER ADVERSE OR
UNFAVORABLE CHANGE IN THE TERMS OF COVERAGE OR AMOUNT OF, ANY
INSURANCE, EXISTING OR APPLIED FOR, IN CONNECTION WITH THE
UNDERWRITING OF PERSONAL INSURANCE AND AS OTHERWISE PERMITTED UNDER
THIS ACT.

(B) "CONSUMER REPORTING AGENCY" MEANS ANY PERSON WHICH, FOR

1 MONETARY FEES, DUES, OR ON A COOPERATIVE NONPROFIT BASIS, REGULARLY
2 ENGAGES IN WHOLE OR IN PART IN THE PRACTICE OF ASSEMBLING OR
3 EVALUATING CONSUMER CREDIT INFORMATION OR OTHER INFORMATION ON
4 CONSUMERS FOR THE PURPOSE OF FURNISHING CONSUMER REPORTS TO THIRD
5 PARTIES.

6 (C) "CREDIT INFORMATION" MEANS ANY CREDIT-RELATED INFORMATION
7 DERIVED FROM A CREDIT REPORT, FOUND ON A CREDIT REPORT ITSELF, OR
8 PROVIDED ON AN APPLICATION FOR PERSONAL INSURANCE. INFORMATION THAT
9 IS NOT CREDIT-RELATED SHALL NOT BE CONSIDERED CREDIT INFORMATION,
10 REGARDLESS OF WHETHER IT IS CONTAINED IN A CREDIT REPORT OR IN AN
11 APPLICATION, OR IS USED TO CALCULATE AN INSURANCE SCORE.

12 (D) "CREDIT REPORT" MEANS ANY WRITTEN, ORAL, OR OTHER
13 COMMUNICATION OF INFORMATION BY A CONSUMER REPORTING AGENCY BEARING
14 ON A CONSUMER'S CREDIT WORTHINESS, CREDIT STANDING, OR CREDIT
15 CAPACITY USED OR EXPECTED TO BE USED OR COLLECTED IN WHOLE OR IN
16 PART FOR THE PURPOSE OF SERVING AS A FACTOR TO DETERMINE, AS
17 OTHERWISE PERMITTED UNDER THIS ACT, PERSONAL INSURANCE PREMIUMS,
18 ELIGIBILITY FOR COVERAGE OR FOR A PREMIUM DISCOUNT PLAN, OR TIER
19 PLACEMENT.

20 (E) "INSURANCE SCORE" MEANS A NUMBER OR RATING THAT IS DERIVED
21 FROM AN ALGORITHM, COMPUTER APPLICATION, MODEL, OR OTHER PROCESS
22 THAT IS BASED IN WHOLE OR IN PART ON CREDIT INFORMATION FOR THE
23 PURPOSES OF PREDICTING THE FUTURE INSURANCE LOSS EXPOSURE OF AN
24 INDIVIDUAL APPLICANT OR INSURED.

25 SEC. 2153. (1) THIS CHAPTER APPLIES TO ALL PROPERTY/CASUALTY
26 INSURANCE POLICIES WRITTEN FOR PERSONAL, FAMILY, OR HOUSEHOLD USE
27 INCLUDING AUTOMOBILE, HOME, MOTORCYCLE, MOBILE HOME, NONCOMMERCIAL

1 DWELLING FIRE, BOAT, PERSONAL WATERCRAFT, SNOWMOBILE, AND
2 RECREATIONAL VEHICLE, WHETHER WRITTEN ON AN INDIVIDUAL, GROUP,
3 FRANCHISE, BLANKET POLICY, OR SIMILAR BASIS.

4 (2) AN INSURER SHALL NOT USE CREDIT INFORMATION OR A CREDIT
5 SCORE FOR PREMIUM SURCHARGES.

