

Part 1 Chapter 31: (2003-1) Use of Credit Information for Determining Rates and Eligibility for Personal Insurance.

Rule 31.01: Purpose

The purpose of this Regulation is to set forth restrictions and procedural requirements for personal lines insurers licensed in Mississippi regarding the use of an applicant's credit history and/or insurance scores for calculating rates and determining eligibility for coverage or tier placement.

Source: Miss. Code Ann. §83-5-29 (Rev. 2011)

Rule 31.02: Authority

This Regulation is promulgated by the Commissioner of Insurance pursuant to the authority granted to him by Miss. Code Ann. §§ 83-5-1 and 83-5-29 through 83-5-51 (Rev. 1999), as well as the provisions of Mississippi Department of Insurance Regulation No. 88-101, said regulation being the Rules of Practice and Procedure before the Mississippi Insurance Department.

Source: Miss. Code Ann. §83-5-29 (Rev. 2011)

Rule 31.03: Scope

This Regulation shall apply to personal insurance written by all personal lines insurers licensed in the State of Mississippi. Personal insurance is defined herein and must be for personal, family or household use.

Source: Miss. Code Ann. §83-5-29 (Rev. 2011)

Rule 31.04: Definitions

The following definitions shall apply for purposes of this Regulation:

- A. Adverse Action - A denial, non-renewal, 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.
- B. Affiliate - Any company that controls, is controlled by, or is under common control with another company.

- C. Applicant - An individual who has applied to be covered by a personal insurance policy with an insurer or who is in the process of applying for such coverage. The term applicant may also include an insured whose credit information is used or whose insurance score is calculated in the underwriting or rating of a personal insurance policy or an applicant for such a policy.
- D. Consumer Reporting Agency - Any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties. For purposes of this Regulation, consumer reporting agency shall include any entity that prepares, assembles, evaluates, calculates and/or furnishes insurance scores.
- E. Credit History - Any written, oral, or other communication of information by a consumer reporting agency bearing on an applicant's credit worthiness, credit standing or credit capacity which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor to determine personal insurance premiums, eligibility for coverage, or tier placement.
- F. Denial - The act of refusing to offer personal insurance coverage to an applicant. An offer of placement with an affiliate insurer does not constitute denial, cancellation or nonrenewal of coverage.
- G. Insurance Score - A number or rating that is derived from an algorithm, computer application, model, or other process that is based in whole or in part on credit history for the purpose of predicting the future insurance loss exposure of an individual applicant or insured.
- H. Insurer - Any company licensed in Mississippi to write personal lines or personal insurance in Mississippi.
- I. No-Hit - An absence of credit history.
- J. Personal Lines or Personal Insurance - Any one of the following:
 - 1. Private Passenger Automobile coverage.
 - 2. Homeowner's coverage, including Renter's coverage.
 - 3. Mobile or Manufactured Homeowner's coverage.
 - 4. Condominium Owner's coverage.
 - 5. Non-commercial Dwelling Fire or Dwelling Property coverage.

- K. Thin File - An inability to determine credit history.

- L. Tier - A category within an insurer's personal lines program into which applicants with substantially like insuring risk, or exposure factors, and expense elements are placed for purposes of determining rate or premium.

Source: Miss. Code Ann. §83-5-29 (Rev. 2011)

Rule 31.05: Requirements

- A. Insurers must maintain and make available upon request by the Department specific written procedures detailing their practices regarding credit history and insurance scores, including the following information:
 - 1. When credit history will be ordered and when insurance scores will be ordered or calculated, e.g. at initial underwriting, upon applicant's request, etc;
 - 2. About whom such information will be ordered or calculated, e.g. the named applicant, all known household members, etc; and,
 - 3. How such information will be used, e.g. to calculate rates, to determine eligibility for coverage, etc.

- B. If an insurer relies, in whole or in part, on an insurance score to initially underwrite or rate any applicant, or to re-underwrite or re-rate any existing class or subclass of insureds, or for tier placement, the insurer shall, before its use in determining any applicant's risk, file the insurance scoring model with the Commissioner. A Third Party may file scoring models on behalf of personal lines insurers licensed in this state. This filing shall include the factors or characteristics from an applicant's credit history that are utilized in determining an insurance score, and the algorithm, computer program, model, or other process used in determining an insurance score. The underlying support, including statistical validation, for the development of the algorithm, computer program, model, or other process that is used in determining an insurance score shall also be filed.

- C. If an insurer relies, in whole or in part, on credit history or an insurance score to initially underwrite or rate any applicant, or to underwrite or re-rate an existing class or subclass of insureds, or for tier placement, the insurer shall maintain and make available upon request by the Department samples of the notification and disclosure forms utilized by the insurer as required in Section 7 of this Regulation. The insurer shall also maintain and make available upon request by the Department evidence that the notification and

disclosure forms as required in Section 7 of this Regulation were furnished to the applicant.

