

SECOND REGULAR SESSION

# HOUSE BILL NO. 868

## 92ND GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES WILDBERGER (Sponsor), WALKER, WHORTON, BARNITZ,  
JOHNSON (90), SALVA AND SAGER (Co-sponsors).

Pre-filed December 15, 2003, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

2903L.011

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### AN ACT

To repeal section 375.918, RSMo, and to enact in lieu thereof one new section relating to insurance credit scores.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Section 375.918, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 375.918, to read as follows:

375.918. 1. As used in this section, the following terms mean:

(1) "Adverse action", a denial, nonrenewal of, or a reduction in the amount of benefits payable or types of coverages under any contract, existing or applied for, in connection with the underwriting of insurance. An offer by an insurer to write a contract through an affiliated insurer does not constitute an adverse action;

(2) "Contract", any automobile insurance policy as defined in section 379.110, RSMo, or any property insurance policy as defined in section 375.001, including such a policy on a mobile home or residential condominium unit or a policy of renters' or tenants' insurance. Contract shall not include any policy of mortgage insurance or commercial insurance;

(3) "Credit report", any written or electronic communication of any information by a consumer reporting agency that:

(a) Bears on a person's credit worthiness, credit standing, or credit capacity; and

(b) Is used or collected wholly or partly to serve as a factor in the underwriting of a contract;

(4) "Credit scoring entity", any entity that is involved in creating, compiling, or providing insurance credit scores;

**EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law. Matter in boldface type in the above law is proposed language.**

17 (5) "Insurance credit score", a numerical representation of the insurance risk a person  
18 presents using the person's attributes derived from a credit report or credit information in a  
19 formula to assess insurance risk on an actuarial or statistical basis;

20 (6) "Insurer", any insurance company or entity that offers a contract;

21 (7) "Underwriting", the selection of the risk that will be assumed by the insurer on a  
22 contract, and specifically the decision whether to accept, deny, renew, nonrenew, reduce, or  
23 increase the amount of benefits payable or types of coverages under the contract.

24 2. An insurer using a credit report or insurance credit score as a factor in underwriting  
25 shall not take an adverse action based on such factor without consideration of another  
26 noncredit-related underwriting factor.

27 3. No insurer shall take an adverse action against an applicant or insured based on  
28 inability to compute an insurance credit score without consideration of another underwriting  
29 factor, unless the insurer can justify the credibility that the lack of an insurance credit score has  
30 in underwriting to the director of insurance.

31 4. An insurer using a credit report or insurance credit score as a factor in underwriting  
32 a contract shall disclose at the time of the original application for the contract or on the  
33 application itself that the insurer may gather credit information.

34 5. An insurer using a credit report or insurance credit score as a factor in underwriting  
35 of a contract shall not take an adverse action on such contract based on information that is the  
36 subject of a written dispute between the policyholder or applicant and a consumer reporting  
37 agency, as noted in such person's credit report, until such dispute has reached final determination  
38 in accordance with the federal Fair Credit Reporting Act, 15 U.S.C. Section 1681, et seq. In the  
39 event that information is the subject of a written dispute under this subsection, the sixty-day  
40 period provided by section 375.002 or section 379.110, RSMo, shall be extended until fifteen  
41 days after the dispute reaches final determination. Nothing in this subsection shall be construed  
42 to require any consumer reporting agency, as defined by the federal Fair Credit Reporting Act,  
43 15 U.S.C. Section 1681, et seq., to include any information on a credit report beyond the extent  
44 required by the federal Fair Credit Reporting Act, 15 U.S.C. Section 1681, et seq.

