

**LOST**

1 Senator Fort of the 39th offered the following amendment:

2 Amend the Senate Health and Human Services Committee substitute to HB 1028 by inserting  
3 after "reforms;" on line 4 on page 1 "to provide definitions; to provide for the use of credit  
4 and credit scoring information in underwriting or rating medical malpractice risks by  
5 insurance companies; to provide limitations on the use of such information; to provide for  
6 dispute resolution and error correction; to provide for notifications; to require certain filings  
7 by insurers using credit and credit scoring information for medical malpractice insurance; to  
8 provide for indemnification;".

9 By striking line 27 on page 16 and inserting in lieu thereof the following:

10 "conflicting provisions of Title 51 or any other law.

11 **ARTICLE 4**

12 31-46-70.

13 As used in this article, the term:

14 (1) "Adverse action" shall mean a denial or cancellation of, an increase in any charge for,  
15 or a reduction or other adverse or unfavorable change in the terms of coverage or amount  
16 of any insurance, existing or applied for, in connection with the underwriting of medical  
17 malpractice insurance.

18 (2) "Affiliate" shall mean any company that controls, is controlled by, or is under  
19 common control with another company.

20 (3) "Applicant" shall mean an individual health care facility or health care provider who  
21 has applied to be covered by a medical malpractice insurance policy with an insurer.

22 (4) "Consumer" shall mean an insured whose credit information is used or whose  
23 insurance score is calculated in the underwriting or rating of a medical malpractice  
24 insurance policy or an applicant for such a policy.

25 (5) "Consumer reporting agency" shall mean any person or entity that, for monetary fees,  
26 dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the  
27 practice of assembling or evaluating consumer credit information or other information  
28 on consumers for the purpose of furnishing consumer reports to third parties.

29 (6) "Credit information" shall mean any credit related information derived from a credit  
30 report or found on a credit report utilized by an insurer or used by an insurer to calculate  
31 an insurance score for medical malpractice insurance. Information that is not credit

1 related shall not be considered credit information, regardless of whether it is contained  
2 in a credit report or in an application, or is used to calculate an insurance score.

3 (7) "Credit report" shall mean any written, oral, or other communication of information  
4 by a consumer reporting agency bearing on a consumer's credit worthiness, credit  
5 standing, or credit capacity which is used or expected to be used or collected in whole or  
6 in part for the purpose of serving as a factor to determine malpractice insurance  
7 premiums, eligibility for coverage, or tier placement.

8 (8) "Insurance score" shall mean a number or rating that is derived from an algorithm,  
9 computer application, model, or other process that is based in whole or in part on credit  
10 information for the purposes of predicting the future insurance loss exposure of an  
11 individual applicant or insured.

12 (9) "Medical malpractice insurance" shall mean an insurance policy which would pay  
13 a claim in the event of injury or death to a patient caused by a health care facility or  
14 health care provider through an act or omission which constitutes a negligent deviation  
15 from the standard of care in the treatment of such patient.

16 31-46-71.

17 An insurer authorized to do business in this state that uses credit information to underwrite  
18 or rate risks, shall not:

19 (1) Use an insurance score that is calculated using income, gender, race, address, zip  
20 code, ethnic group, religion, marital status, or nationality of the consumer as a factor;

21 (2) Deny, cancel, or nonrenew a policy of medical malpractice insurance solely on the  
22 basis of credit information, without consideration of any other applicable underwriting  
23 factor independent of credit information and not expressly prohibited by paragraph (1)  
24 of this Code section;

25 (3) Base an insured's renewal rates for medical malpractice insurance solely upon credit  
26 information, without consideration of any other applicable factor independent of credit  
27 information;

28 (4) Take an adverse action against a consumer solely because he or she does not have a  
29 credit card account, without consideration of any other applicable factor independent of  
30 credit information;

31 (5) Consider an absence of credit information or an inability to calculate an insurance  
32 score in underwriting or rating medical malpractice insurance, unless the insurer does one  
33 of the following:

34 (A) Treat the consumer as otherwise approved by the Commissioner of Insurance, if  
35 the insurer presents information that such an absence or inability relates to the risk for  
36 the insurer;

1 (B) Treat the consumer as if the applicant or insured had neutral credit information, as  
2 defined by the insurer; or

3 (C) Exclude the use of credit information as a factor and use only other underwriting  
4 criteria;

5 (6) Take an adverse action against a consumer based on credit information unless an  
6 insurer obtains and uses a credit report issued or an insurance score calculated within 180  
7 days from the date the policy is first written or renewal is issued;

8 (7) Use credit information unless not later than every 36 months following the last time  
9 that the insurer obtained current credit information for the insured, the insurer  
10 recalculates the insurance score or obtains an updated credit report. Regardless of the  
11 requirements of this paragraph:

12 (A) At annual renewal, upon the request of a consumer, the insurer shall reunderwrite  
13 and rerate the policy based upon a current credit report or insurance score. An insurer  
14 need not recalculate the insurance score or obtain the updated credit report of a  
15 consumer more frequently than once in a twelve-month period. Prior to a consumer  
16 exercising his or her option for the insurer to reunderwrite or rerate the policy, the  
17 insurer shall notify the consumer orally or in writing that the reunderwriting or rerating  
18 of the policy may result in a higher rate, a lower rate, or other possible consequences,  
19 including nonrenewal or termination of the policy, or could produce no change for the  
20 consumer;

21 (B) The insurer shall have the discretion to obtain current credit information upon any  
22 renewal before the 36 months, if consistent with its underwriting guidelines; and

23 (C) No insurer need obtain current credit information for an insured, despite the  
24 requirements of subparagraph (A) of paragraph (7) of this Code section, if one of the  
25 following applies:

26 (i) The insurer is treating the consumer as otherwise approved by the Commissioner  
27 of Insurance;

28 (ii) The insured is in the most favorably priced tier of the insurer, within a group of  
29 affiliated insurers; however, the insurer shall have the discretion to order such report,  
30 if consistent with its underwriting guidelines;

31 (iii) Credit information was not used for underwriting or rating such insured when the  
32 policy was initially written; however, the insurer shall have the discretion to use credit  
33 for underwriting or rating such insured upon renewal, if consistent with its  
34 underwriting guidelines; or

35 (iv) The insurer reevaluates the insured beginning no later than 36 months after  
36 inception and thereafter based upon other underwriting or rating factors, excluding  
37 credit information; or

1 (8) Use the following as a negative factor in any insurance scoring methodology or in  
2 reviewing credit information for the purpose of underwriting or rating a policy of medical  
3 malpractice insurance:

4 (A) Credit inquiries not initiated by the consumer or inquiries requested by the  
5 consumer for his or her own credit information;

6 (B) Inquiries relating to insurance coverage, if so identified on a consumer's credit  
7 report;

8 (C) Collection accounts with a medical industry code, if so identified on the  
9 consumer's credit report;

10 (D) Multiple lender inquiries, if coded by the consumer reporting agency on the  
11 consumer's credit report as being from the home mortgage industry and made within  
12 30 days of one another, unless only one inquiry is considered; or

13 (E) Multiple lender inquiries, if coded by the consumer reporting agency on the  
14 consumer's credit report as being from the automobile lending industry and made  
15 within 30 days of one another, unless only one inquiry is considered.

16 31-46-72.

17 If an item or items contained in the credit information for an applicant or insured are in  
18 dispute pursuant to the dispute resolution process set forth in the federal Fair Credit  
19 Reporting Act, 15 USC 1681i, the insurer, during the 45 day period following the date on  
20 which the item was placed in dispute pursuant to such dispute resolution process, shall  
21 either not use such disputed item or items in making its underwriting or rating  
22 determination for such applicant or insured or shall treat the credit information as neutral  
23 with respect to the item or items in dispute.

24 31-46-73.

