September 29, 2003

To:	All Licensed Property & Casualty Insurers
From:	J. Anthony Clark, Director
Re:	CB# 2003-03 Guidance on HB1640 and Insurance Scoring Provisions of HB3661
Reply To:	Due to the number of expected inquiries, we request that you e-mail your questions or inquiries whenever possible. For Personal Auto Filing Questions: Dee Caruso, P&C Compliance Unit; E-mail: dee_caruso@ins.state.il.us Phone: (217) 782-1790; Fax: (217) 558-2083 For All Other Personal Lines Filing Questions: Kathi Armstrong, P&C Compliance Unit; E-mail: kathi_armstrong@ins.state.il.us Phone: (217) 558-2960; Fax: (217) 558-2083

Background

This bulletin is designed to give industry guidance on how the Department will interpret and enforce the provisions of HB1640 and insurance scoring provisions of HB3661.

Interpretation

The Department will interpret each section and Subsection in the order shown that combines the language from both bills. This bulletin addresses only those Sections and Subsections for which the Department believes industry desires and needs interpretation and clarification.

Section 10 -- Scope

"Homeowners" includes renters and condo-owners policy forms, as these forms are included in the typical HO series of homeowner forms, and are individually underwritten for personal or family use.

Section 15 -- Definitions

"Adverse Action" includes ‘nonrenewal' of policies. Although the term is not expressly included, the Department interprets the definition of "adverse action" to include nonrenewals. Nonrenewal can be included under the terms "denial of insurance" or "unfavorable change in the terms, amounts of insurance," etc.

The Department interprets the definition of "adverse action" to include an applicant's or insured's: not receiving the best rate, best coverage, or a discount; receiving a surcharge; and not being placed in an insurer's best tier or program within the company.

Insurers must provide the appropriate adverse action notification in each of these instances.

If an insurer provides a new applicant with an adverse action notification for not receiving the best tier, rate, coverage, etc., the insurer need not provide such notice at subsequent renewals unless the insurer changes the insured's rates, coverages, terms, amounts, etc., to the detriment of the insured, and such action is due, in whole or in part, to credit information.

Section 20 -- Use of Credit Information

Subsection (1)

An insurer...that uses credit information to underwrite or rate risks shall not "use an insurance score that is calculated using income, gender, address, ethnic group, religion, marital status, or nationality of the consumer as a factor."

The Department interprets this language to mean that starting October 1, 2003, insurers may not use a scoring model or other process using credit, on new business, if such model or other process using credit contains any of these prohibited factors.

In addition, on October 1, 2003, insurers must remove any insurance score on any existing policyholder if the policyholder's score was calculated with a model or other process using credit, and such model or process contained any of these prohibited factors.

If the Department finds -- through form and rate filing analyses, consumer complaints, market conduct examinations, or through any other means -- that insurers have, after October 1, 2003, used insurance scores that contain such prohibited factors, and use of such scores have adversely affected Illinois consumers, the Department will take appropriate regulatory action, including, but not limited to requiring insurers to re-underwrite and re-rate policyholders back to the October 1, 2003 effective date of HB1640, and requiring insurers to refund any premium a policyholder has overpaid.

Subsection (2)

An insurer...that uses credit information to underwrite or rate risks shall not "deny, cancel, or nonrenew a policy...solely on the basis of credit information, without consideration of any other applicable underwriting factor independent of credit information...An insurer shall not be considered to have denied, cancelled, or nonrenewed a policy if coverage is available through an affiliate."

Subsection (2) does not define "other applicable underwriting factor." However, "other applicable factors" cannot be used as a mere pretext for avoiding the spirit and intent of the law.

Subsection (2) allows an insurer to deny, cancel, or nonrenew a policy, solely on the basis of credit information, as long as coverage is available through an affiliate. This Subsection does not require the affiliate's coverages, terms, conditions, or rates to be equal to the insurer's coverages, terms, conditions or rates. However, if the

move to the affiliate insurer results in any reduction in coverages, terms, conditions, removal of discounts, addition of surcharges, increase in rates, or other action that is detrimental to the applicant or insured, such action is an "adverse action" for which insurers must provide the appropriate notification.

In addition, the Department interprets the phrase "coverage is available" to mean that the insurer has affirmatively offered such coverage through the affiliate.

Subsection (3)

An insurer...that uses credit information to underwrite or rate risks shall not "base an insured's renewal rates...solely upon credit information, without consideration of any other applicable underwriting factor independent of credit information...An insurer shall not be considered to have based rates solely on credit information if coverage is available in a different tier of the same insurer."

As with Subsection (2) above, Subsection (3) does not define "other applicable underwriting factor." All Department comments regarding this phrase as stated in Subsection (2) above, also apply to Subsection (3).