- D. If an applicant is eligible for a particular rate or tier based on all other criteria, except for the fact that an applicant's credit history or insurance score is unavailable ("no-hit") or incomplete ("thin file") for that applicant, the applicant will be given that rate or tier unless said insurer files and the Department concurs with actuarial documentation which supports other practices. The actuarial documentation shall include age segmentation as well as other reasonable criteria. Notwithstanding the above, the insurer may treat the applicant as if the applicant had neutral credit.
- E. If it is determined through the dispute resolution process set forth in the federal Fair Credit Reporting Act, 15 USC 1681i(a)(5), that the credit history of an insured is incorrect or incomplete and if the insurer receives notice and documentation of this determination from either the consumer reporting agency or the insured, the insurer shall within thirty (30) days after receiving notice:
1. Re-underwrite or re-rate the insured; and,
 2. Adjust the premium as indicated in Subsection G below.
- F. If it is determined through the dispute resolution process set forth in the federal Fair Credit Reporting Act, 15 USC 1681i(a)(5), that the credit history of an applicant is incorrect or incomplete and if the insurer receives notice and documentation of this determination from either the consumer reporting agency or the applicant, the insurer shall within thirty (30) days after receiving the notice correct its records by removing the incorrect or incomplete information pertaining to the applicant.
- G. If it is determined by the re-underwriting or re-rating in accordance with Subsection E. above that the insured has overpaid the premium, the insurer shall refund or credit to the insured the amount of the overpayment of premium. Such refund shall be calculated back to the shorter of either the last twelve (12) months or the actual policy period.
- H. Any filing made in response to Section 5.B. of this Regulation is considered to be a commercially valuable trade secret and proprietary information of the entity filing the information. Any release of information that is filed with the Department on a proprietary basis shall be governed by Miss. Code Ann. § 25-61-9 (Rev. 1999). Any proprietary information shall be submitted under separate cover and must clearly state the desires of the party filing the information as to its confidentiality.

- I. An insurance company writing personal insurance that uses credit history or insurance scores, in whole or in part, to initially underwrite or rate any applicant, or to re-underwrite or re-rate any existing class or subclass of insureds, or for tier placement, shall provide its producers with informational materials pertaining to the company's use of credit history or insurance scores in the underwriting and rating of its policies.

Source: Miss. Code Ann. §83-5-29 (Rev. 2011)

Rule 31.06: Prohibited Procedures

- A. Insurers shall not deny, cancel or non-renew personal insurance coverage, calculate an insurance score, determine personal insurance premiums or rates, or place an applicant in a tier based on the following types of credit history:
 1. The type of credit card, charge card or debit card used by an applicant.
 2. Credit information that the insurer knows to be in dispute, if it is disputed on the applicant's credit report.
- B. Insurers shall not deny, cancel or non-renew personal insurance coverage, determine personal insurance premiums, or place an applicant in a tier based solely on a lack of credit history or insurance score ("no-hit") or incomplete credit history ("thin file"), if the insurer has received accurate and complete information from the applicant.
- C. Insurers shall not refuse to insure an applicant based solely on the applicant's credit history or insurance score (where insurance score is based solely on credit history), without consideration of any other applicable factor independent of credit history.
- D. Insurers shall not rely solely on an applicant's credit history or insurance score (where insurance score is based solely on credit history) when electing to cancel or non-renew a policy, without consideration of any other applicable factor independent of credit history.
- E. Insurers shall not use credit history or insurance score for any arbitrary, capricious, or unfairly discriminatory reason.
- F. Insurers shall not request an applicant's credit history or an insurance score based on residence, sex, race, color, creed, occupation, income, physical handicap, or disability of an applicant.

- G. Insurers shall not cancel or refuse to issue or renew a policy solely because the applicant does not have a credit card account.
- H. Insurers shall not base an insured's initial or renewal rates for personal insurance or make a determination on an insured's application for another line of personal insurance solely upon credit history or insurance score (where insurance score is based solely on credit history), without consideration of any other applicable factor independent of credit history.
- I. Insurers or Third Parties shall not use the following as a negative factor in any insurance scoring methodology or in reviewing credit history for the purpose of underwriting or rating a policy of personal insurance:
 - 1. Credit inquiries not initiated by the applicant or inquiries requested by the applicant for his or her own credit information.
 - 2. Inquiries relating to insurance coverage.
 - 3. Collection accounts with a medical industry code, if identified in the credit history.
 - 4. Multiple lender inquiries from the home mortgage industry made within thirty (30) days of one another, unless only one (1) inquiry is considered.
 - 5. Multiple lender inquiries from the automobile lending industry made within thirty (30) days of one another, unless only one (1) inquiry is considered.