45 **6. If an insurer uses a credit report or insurance credit score as a factor in**  
46 **underwriting of insurance contracts, every fiduciary for such insurer shall submit annually**  
47 **his or her credit score to the department of insurance. For purposes of this subsection,**  
48 **"fiduciary" means an agent, trustee, partner, corporate officer or director, or other**  
49 **representative owing a fiduciary duty with respect to an insurer, insurance company, or**  
50 **insurance contract.**

51 7. If the use of a credit report or insurance credit score on a contract results in an adverse  
52 action, the insurer shall provide the policyholder or applicant:

53 (1) Notice that a credit report or insurance credit score adversely affected the  
54 underwriting of the contract;

55 (2) The name, address, and telephone number of the consumer credit reporting agency  
56 that furnished the credit information, in compliance with the notice requirements of the federal  
57 Fair Credit Reporting Act, 15 U.S.C. Section 1681, et seq.;

58 (3) Notice of the right to obtain a free credit report from the consumer credit reporting  
59 agency within sixty days; and

60 (4) Notice of the right to lodge a dispute with the consumer credit reporting agency to  
61 have any erroneous information corrected in accordance with the federal Fair Credit Reporting  
62 Act, 15 U.S.C. Section 1681, et seq.

63 [7.] **8.** Within thirty days from the date the insurer provides notice of an adverse action  
64 pursuant to subdivision (1) of subsection [6] 7 of this section, the applicant or insured may in  
65 writing request from the insurer a statement of reasons for such action. For purposes of  
66 determining the thirty-day period, the notice of an adverse action is deemed received three days  
67 after mailing. The statement of reasons shall be sufficiently clear and specific so that a person  
68 of average intelligence can identify the basis for the insurer's decision without further inquiry.  
69 An insurer may provide an explanation of significant characteristics of the credit history that may  
70 have impacted such person's insurance credit score to meet the requirements of this subsection.  
71 Standardized credit explanations provided by credit scoring entities comply with this subsection.

72 [8.] **9.** If an insurer bases an adverse action in part on a credit report or insurance credit  
73 score, the applicant or insured may within thirty days of such adverse action make a written  
74 request for reunderwriting following any correction relating to the credit report or insurance  
75 credit score.

76 [9.] **10.** An insurer may obtain and use a current credit report or insurance credit score  
77 on new business or renewal contracts, but shall not take an adverse action with respect to renewal  
78 contracts based upon such credit report or insurance credit score until or after the third  
79 anniversary date of the initial contract.

80 [10.] **11.** Insurance inquiries shall not directly or indirectly be used as a negative factor  
81 in any insurance credit scoring formula or in the use of a credit report in underwriting.

82 [11.] **12.** Nothing in this section shall be construed as superceding the provisions of  
83 section 375.002 and section 379.114, RSMo. Nothing in this section shall be construed as  
84 prohibiting any insurer from using credit information in determining whether to offer a  
85 policyholder or applicant the option to finance or establish a payment plan for the payment of  
86 any premium for a contract. Nothing in this section shall apply to any entity not acting as an  
87 insurer or credit scoring entity as defined in subsection 1 of this section.

88 [12.] **13.** No credit scoring entity shall provide or sell to any party, other than the insurer,

89 its insurance company affiliates or holding companies, and the producer from whom the inquiry  
90 was generated, data or lists that include any information that in whole or in part is submitted in  
91 conjunction with credit inquiries about consumers. Such information includes, but is not limited  
92 to, expiration dates, information that may identify time periods during which a consumer's  
93 insurance may expire, or other nonpublic personal information as defined under the  
94 Gramm-Leach-Bliley Act, 15 U.S.C. Sections 6801 to 6809. The provisions of this subsection  
95 shall not preclude the exchange of information specifically authorized under the federal Fair  
96 Credit Reporting Act, 15 U.S.C. Section 1681, et seq., the Gramm-Leach-Bliley Act, 15 U.S.C.  
97 Sections 6801 to 6809 and other applicable federal law. The provisions of this subsection shall  
98 not apply to data disclosed in connection with a proposed or actual sale, merger, transfer or  
99 exchange of all or a portion of an insurer's or producer's business or operating unit, including but  
100 not limited to, the sale of a portfolio of contracts, if such disclosure concerns solely consumers  
101 of the business or unit and such disclosure is not the primary reason for the sale, merger, transfer  
102 or exchange.

103 [13.] **14.** A violation of this section may be enforceable under section 374.280, RSMo.

104 [14.] **15.** The provisions of this section shall apply to all contracts entered into on or after  
105 July 1, 2003.