Subsection (3) allows an insurer to base renewal rates, solely upon credit information, as long as coverage is available in a different tier of the same insurer. This Subsection does not require the different tier to include the same coverages, terms, conditions, or rates. However, any reduction in coverages, terms, conditions, removal of discounts, addition of surcharges, increase in rates, or other action that is detrimental to the insured, is an "adverse action" for which insurers must provide the appropriate notification.

In addition, the Department interprets the phrase "coverage is available" to mean that the insurer has affirmatively offered such coverage in the different tier.

Subsection (4)

An insurer...that uses credit information to underwrite or rate risks shall not...take an adverse action against a consumer solely because he or she does not have a credit card account, without consideration of any other applicable factor independent of credit information.

As with Subsections (2) and (3) above, Subsection (4) does not define "other applicable underwriting factor." All Department comments regarding this phrase as stated in Subsections (2) and (3) above, also apply to Subsection (4).

Subsection (5)

An insurer...that uses credit information to underwrite or rate risks shall not...consider an absence of credit information or an inability to calculate an insurance score in underwriting or rating personal insurance, unless the insurer does one of the following:

(A) Treats the consumer as otherwise filed with the Department, if the insurer presents information that such an absence or inability relates to the risk for the insurer and submits a filing certification form signed by an officer for the insurer certifying that such treatment is actuarially justified.

The Department created a certification form (attached) for company officers to complete, sign, and file with any filing that treats "no hit" or "thin file" consumers in any manner other than contemplated in Subsection (5), and to be completed, signed, and filed with any future filing where such provision is revised.

For insurers whose underwriting guidelines are not required to be filed in Illinois because, for example, the company does not use multiple tiers or programs within one company, any treatment of "no hit" or "thin file" consumers pursuant to Subsection (5)(A) must be filed with the Department and must be certified by a company officer.

(B) Treats the consumer as if the applicant or insured had neutral credit information, as defined by the insurer.

HB1640 does not define the term "neutral," but rather, allows insurers to define the term.

If, after reviewing filings and discussing an insurer's treatment of "no hit" or "thin file" consumers, the Department determines that an insurer's treatment is not "neutral," the Department may require the company to treat such provision as a provision allowed under Subsection (5)(A) and require a company officer's actuarial certification.

(C) Excludes the use of credit information as a factor and uses only other underwriting criteria.

Insurers who treat "no hit" or "thin file" consumers according to Subsection (5)(C) must exclude the use of credit information totally, and develop a different set of underwriting or rating criteria. An insurer that uses credit information to develop discounts only may not simply deny the discount and consider such action to comply with this Subsection.

If the Department determines that an insurer's treatment does not exclude use of credit totally, the Department may require the company to treat such provision as a provision allowed under Subsection (5)(A) and require a company officer's actuarial certification.

Subsection (7)

An insurer...that uses credit information to underwrite or rate risks shall not...use credit information unless not later than every 36 months following the last time that the insurer obtained current credit information for the insured, the insurer recalculates the insurance score or obtains an updated credit report.

The Department interprets this language to mean that insurers that use credit information must re-underwrite and/or re-rate a consumer, using current credit information, at least every 36 months following the last time

current credit information was used. (Note that there are exceptions to this requirement under Subsection (7)(C).)

Thus, for policies renewed on or after the October 1, 2003 effective date, insurers must begin re-underwriting and re-rating insureds who have not been re-underwritten or re-rated within 36 months after the last time current credit information was used, even if the last use of current credit occurred prior to October 1, 2003. For example, if the insurer last obtained the insured's current credit information on September 1, 1999, the company must obtain current credit information at the first renewal processed after October 1, 2003.

If the Department finds, through form and rate filing analyses, consumer complaints, market conduct examinations, or through any other means, that insurers have processed renewals after October 1, 2003 with credit information that is older than 36 months, and such actions have adversely affected Illinois consumers, the Department will take appropriate regulatory action, including, but not limited to requiring insurers to re-underwrite and re-rate policyholders back to the renewal date at which current credit information should have been obtained, and requiring insurers to refund any premium a policyholder has overpaid.

Regardless of the other requirements of this Section [i.e. Subsection (7)]:

(C) An insurer is not required to obtain current credit information for an insured, despite the requirements of subitem (A) of item (7) of this Section if one of the following applies:

The Department interprets Subsection (7)(C) to mean that insurers will not have to re-underwrite or re-rate an insured every 36 months or annually at the consumer or agent's requests, as long as one of the following apply:

(a) The insurer is treating the consumer as otherwise filed with the Department.

Subsection (7)(C)(a) poses unique concerns to the Illinois Department that have not been experienced in other states that have adopted the NCOIL model. Specifically, in the Illinois legislation, the NCOIL model's words "approved by" were changed to "filed with." Thus, the effect allows insurers to avoid re-underwriting or re-rating consumers every 36 months, or annually at the consumer or agent's request, as long as the insurer has filed the differing treatment with the Department.