6 SEC. 2155. AN INSURER SHALL NOT USE CREDIT INFORMATION OR A
7 CREDIT-BASED INSURANCE SCORE UNLESS ALL OF THE FOLLOWING ARE MET:

8 (A) THE INSURER OR ITS PRODUCER DISCLOSES, AT THE RENEWAL OF A
9 POLICY, ON AN INSURANCE APPLICATION, OR AT THE TIME THE APPLICATION
10 IS TAKEN, THAT IT MAY OBTAIN CREDIT INFORMATION. THE DISCLOSURE
11 SHALL BE EITHER WRITTEN OR PROVIDED TO AN APPLICANT IN THE SAME
12 MEDIUM AS THE APPLICATION FOR INSURANCE OR NOTICE OF RENEWAL. THE
13 DISCLOSURE IS NOT REQUIRED TO BE GIVEN TO AN INSURED ON A RENEWAL
14 POLICY IF THE INSURED HAS PREVIOUSLY BEEN PROVIDED A DISCLOSURE
15 STATEMENT. AN INSURER MAY USE THE FOLLOWING DISCLOSURE STATEMENT:

16 "IN CONNECTION WITH THIS APPLICATION FOR INSURANCE, WE MAY
17 REVIEW YOUR CREDIT REPORT OR OBTAIN OR USE A CREDIT-BASED INSURANCE
18 SCORE BASED ON THE INFORMATION CONTAINED IN THAT CREDIT REPORT. WE
19 MAY USE A THIRD PARTY IN CONNECTION WITH THE DEVELOPMENT OF YOUR
20 INSURANCE SCORE."

21 (B) THE INSURER OR A THIRD PARTY ON BEHALF OF THE INSURER
22 FILES WITH THE COMMISSIONER THE SCORING MODELS OR OTHER SCORING
23 PROCESSES USED. A FILING THAT INCLUDES INSURANCE SCORING MAY
24 INCLUDE LOSS EXPERIENCE JUSTIFYING THE USE OF CREDIT INFORMATION.

25 (C) THE INSURER OR A THIRD PARTY ON BEHALF OF THE INSURER DOES
26 NOT USE INCOME, GENDER, ADDRESS, ZIP CODE, ETHNIC GROUP, RELIGION,
27 MARITAL STATUS, OR NATIONALITY OF THE INSURED OR APPLICANT FOR

1 INSURANCE IN CALCULATING AN INSURANCE SCORE.

2 (D) THE INSURER DOES NOT DO ANY OF THE FOLLOWING:

3 (i) DENY, CANCEL, OR NONRENEW A POLICY SOLELY OR SUBSTANTIALLY
4 ON THE BASIS OF CREDIT INFORMATION, WITHOUT CONSIDERATION OF ANY
5 OTHER APPLICABLE UNDERWRITING FACTOR INDEPENDENT OF CREDIT
6 INFORMATION AND NOT EXPRESSLY PROHIBITED BY THIS ACT.

7 (ii) BASE AN INSURED'S PREMIUM DISCOUNT OR RENEWAL RATES SOLELY
8 OR SUBSTANTIALLY UPON CREDIT INFORMATION, WITHOUT CONSIDERATION OF
9 ANY OTHER APPLICABLE FACTOR INDEPENDENT OF CREDIT INFORMATION.

10 (iii) TAKE AN ADVERSE ACTION AGAINST A CONSUMER SOLELY OR
11 SUBSTANTIALLY BECAUSE HE OR SHE DOES NOT HAVE A CREDIT CARD
12 ACCOUNT, WITHOUT CONSIDERATION OF ANY OTHER APPLICABLE FACTOR
13 INDEPENDENT OF CREDIT INFORMATION.

14 (E) THE INSURER OR A THIRD PARTY ON BEHALF OF THE INSURER DOES
15 NOT CONSIDER AN ABSENCE OF CREDIT INFORMATION OR AN INABILITY TO
16 CALCULATE AN INSURANCE SCORE UNLESS THE INSURER OR THIRD PARTY ON
17 BEHALF OF THE INSURER TREATS THE CONSUMER AS OTHERWISE APPROVED BY
18 THE COMMISSIONER AND THE INSURER PRESENTS INFORMATION TO THE
19 COMMISSIONER THAT SUCH AN ABSENCE OR INABILITY RELATES TO THE
20 INSURER'S RISK.

21 (F) THE INSURER OR A THIRD PARTY ON THE INSURER'S BEHALF USES
22 A CREDIT REPORT ISSUED OR AN INSURANCE SCORE CALCULATED WITHIN 90
23 DAYS FROM THE DATE THE POLICY IS FIRST WRITTEN OR RENEWED.

