

Credit Scoring

In 2003, the Florida Legislature enacted a law to regulate and limit the use of credit reports and credit scores by insurers for underwriting and rating purposes. One public study on credit scoring found that one in four credit reports contains errors or omissions serious enough to disqualify consumers from purchasing a home, a car or getting a job. And, in recent years, a national insurance company paid a multi-million dollar fine to settle state charges that it used negative credit information to deny or discourage applicants from obtaining automobile coverage. As soon as the law was passed, various insurance industry trade groups challenged the law in court asserting that it was an impermissible restraint on trade. Notwithstanding this ongoing push-back, the Office filed a rule in March 2005 requiring information be submitted to it regarding how credit scoring information will be utilized and to show that it would not have a disparate impact on persons of any race, color, religion, marital status, age, gender, income, or national origin.

Although industry trade groups delayed implementation of the rule by challenging the Office's authority to implement the rule (calling it an invalid exercise of delegated legislative authority) on January 31, 2006, the Financial Services Commission approved Rule 69O-125.005, Use of Credit Reports and Credit Scores by Insurers, F.A.C. The rule detailed the information that an insurer must submit to the Office regarding their use of credit reports and credit scores and requires insurers to demonstrate that their use of credit reports and credit scores does not unfairly discriminate against insureds because of their race, color, religion, marital status, age, gender, income, national origin, or place of residence. The Informational Memorandum subsequently sent to all affected insurance companies in May 2006 regarding the rule can be viewed at <http://www.floir.com/Memoranda/OIR-06-10M.pdf>.

The industry trade groups kept the implementation of the rule tied up in litigation for almost one year when, on January 4, 2007, an Administrative Law Judge determined that although the terms "race, color, national origin" were not clearly defined in the rule, and that it failed to clearly define the term "disparate impact", he approved the underlying authority and approach taken by the rule. In addition to the new rule requiring all insurers to show the use of credit information does not cause any disparate impact, the filings must also include a complete description of the methodology utilized when using credit information. Further, they must contain data showing what impact having little or no credit history would have on policyholders and also certification that the insurer will correct any errors in premiums charged to Floridians.

In February 2007, the Office held a hearing to gather testimony regarding the insurance industry's use of occupation and education for the underwriting and rating of auto insurance policies. A taped broadcast of the hearing, produced by The Florida Channel, is also available at <http://www.floir.com/pcfr/RateHearingVideo.aspx#Other>. The transcript is available at <http://www.floir.com/pdf/occtranscriptv1.pdf> (Volume I) and <http://www.floir.com/pdf/occtranscriptv2.pdf> (Volume II). Based on the materials and testimony presented at the hearing, the Office, in April 2007 issued a report analyzing the use of occupation and education for the underwriting and rating of auto insurance policies. The report finds the use of these practices unintentionally harms minorities and low-income individuals in determining auto insurance premiums and insurance eligibility. A copy of the report is available at <http://www.floir.com/pdf/OCCRateRpt.pdf>.

In February 2009, the Office held a hearing on the auto insurance industry's use of policyholders' credit scores in setting rates. The transcript is available at <http://www.floir.com/pdf/CreditScoringTranscript.pdf>.

Although Rule 69O-125.005, F.A.C has not been refilled as of September 2009, the Office still has the authority to question an insurer's use of credit scoring in setting rates. If an insurer chooses to use credit scoring, the Office requires the company to submit data justifying its particular use. The Office uses authority directly conveyed by Section 626.9741(5), F.S., the intent of the legislature as expressed in s. 626.9741(8)(d), F.S., our ability to require information necessary to evaluate the reasonableness of the

filing under s. 627.0651(9), F.S., and Rule 69O-175.003(2)(a) F.A.C that requires filing of information and supporting documentation required by the Office's Internet Filing System (I-File).

While the required data may not be quite as extensive as might have been required if Rule 69O-125.005, F.A.C had gone into effect, the requirement is still considerable.