25 (a) If an insurer writing medical malpractice insurance uses credit information in  
26 underwriting or rating a consumer, the insurer or its agent shall disclose, either on the  
27 insurance application or at the time the insurance application is taken, that it may obtain  
28 credit information in connection with such application. Such disclosure shall be either  
29 written or provided to an applicant in the same medium as the application for insurance.  
30 The insurer need not provide the disclosure statement required under this Code section to  
31 any insured on a renewal policy, if such consumer has previously been provided a  
32 disclosure statement.

33 (b) The disclosure required by this Code section shall be in substantially the following  
34 form: "In connection with this application for insurance, we may review your credit report

1 or obtain or use a credit based insurance score based on the information contained in that  
2 credit report. We may use a third party in connection with the development of your  
3 insurance score."

4 31-46-74.

5 If an insurer takes an adverse action based upon credit information, the insurer must meet  
6 the notice requirements of this Code section. Such insurer shall provide notification to the  
7 consumer that an adverse action has been taken, in accordance with the requirements of the  
8 federal Fair Credit Reporting Act, 15 USC 1681m(a), and shall provide notification to the  
9 consumer explaining the reason or reasons for the adverse action. The reasons must be  
10 provided in sufficiently clear and specific language so that a person can identify the basis  
11 for the insurer's decision to take an adverse action. Such notification shall include a  
12 description of up to four factors that were the primary influences of the adverse action. The  
13 use of generalized terms such as "poor credit history," "poor credit rating," or "poor  
14 insurance score" does not meet the explanation requirements of this Code section.  
15 Standardized credit explanations provided by consumer reporting agencies or other third  
16 party vendors are deemed to comply with this Code section.

17 31-46-75.

18 (a) Insurers that use insurance scores to underwrite and rate risks must file their scoring  
19 models or other scoring processes with the Commissioner of Insurance. A third party may  
20 file scoring models on behalf of insurers licensed to do business in this state, provided that  
21 such third parties are on an approved list maintained by the Commissioner of Insurance.  
22 A filing that includes insurance scoring may include loss experience justifying the use of  
23 credit information.

24 (b) Any filing relating to credit information is considered to be a trade secret and  
25 proprietary information of the entity filing the information. Such information shall not be  
26 subject to public disclosure and shall be exempt from disclosure under the provisions of  
27 Article 4 of Chapter 18 of Title 50.

28 31-46-76.

29 An insurer shall indemnify, defend, and hold agents harmless from and against all liability,  
30 fees, and costs arising out of or relating to the actions, errors, or omissions of an agent or  
31 a producer who obtains or uses credit information or insurance scores for an insurer,  
32 provided the agent or producer follows the instructions and procedures established by the  
33 insurer and complies with any applicable law or regulation. Nothing in this section shall

1 be construed to provide a consumer or other insured with a cause of action that does not  
2 exist in the absence of this section.

3 31-46-77.

4 (a) No consumer reporting agency shall provide or sell data or lists that include any  
5 information that in whole or in part was submitted in conjunction with an insurance inquiry  
6 about a consumer's credit information or a request for a credit report or insurance score.  
7 Such information includes, but is not limited to, the expiration dates of an insurance policy  
8 or any other information that may identify time periods during which a consumer's  
9 insurance may expire and the terms and conditions of the consumer's insurance coverage.

10 (b) The restrictions provided in subsection (a) of this Code section do not apply to data or  
11 lists the consumer reporting agency supplies to the insurance agent or producer from whom  
12 information was received, the insurer on whose behalf such agent or producer acted, or  
13 such insurer's affiliates or holding companies.

14 (c) Nothing in this Code section shall be construed to restrict any insurer from being able  
15 to obtain a claims history report or a motor vehicle report.

16 31-46-78.

17 Notwithstanding any provision of law to the contrary, insurers shall be allowed to use  
18 insurance scores in rating and underwriting medical malpractice insurance subject to the  
19 provisions of this article."