Source: Miss. Code Ann. §83-5-29 (Rev. 2011)

Rule 31.07: Notice Requirements

- A. If an insurer writing personal insurance uses credit history or an insurance score in underwriting or rating an applicant, the insurer shall disclose, either on the insurance application or at the time the insurance application is taken, that it may obtain credit history and/or an insurance score in connection with such application. Such disclosure shall be either written or provided to an applicant in the same medium as the application for insurance. The insurer need not provide the disclosure statement required under this section to any insured on a renewal policy, if such insured has previously been provided a disclosure statement.

Use of the following example disclosure statement constitutes compliance with this subsection: “In connection with this application for insurance, we may review your credit history or obtain or use a credit-based insurance score based on the information contained in that credit history. We may use a third party in connection with the development of your insurance score.”

- B. Any adverse action by an insurer as defined in Section 4.A. of this Regulation shall comply with the notice requirements of the Fair Credit Reporting Act, 15 U.S.C. § 1681.
- C. If an insurer takes an adverse action based upon credit history or an insurance score, the insurer shall provide notification to the applicant that an adverse action has been taken in accordance with the Fair Credit Reporting Act, 15 U.S.C. § 1681m(a). The notification may be done in writing, orally or by electronic means and must include the following:
 - 1. The name, address and telephone number of the consumer reporting agency, including a toll-free telephone number if it is a nationwide consumer reporting agency that provided the report.
 - 2. A statement that the consumer 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 applicant’s right to obtain a free disclosure of the applicant’s report from the consumer reporting agency.
 - 4. A statement setting forth the applicant’s right to dispute directly with the consumer reporting agency the accuracy or completeness of any information provided by the consumer reporting agency.
 - 5. A statement explaining the reasons for the adverse action. The reasons must be provided in sufficiently clear and specific language so that a person can identify the basis for the insurer’s decision to take an adverse action. Such notification shall include a description of up to four factors that were the primary influences of the adverse action. The use of generalized terms such as “poor credit history”, “poor credit rating”, or “poor insurance score” does not meet the explanation requirements of this subsection. Standardized credit explanations provided by consumer reporting agencies are deemed to comply with this subsection.

Source: Miss. Code Ann. §83-5-29 (Rev. 2011)

Rule 31.08: Indemnification

An insurer shall indemnify, defend, and hold agents harmless from and against all liability, fees and costs arising out of or relating to the actions, errors or omissions of an agent who obtains or uses credit history and/or insurance scores for an insurer, provided the agent follows the instructions of or procedures established by the insurer and complies with any applicable law or regulation. Nothing in this section shall be construed to provide an applicant or insured with a cause of action that does not exist in the absence of this section.

Source: Miss. Code Ann. §83-5-29 (Rev. 2011)

Rule 31.09: Sale of Policy Term Information By Consumer Reporting Agency

- A. No consumer reporting agency shall provide or sell data or lists that include any information that in whole or in part was submitted in conjunction with an insurance inquiry about an insured's credit history or a request for an insurance score. Such information includes, but is not limited to, the expiration dates of an insurance policy or any other information that may identify time periods during which an insured's insurance may expire and the terms and conditions of the insured's insurance coverage.
- B. The restrictions provided in subsection (A) of this section do not apply to data or lists the consumer reporting agency supplies to the insurance agent from whom information was received, the insurer on whose behalf such agent acted, or such insurer's affiliates or holding companies.
- C. Nothing in this section shall be construed to restrict any insurer from being able to obtain a claims history report or a motor vehicle report.

Source: Miss. Code Ann. §83-5-29 (Rev. 2011)

Rule 31.10: Revocation of Certificate of Authority

Failure to comply with a material provision of this regulation is considered a violation of Miss. Code Ann. § 83-5-17 (Rev. 1999) and Miss. Code Ann. §§ 83-5-29 through 83-5-51 (Rev. 1999). Violation of said statutes may subject the insurer to the suspension or revocation of the insurer's Certificate of Authority, the imposition of an administrative fine, or both.

Source: Miss. Code Ann. §83-5-29 (Rev. 2011)

Rule 31.11: Protection of Fair Credit Reporting Act

Nothing in this Regulation shall be construed to modify, limit, or supersede the operation of the Fair Credit Reporting Act, 15 U.S.C. §1681, *et seq.*

Source: Miss. Code Ann. §83-5-29 (Rev. 2011)

Rule 31.12: Severability

If any section or portion of a section of this Regulation or the application thereof is held by a court to be invalid, such invalidity shall not affect any other provision of that section or application of the Regulation which can be given effect without the invalid provision or application, and to this end the provisions of this Regulation are declared to be severable.