24 (G) NOT LATER THAN EVERY 36 MONTHS FOLLOWING THE LAST TIME THE
25 INSURER OR A THIRD PARTY ON THE INSURER'S BEHALF OBTAINED CURRENT
26 CREDIT INFORMATION FOR THE INSURED, THE INSURER OR A THIRD PARTY ON
27 THE INSURER'S BEHALF RECALCULATES THE INSURANCE SCORE OR OBTAINS AN

1 UPDATED CREDIT REPORT SUBJECT TO ALL OF THE FOLLOWING:

2 (i) UPON REQUEST OF AN INSURED OR THE INSURED'S PRODUCER AT
3 ANNUAL RENEWAL, AN INSURER OR A THIRD PARTY ON THE INSURER'S BEHALF
4 SHALL REEXAMINE A CURRENT CREDIT REPORT OR INSURANCE SCORE. AN
5 INSURER OR A THIRD PARTY ON THE INSURER'S BEHALF IS NOT REQUIRED TO
6 RECALCULATE THE INSURANCE SCORE OR OBTAIN AN UPDATED CREDIT REPORT
7 MORE FREQUENTLY THAN ONCE IN A 12-MONTH PERIOD.

8 (ii) AN INSURER OR A THIRD PARTY ON THE INSURER'S BEHALF MAY
9 ORDER A CREDIT REPORT UPON ANY RENEWAL BEFORE 36 MONTHS IF THE
10 INSURER DOES SO CONSISTENTLY WITH ALL ITS INSUREDS.

11 (iii) NOTWITHSTANDING SUBPARAGRAPH (i), AN INSURER OR A THIRD
12 PARTY ON THE INSURER'S BEHALF IS NOT REQUIRED TO OBTAIN CURRENT
13 CREDIT INFORMATION FOR AN INSURED IF 1 OF THE FOLLOWING APPLIES:

14 (A) THE INSURER IS TREATING THE CONSUMER AS OTHERWISE APPROVED
15 BY THE COMMISSIONER.

16 (B) THE INSURED IS IN THE MOST FAVORABLY-PRICED TIER OF THE
17 INSURER. HOWEVER, THE INSURER SHALL HAVE THE DISCRETION TO ORDER
18 THE REPORT, IF CONSISTENT WITH ITS UNDERWRITING GUIDELINES.

19 (C) CREDIT WAS NOT USED FOR UNDERWRITING OR RATING THE INSURED
20 WHEN THE POLICY WAS INITIALLY WRITTEN. HOWEVER, THE INSURER MAY USE
21 CREDIT FOR UNDERWRITING, A PREMIUM DISCOUNT PLAN, OR RATING THE
22 INSURED UPON RENEWAL, IF CONSISTENT WITH ITS UNDERWRITING
23 GUIDELINES AND THIS ACT.

24 (D) THE INSURER REEVALUATES THE INSURED BEGINNING NO LATER
25 THAN 36 MONTHS AFTER INCEPTION AND THEREAFTER BASED UPON OTHER
26 UNDERWRITING, PREMIUM DISCOUNT PLAN, OR RATING FACTORS AS PERMITTED
27 UNDER THIS ACT, EXCLUDING CREDIT INFORMATION.

1 (H) THE INSURER OR A THIRD PARTY ON THE INSURER'S BEHALF DOES
2 NOT USE THE FOLLOWING AS A NEGATIVE FACTOR IN ANY INSURANCE SCORE
3 OR IN REVIEWING CREDIT INFORMATION:

4 (i) CREDIT INQUIRIES NOT INITIATED BY THE CONSUMER OR REQUESTED
5 BY THE CONSUMER FOR HIS OR HER OWN CREDIT INFORMATION.

6 (ii) CREDIT INQUIRIES RELATING TO INSURANCE COVERAGE, IF SO
7 IDENTIFIED ON AN INSURED'S OR APPLICANT'S CREDIT REPORT.

8 (iii) COLLECTION ACCOUNTS WITH A MEDICAL INDUSTRY CODE, IF SO
9 IDENTIFIED ON THE CONSUMER'S CREDIT REPORT.

10 (iv) MULTIPLE LENDER INQUIRIES, IF CODED BY THE CONSUMER
11 REPORTING AGENCY ON THE CREDIT REPORT AS BEING FROM THE HOME
12 MORTGAGE INDUSTRY AND MADE WITHIN 45 DAYS FROM ONE ANOTHER, UNLESS
13 ONLY 1 INQUIRY IS CONSIDERED.

14 (v) MULTIPLE LENDER INQUIRIES, IF CODED BY THE CONSUMER
15 REPORTING AGENCY ON THE CREDIT REPORT AS BEING FROM THE AUTOMOBILE
16 LENDING INDUSTRY AND MADE WITHIN 45 DAYS OF ONE ANOTHER, UNLESS
17 ONLY 1 INQUIRY IS CONSIDERED.