The Department believes that the intent of the original NCOIL model was to require insurers to periodically re-underwrite and re-rate consumers who are not being treated according to Subsections (7)(C)(b), (c), or (d) below. The original NCOIL model allowed insurers to file different programs, but allowed the Department of Insurance to review and approve such filings, thereby ensuring that consumers would be periodically re-underwritten or re-rated using current credit information.

Under the Illinois version of the NCOIL model, the Department may not disapprove an insurer's filings, even if the filing contains provisions to never re-underwrite or re-rate a consumer using current credit information.

The Department will rely on the responsible actions of insurers to comply with what the Department believes to be the spirit and intent of the original NCOIL model, which is to periodically re-underwrite and re-rate consumers using current credit information.

The Department will monitor insurer filings to track how insurers are using this provision.

(b) The insured is in the most favorably-priced tier of the insurer, within a group of affiliated insurers. However, the insurer shall have the discretion to order credit information, if consistent with its underwriting guidelines.

Insurers will not be required to obtain current credit information every 36 months, or annually at the consumer or agent's request if the insured is already in the company's most favorably priced program, or within the most favorably-priced program within a group of affiliated companies.

(c) Credit was not used for underwriting or rating the insured when the policy was initially written. However, the insurer shall have the discretion to use credit for underwriting or rating the insured upon renewal, if consistent with its underwriting guidelines.

Insurers are not required to use credit for existing policyholders if credit was not used to underwrite or rate such policyholders when initially written. However, if the insurer later chooses to use credit on existing policyholders, then the insurer must comply with the other re-underwriting and re-rating requirements of this Subsection, as well as all other requirements of HB1640, the insurance scoring provisions of HB3661, and this bulletin.

(d) The insurer re-evaluates the insured beginning no later than 36 months after inception and thereafter based upon other underwriting or rating factors, excluding credit information.

If the insurer chooses to remove credit as an underwriting or rating factor no later than 36 months after inception, then the new treatment may not be related to credit in any way, whether directly or indirectly, and any relation to credit must be removed completely to comply with this Subsection.

Subsection (8)

An insurer...that uses credit information to underwrite or rate risks shall not...use the following as a negative factor in any insurance scoring methodology or in reviewing credit information for the purpose of underwriting or rating a policy of personal insurance...

The term "negative factor" is not defined in HB1640. However, the Department interprets "negative" to mean any use that results in a detriment to the applicant or insured (i.e. less favorable coverage or terms, higher rates, etc.).

The Department interprets this language to mean that:

- For new business written on or after October 1, 2003, insurers may not use any insurance scoring methodology that includes a prohibited factor.
- For insureds initially written prior to October 1, 2003, insurers must re-underwrite or re-rate such consumers, using an insurance scoring model that does not include a prohibited factor, at the first renewal processed after October 1, 2003.

If the Department finds, through form and rate filing analyses, consumer complaints, market conduct examinations, or through any other means, that insurers have, after October 1, 2003, violated this Subsection, and such violations have adversely affected Illinois consumers, the Department will take appropriate regulatory action.

Section 25 -- Dispute resolution and error correction

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 that determination from either the consumer reporting agency or from the insured, the insurer shall re-underwrite and re-rate the consumer within 30 days after receiving the notice. After re-underwriting or re-rating the insured, the insurer shall make any adjustments necessary, consistent with its underwriting and rating guidelines.

The Department interprets this Section to mean that insurers' underwriting guidelines must provide that any change that is more favorable to the applicant or insured will be made immediately. Any change that would be unfavorable may be handled according to the insurer's business decision to handle such change.

The Department will rely on the responsible actions of insurers not to develop underwriting and rating guidelines that avoid the spirit and intent of this Section.

Section 35 -- Adverse action notification

"If an insurer takes an adverse action based upon credit information, the insurer must meet all of the notice requirements of this Section..."

HB1640 requires adverse action notification only if the insurer takes adverse action based on "credit information."

Therefore, if an insurer uses an insurance scoring methodology or other scoring process that includes factors other than credit information, the Department interprets this Section to mean that the adverse action notification requirements apply only to the credit information contained in the insurance scoring methodology or process.

However, there are other laws in the Illinois Insurance Code that require cancellation and nonrenewal notices to provide a specific explanation of the reason(s) for cancellation or nonrenewal.

Therefore, if a company's insurance scoring model includes both credit information and non-credit-related factors, HB1640 requires the adverse action notice to include up to four (4) reasons related to credit information, if the adverse action was based upon credit information.

HB1640 does not require adverse action notices to contain reasons not related to credit information. However, if an insurer cancels or nonrenews a policy and the reason(s) for cancellation or nonrenewal include both credit-related and non-credit-related reasons, insurers must comply with HB1640 and all other Illinois cancellation and nonrenewal laws.

