§ 58-36-90. Prohibitions on using credit scoring to rate noncommercial private passenger motor vehicle and residential property insurance; exceptions.

(a) Definitions. – As used in this section:

(1) "Adverse action" has the same meaning as in section 1681a(k) of the federal Fair Credit Reporting Act and includes 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 insurance.

(2) "Credit report" means any written, oral, or other communication of any information by a consumer reporting agency that bears on a consumer's credit worthiness, credit standing, or credit capacity. Credit report does not include accident or traffic violation records as maintained by the North Carolina Division of Motor Vehicles or any other law enforcement agency, a property loss report or claims history that does not include information that bears on a consumer's credit worthiness, credit standing, or credit capacity, or any report containing information solely as to transactions or experiences between the consumer and the person making the report.

(3) "Credit score" means a score that is derived by utilizing data from an individual's credit report in an algorithm, computer program, model, or other process that reduces the data to a number or rating.

(4) "Noncommercial private passenger motor vehicle" means a "private passenger motor vehicle," as defined by G.S. 58-40-10, that is neither insured under a commercial policy nor used for commercial purposes.

(5) "Private passenger motor vehicle" has the same meaning as set forth in G.S. 58-40-10.

(6) "Residential property" means real property with not more than four housing units located in this State, the contents thereof and valuable interest therein, and insurance coverage written in connection with the sale of that property. It also includes mobile homes, modular homes, townhomes, condominiums, and insurance on contents of apartments and rental property used for residential purposes.

(b) Prohibitions; Exceptions. – In the rating and underwriting of noncommercial private passenger motor vehicle and residential property insurance coverage, insurers shall not use credit scoring as the sole basis for terminating an existing policy or any coverage in an existing policy or subjecting a policy to consent to rate as specified in G.S. 58-36-30(b) without consideration of any other risk factors, but insurers may use credit scoring as the sole basis for discounting rates. For purposes of this subsection only, "existing policy" means a policy that has been in effect for more than 60 days.

(c) Notification. – If a credit report is used in conjunction with other criteria to take an adverse action, the insurer shall provide the applicant or policyholder with written notice of the action taken, in a form approved by the Commissioner. The notification shall include, in easily understandable language:

(1) The specific reason for the adverse action and, if the adverse action was based upon a credit score, a description of the factors that were the primary influence on the score.

(2) The name, address, and toll-free telephone number of the credit bureau that provided the insurer with the credit-based information.

(3) The fact that the consumer has the right to obtain a free copy of the consumer's credit report from the appropriate credit bureau.

(4) The fact that the consumer has the right to challenge information contained in the consumer's credit report.

(d) Disputed Credit Report Information. – If it is determined through the dispute resolution process set forth in the federal Fair Credit Reporting Act, 15 U.S.C. § 1681i(a)(5), that the credit information of a current insured was incorrect or incomplete and if the insurer receives notice of such determination from either the consumer reporting agency or from the insured, the insurer shall re-underwrite or re-rate the consumer within 30 days of receiving the notice. After re-underwriting or re-rating the insured, the insurer shall make any adjustments necessary, consistent with its underwriting guidelines. If an insurer determines the insured has overpaid premium, the insurer shall refund to the insured the amount of overpayment calculated back to the shorter of either the last 12 months of coverage or the actual policy period.

(e) Indemnification. – An insurer shall indemnify, defend, and hold insurance producers harmless from and against all liability, fees, and costs arising out of or relating to the actions, errors, or omissions of an insurance producer who obtains or uses credit information or credit scores for an insurer, provided the insurance producer follows the instructions or procedures established by the insurer and complies with any applicable law or regulation. Nothing in this subsection shall be construed to provide a consumer or other insured with a cause of action that does not exist in the absence of this subsection.

(f) Filing. – Insurers that use credit scores to underwrite and rate risks shall file their scoring models, or other scoring processes, with the Department. A filing that includes credit scoring may include loss experience justifying the applicable surcharge or credit. A filer may request that its credit score data be considered a trade secret and may designate parts of its filings accordingly. (2003-216, s. 1; 2004-199, ss. 20(f), 20(g); 2022-46, s. 14(ss).)