

ADMINISTRATIVE PROCEDURES FILING NOTICE

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Copy Attached: Yes ☒ No ☐

Name or Number of Rule(s) _____ Regulation No. 2003-1

Terms or Substance of the Actions or Description of the Subject and Issues:
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 for calculating rates and determining eligibility for coverage or tier placement.

Printed Name and Title _____
of Person Authorized to File Rules: Kimberly Gilmer Special Assistant Attorney General
Kimberly Gilmer _____
Signature Title

EMERGENCY RULES

PROPOSED ACTION ON RULES

FINAL ACTION ON RULES

_____ Original Filing
_____ Renewal of Effectiveness
To Be In Effect _____ Days
Effective Date:
_____ Immediately on
_____ Other (Specify): _____

Action Proposed:
☒ _____ New Rule(s)
_____ Amendment to Existing Rule(s)
_____ Repeal of Existing Rule(s)
_____ Adoption by Reference
Proposed Date of Adoption:
☒ _____ 30 Days after Filing
_____ Other (Specify): _____

Action Taken:
_____ Adopted with No Changes in Text
☒ _____ Adopted with Changes
_____ Adopted by Reference
_____ Withdrawn
Date Action Taken _____
Effective Date
☒ _____ 30 Days After Filing
_____ Other (Specify): _____

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**STATE OF MISSISSIPPI
OFFICE OF THE COMMISSIONER OF INSURANCE**

IN THE MATTER OF :

**USE OF CREDIT HISTORY AND INSURANCE
SCORES FOR DETERMINING RATES AND
ELIGIBILITY FOR PERSONAL INSURANCE**

CAUSE NO.: 03-4743

ORDER

THIS CAUSE came on for hearing to consider the adoption of Mississippi Insurance Department Regulation No. 2003-1, entitled "Use of Credit History and Insurance Scores for Determining Rates and Eligibility for Personal Insurance", and the Commissioner of Insurance having held a public hearing and heard the comments of all interested parties and the evidence produced by such parties involved and after receiving and considering written comments, finds as follows, to-wit:

I.

That on or about July 30, 2003, the Commissioner of Insurance for the State of Mississippi, or his duly appointed representative, pursuant to the provisions of Miss. Code Ann. § 25-43-7(1)(Supp. 2003), filed with the Secretary of State of the State of Mississippi that said Commissioner of Insurance, or his duly designated representative, would hold a public hearing on Tuesday, September 9, 2003, at 9:30 a.m., in the Old Supreme Court Chamber, Room 216, Mississippi Capitol Building, Jackson, Hinds County, Mississippi, to afford all interested persons the opportunity to submit testimony and evidence and to give opinions, make comments, suggestions or objections concerning Regulation 2003-1.

II.

That the Commissioner of Insurance, or his duly appointed representative, pursuant to the

provisions of Miss. Code Ann. § 25-43-7(1)(Supp. 2003), mailed postage prepaid, copies of an Administrative Procedures Filing Notice and Notice of Hearing to all persons who had made a timely request to the Mississippi Insurance Department for advance notice of said Department's rule making proceedings.

III.

That pursuant to said Notice of Hearing, a public hearing was held before the Commissioner of Insurance of the State of Mississippi, or his duly appointed representative, On September 9, 2003, at 9:30 a.m., in the Old Supreme Court Chamber, Room 216, Mississippi Capitol Building, Jackson, Hinds County, Mississippi, in which all interested parties were given an opportunity to present their views, opinions, suggestions, comments or objections relative to Regulation 2003-1.

IV.

That the Commissioner of Insurance received written statements from companies, organizations and individuals in addition to having received and heard the oral statements of those appearing at the aforesaid public hearing. As a result of the many comments received, several substantive changes were made to the initial draft of the Proposed Regulation. A revised draft of Regulation 2003-1 was filed with the Secretary of State's Office on October 3, 2003. All interested parties were notified pursuant to Miss. Code Ann. § 25-43-7(1)(Supp. 2003) of an additional thirty (30) day period to submit written views, opinions, suggestions, comments or objections concerning the revised draft. The thirty (30) day comment period commenced running on Monday, October 6, 2003, and concluded on Tuesday, November 4, 2003.

V.

That the Commissioner of Insurance has received written statements concerning the revised draft from companies, organizations and individuals and has considered same, and after considering

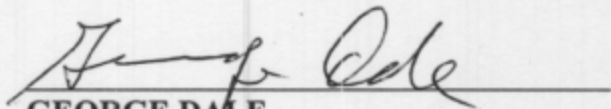
such objections, comments, opinions, statements, and evidence, is of the opinion that it would be in the public interest to amend the revised proposed Mississippi Insurance Department Regulation 2003-1 entitled, "Use of Credit History and Insurance Scores for Determining Rates and Eligibility for Personal Insurance."

VI.

That the Commissioner of Insurance, after having considered all relevant evidence, is of the opinion that it will be in the public interest to adopt the amended Mississippi Insurance Department Regulation 2003-1 entitled, "Use of Credit History and Insurance Scores for Determining Rates and Eligibility for Personal Insurance", a copy of which is attached hereto marked Exhibit "A", and made a part hereof as if fully copied herein in words, lines and figures, should be and is hereby **ADOPTED** with an effective date of thirty (30) days after the date of filing with the Secretary of State of the State of Mississippi.

IT IS, THEREFORE, ORDERED, that any interested person or party who feels that he or she will be adversely affected by this Order shall have ten (10) days from the date of this Order in which such adversely affected party may file with the Commissioner of Insurance a written statement outlining how such person will be adversely affected and their reasons for review of the Order.

SO ORDERED this the 24th day of November, 2003.


GEORGE DALE
COMMISSIONER OF INSURANCE
STATE OF MISSISSIPPI

**MISSISSIPPI DEPARTMENT OF INSURANCE
REGULATION 2003-1**

**USE OF CREDIT HISTORY AND INSURANCE SCORES FOR DETERMINING
RATES AND ELIGIBILITY FOR PERSONAL INSURANCE**

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Section 1. 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.

Section 2. 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.

Section 3. 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.

Section 4. 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.

Section 5. 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 re-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:

- a. Re-underwrite or re-rate the insured; and,
- b. 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 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.

Section 6. 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.

Section 7. 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.

Section 8. 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.

Section 9. 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 who's 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.

Section 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.

Section 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.*

Section 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.

Section 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 insurers to establish policies and systems to comply with this Regulation, the time for compliance with this Regulation is extended to March 1, 2004.