18 SEC. 2157. IF AN INSURER TAKES AN ADVERSE ACTION BASED UPON
19 CREDIT INFORMATION, THE INSURER SHALL NOTIFY THE INSURED OR
20 APPLICANT FOR INSURANCE IN ACCORDANCE WITH 15 USC 1681M, THAT AN
21 ADVERSE ACTION HAS BEEN TAKEN AND SHALL EXPLAIN IN CLEAR AND
22 SPECIFIC LANGUAGE THE REASONS FOR THE ADVERSE ACTION. THE REASONS
23 SHALL BE IN SUFFICIENTLY CLEAR AND SPECIFIC LANGUAGE SO THAT AN
24 INDIVIDUAL CAN IDENTIFY THE BASIS FOR THE INSURER'S DECISION TO
25 TAKE AN ADVERSE ACTION. THE NOTICE SHALL INCLUDE A DESCRIPTION OF
26 UP TO 4 FACTORS THAT WERE THE PRIMARY INFLUENCES FOR THE ADVERSE
27 ACTION. THE USE OF GENERALIZED TERMS SUCH AS "POOR CREDIT HISTORY",

1 "POOR CREDIT RATING", OR "POOR INSURANCE SCORE" DOES NOT MEET THE
2 DESCRIPTION REQUIREMENTS OF THIS SECTION. STANDARDIZED CREDIT
3 EXPLANATIONS PROVIDED BY CONSUMER REPORTING AGENCIES OR OTHER THIRD
4 PARTY VENDORS DO MEET THE DESCRIPTION REQUIREMENTS OF THIS SECTION.
5 THIS SECTION IS NOT SATISFIED IF A PRODUCER INSTEAD OF THE INSURER
6 PROVIDES THE REASONS FOR THE ADVERSE ACTION.

7 SEC. 2159. IF IT IS DETERMINED THROUGH THE DISPUTE RESOLUTION
8 PROCESS SET FORTH IN 15 USC 1681I, THAT THE CREDIT INFORMATION OF A
9 CURRENT INSURED WAS INCORRECT OR INCOMPLETE AND IF THE INSURER
10 RECEIVES NOTICE OF THIS DETERMINATION FROM EITHER THE CONSUMER
11 REPORTING AGENCY OR FROM THE INSURED, THE INSURER SHALL REEVALUATE
12 THE INSURED WITHIN 30 DAYS OF RECEIVING THE NOTICE. AFTER
13 REEVALUATING THE INSURED, THE INSURER SHALL MAKE ANY ADJUSTMENTS
14 NECESSARY, CONSISTENT WITH THIS ACT AND ITS UNDERWRITING, RATING
15 GUIDELINES, AND PREMIUM DISCOUNT PLAN. IF AN INSURER DETERMINES
16 THAT THE INSURED HAS OVERPAID PREMIUM, THE INSURER SHALL REFUND TO
17 THE INSURED THE AMOUNT OF OVERPAYMENT CALCULATED BACK TO THE
18 SHORTER OF EITHER THE LAST 12 MONTHS OF COVERAGE OR THE ACTUAL
19 POLICY PERIOD.

20 SEC. 2161. AN INSURER SHALL INDEMNIFY, DEFEND, AND HOLD
21 HARMLESS PRODUCERS FROM AND AGAINST ALL LIABILITY, FEES, AND COSTS
22 ARISING OUT OF OR RELATING TO THE ACTIONS, ERRORS, OR OMISSIONS OF
23 A PRODUCER WHO OBTAINS OR USES CREDIT INFORMATION OR INSURANCE
24 SCORES FOR AN INSURER, IF THE PRODUCER FOLLOWS THE INSTRUCTIONS OF
25 OR PROCEDURES ESTABLISHED BY THE INSURER AND COMPLIES WITH ANY
26 APPLICABLE LAW OR REGULATION. NOTHING IN THIS SECTION SHALL BE
27 CONSTRUED TO PROVIDE AN INSURED OR APPLICANT FOR INSURANCE WITH A

1 CAUSE OF ACTION THAT WOULD NOT EXIST IN THE ABSENCE OF THIS
2 SECTION.

3 Enacting section 1. This amendatory act takes effect 90 days
4 after the date this amendatory act is enacted.