Source: Miss. Code Ann. §83-5-1 (Rev. 2011)

Rule 31.13: Effective Date

The Effective Date of this Regulation shall be thirty (30) days from and after its adoption and filing with the Secretary of State's Office of the State of Mississippi. In order to provide sufficient time for the insurers to establish policies and systems to comply with this Regulation, the time for compliance with this Regulation is extended to March 1, 2004.

Source: Miss. Code Ann. §25-43-3.113 (Rev. 2010)

Rule 31.14: Mississippi Regulation 2003-1 Compliance Checklist.

Mississippi Regulation 2003-1 Compliance Checklist

Throughout this document, "Insurer" refers to company name _____,
_____ AIC number _____. Please check all boxes that apply and
return the signed, completed checklist to the Mississippi Department of Insurance.

- The Insurer maintains and makes available upon request by the Department the following information:

- When credit history will be ordered and when insurance scores will be ordered or calculated, about whom such information will be ordered and calculated, and how such information will be used (refer to Section 5.A. for examples);

- Disclosure forms (refer to Section 7.A. for further details) provided to the applicant advising that credit report information will be ordered, as well as evidence that the disclosure forms were furnished to the applicant; and
- The adverse action notification, as detailed in Section 7.C.

- The Insurer (or a third party on behalf of the Insurer) has filed its insurance scoring model and underlying statistical support with the Commissioner.
- Check this box if any of the following applies to the Insurer and check the box below to signify which is applicable:
 - The Insurer treats all consumers whose credit history is unavailable (“no-hit”) or incomplete (“thin file”) as having the most favorable credit history.
 - Subsequent to the passing of Regulation 2003-1, the Insurer has filed and the Department is reviewing or has concurred with actuarial documentation that supports the Insurer’s practices regarding no-hits and thin files. The no-hit and thin file support data submitted was segmented by age of insured.
 - The Insurer treats no-hit and thin file applicants as having neutral credit.
- The Insurer provides its producers with informational materials pertaining to the Insurer’s use of credit history or insurance scores in the underwriting and rating of its policies.
- The Insurer does not deny, cancel, or non-renew personal insurance coverage, calculate an insurance score, determine personal insurance premiums or rates, or place an applicant in a tier based on the type of credit card, charge card, or debit card used by an applicant or based on credit information that the Insurer knows to be in dispute, if it is disputed on the applicant’s credit report.
- The Insurer does not deny, cancel, or non-renew personal insurance coverage, determine personal insurance premiums, or place an applicant in a tier based solely on an applicant’s credit history being a no-hit or thin file if the Insurer has received accurate and complete information from the applicant.
- The Insurer does not refuse to insure an applicant based solely on the applicant’s credit history or insurance score.
- The Insurer does not cancel or non-renew any policy based solely on the insured’s credit history or insurance score.
- The Insurer does not use credit history or insurance scores for any arbitrary, capricious, or unfairly discriminatory reason.

- The Insurer does not request or calculate an applicant's credit history or reinsurance score based on residence, sex, race, color, creed, occupation, income, physical handicap, or disability of an applicant.
- The Insurer does not cancel or refuse to issue or renew any policy solely because the applicant or insured does not have a credit card account.
- The Insurer does not determine any insured's initial or renewal rates for personal insurance, or make a determination on an insured's application for another line of personal insurance, solely based upon credit history or insurance score.
- The Insurer (or third party insurance score provider) shall not use any of the following as a negative factor in any insurance scoring methodology or in reviewing credit history for the purpose of underwriting or rating a policy of personal insurance:
 - Credit inquiries not initiated by the applicant or inquiries requested by the applicant for his or her own credit information;
 - Inquiries relating to insurance coverage;
 - Collection accounts with a medical industry code, if so identified in the credit history; or
 - Multiple lender inquiries from the home mortgage industry made within 30 days of one another, unless only one inquiry is considered.
 - Multiple lender inquiries from the automobile lending industry made within 30 days of one another, unless only one inquiry is considered.
- The Insurer has reviewed and complies with the treatment of inaccurate credit history information as outlined in Sections 5.E., 5.F., and 5.G. of MS Regulation 2003-1.
- The Insurer has reviewed and complies with the notice requirements outlined in Section 7. of Mississippi Regulation 2003-1.

I, _____, as an officer of _____ do certify that said Insurer has reviewed and fully complies with Mississippi Insurance Regulation No. 2003-1. Dated: _____

Signature: _____

Source: Miss. Code Ann. §83-5-29 (Rev. 2011)