As stated earlier in this bulletin, the Department interprets the definition of "adverse action" to include an applicant's or insured's: not receiving the best rate, coverages or terms; not receiving a discount; receiving a surcharge; and/or not being placed in the insurer's best tier or program within the company, and that insurers must provide the appropriate adverse action notification in each of these instances.

If an insurer provides a new applicant with an adverse action notification for not receiving the best rate, coverage, etc., the insurer need not provide notice at subsequent renewals unless the insurer changes the insured's rates, coverages, terms, amounts, etc., to the detriment of the insured, and such action was due, in whole or in part, to credit information.

Section 40 -- Filing

(a) Insurers that use insurance scores to underwrite and rate risks must file their scoring models (or other scoring processes) with the Department. A third party may file scoring models on behalf of insurers. A filing that includes insurance scoring may include loss experience justifying the use of credit information.

HB1640 does not specify when scoring models must be filed. Because scoring models affect rating procedures, such models must be filed according to the time frames in Rule 754 (50 IL Adm. Code 754), as is required for all other rating information.

An insurer that files models on its own behalf must:

- File currently-used models no later than October 1, 2003.
- File new or revised models no later than 10 days of their stated effective dates.

HB1640 allows a third party to file scoring models on an insurer's behalf. The Department will not require third party vendors to file the actual scoring models more than once.

An insurer that uses a third party vendor's insurance scoring model(s):

- Remain responsible for ensuring that the vendor has properly filed the model(s) with the Department before notifying the Department of any adoption.

- Must notify the Department no later than October 1, 2003 that it currently uses a third party vendor's model(s), and provide the appropriate model reference name for cross-reference with models filed by third party vendors.
- Notify the Department no later than 10 days after the effective date if the insurer adopts a new or revised third party vendor model, and provide the appropriate model reference name for cross-reference with models filed by third party vendors.

(b) Any filing relating to credit information is considered to be a trade secret under the Illinois Trade Secrets Act.

HB1640 defines "credit information" as "...any credit-related information derived from a credit report, found on a credit report, or provided on an application for personal insurance. Information that is not credit related shall not be considered "credit information," regardless of whether it is...used to calculate an insurance score."(emphasis added)

Since the definition of "credit information" specifically states that information that is not credit related shall not be considered credit information -- even if it is used to calculate an insurance score, the Department will not consider non-credit-related factors to be a trade secret, even if they are contained in an insurance score. Therefore, insurers and third parties must identify non-credit-related factors, and such factors will not be considered trade secrets. Insurers and third parties will not be required to file the weighting factors applied to the non-credit-related factors.

To make it easier for the Department to identify and keep confidential trade secret material separate from public information, insurers and third parties must file credit-related portions of their insurance scoring models or processes separately from non-credit-related portions, and mark the credit-related portion "Confidential." The two separate filings may be mailed in the same envelope, but must be filed with separate cover letters, contents, etc.

Reminders about Illinois cancellation and nonrenewal laws

Insurers should keep in mind all of the requirements for renewal and cancellation and nonrenewal contained in HB1640/HB3661, as well as the Illinois Insurance Code. For example:

If a company looks only at credit, the company:

- May not nonrenew.
- May offer renewal coverage in an affiliate without sending a nonrenewal notice, but must give the insured 60 days advance notice of the assignment per Section 143.11b (215 ILCS 5/143.11b).
- May offer renewal coverage in the same company, but in a different tier, etc., by providing a regular renewal notice.

If the company looks at other factors besides credit, the company may:

- Nonrenew if the company follows all Illinois nonrenewal laws.
- Offer renewal coverage in an affiliate without sending a nonrenewal notice, but must give the insured 60 days advance notice of the assignment per Section 143.11b (215 ILCS 5/143.11b).
- Offer renewal coverage in the same company, but in a different tier, etc., by providing a regular renewal notice.

If the company's coverages, tier, rate, etc, results in a detriment to the consumer, the company must provide the appropriate adverse action notice.

If the company's coverages, tier, rate, etc., is better for the insured, but still is not the company's best coverage, tier, rate, etc., the company must provide the appropriate adverse action notice only if the company had never previously given such adverse action notice to the consumer advising that the consumer wasn't receiving the best rate based in whole or in part on credit information.

Enforcement

The Department will enforce the provisions of HB1640 and the insurance scoring provisions of HB3661 using all appropriate regulatory activities, including form and rate filing laws and rules, consumer complaint tracking, and market conduct reviews.

If the Department receives filings that violate any provisions in this bulletin, or finds that insurers are filing provisions that are pretexts for avoiding the spirit and intent of this law, the Department will consider further regulatory or legislative action at the earliest opportunity.

Illinois Certification Of Compliance Form Actuarial Justification For Treatment Of Consumers With Lack Of Or Incomplete Credit History