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September 17, 2004

John Campbell, Chief Counsel  
Kansas Department of Insurance  
420 SW 9<sup>th</sup> Street  
Topeka, Kansas 66612-1603

Dear Mr. Campbell:

Thank you for this opportunity to provide written comments on proposed Bulletin 2004-6 regarding implementation of the Kansas Insurance Score Act (K.S.A. 2003 Supp. 40-5101, *et seq.*, hereafter referred to as the Act) and current regulation (K.A.R. 40-1-50) on the use of credit-based insurance scores.

NAMIC is a full-service international trade association with more than 1,350 member companies underwriting 41 percent (\$170 billion) of the property/casualty insurance premium in the United States. In Kansas, NAMIC members (including 13 domiciled companies) underwrite 35.5 percent (\$1.58 billion) of the direct written premium in the state. NAMIC membership includes four of the seven largest p/c carriers, every size regional and national p/c insurer and hundreds of farm mutual insurance companies.

NAMIC believes that the Kansas Insurance Department's interpretation of the Act, as reflected by the proposed bulletin as well as by current regulation, requires clarification and revision. The current regulation and the proposed bulletin significantly alter existing law and place burdensome and unrealistic compliance obligations on insurance companies.

NAMIC's greatest concern with the proposed bulletin is as follows:

- Included in the introduction of draft Bulletin 2004-6, is the Department's interpretation of "sole use," which asserts that individuals with the worst credit history are entitled to the same treatment as individuals with the best credit history unless there is a non-credit related reason to take an "adverse action."

In 2003, Representative George Keiser, Chair of the National Conference of Insurance Legislators' (NCOIL) Property-Casualty Insurance Committee, issued a letter clarifying NCOIL's intended meaning of "sole use" as it applies to the NCOIL *Model Act Regarding the Use of Credit Information in Personal Insurance*, upon which the Kansas Act is based. (This letter is attached.) Representative Keiser's letter clearly states that the "sole use" language in the model was drafted to ensure that factors other than credit would be considered but that credit-experience can be the definitive factor on an underwriting decision. "It was not intended to reflect on whether the combination of all factors would result in credit information being the ultimate discretionary factor. NCOIL's concern was to assert the role of traditional underwriting influences while acknowledging the legitimacy of insurance scoring," Rep. Keiser states in his letter. In other words, an individual's credit-score can be the determining factor just not the only

factor considered in making an adverse underwriting decision. As Rep. Keiser's letter says: "It would be difficult to imagine an auto insurer that failed to place due importance on driving record when underwriting a personal lines auto insurance policy."

Earlier this week, at the National Association of Insurance Commissioner's (NAIC) meeting in Alaska, the Market Regulation and Consumer Affairs (D) Committee adopted a report authored by the Credit Scoring Working Group that includes the following interpretation of "sole use:"

"An insurer must consider other relevant factors, in addition to credit information, in the underwriting decision. An insurer shall be prohibited from deeming other underwriting factors irrelevant for new or renewal business, regardless of how favorable these other underwriting factors are, if a person's credit score does not meet a specified threshold. For example, an insurer should be prohibited from declining to write a policy when the credit score is below some specific value. An insurer should not be prohibited from declining to write a policy when the credit score is below a specific value and the driver has had several accidents."

Both NCOIL and the NAIC Market Regulation and Consumer (D) Affairs Committee agree that an individual's credit-based insurance score can be the determining factor in making an adverse underwriting decision, just not the only factor considered.

**NAMIC Recommendation:** The draft bulletin should be changed to reflect the "sole use" interpretation of NCOIL and NAIC.

NAMIC's specific concerns with current Regulation K.A.R. 40-1-50 are as follows:

- Section (a)(1) through (8) defines terms not included in the definitions section of the Act and, furthermore, the proposed regulation does not define any of the terms included in the definitions section of the Act. In other words, the definitions section of the proposed rule is completely different and therefore inconsistent with current law.
- Section (b) of Regulation K.A.R. 40-1-50 states:

"No insurer authorized to write business in the state of Kansas shall use credit information or an insurance score that has an adverse premium or coverage impact on an **insured**, unless all of the following conditions are met:"

Use of the term "insured" in this section suggests the rule only applies to renewal business. The term "insured" is not defined in the Act. The Act, however, defines the term "consumer" as follows:

"Consumer means an insured whose credit information is used or whose insurance score is calculated in the underwriting or rating of a personal insurance policy. Consumer also includes an applicant for a personal insurance policy."

If the rule is meant to apply to both new and renewal business the term "consumer" should be added to the definitions section and this term should replace the term "insured" in the rule.

- Section (b) of Regulation K.A.R. 40-1-50 states the conditions to be met for utilizing an insurance score with an adverse premium or coverage impact. Section (b)(2) states:

“The insurer has **documented** the factors considered.”

This language is not found in the Act and creates a requirement not defined in current law. Furthermore, the language is ambiguous and leaves open to interpretation what is meant by “documented” and further leaves unclear how often and to whom this information should be provided.

- Section (b)(3) of Regulation K.A.R. 40-1-50 states:

“The insurer provides the insured with each reason for the change in the premium or coverage.”

Requiring insurers to provide each and every reason for a change in premium or coverage is unrealistic and, more importantly, not consistent with the Act. (See K.S.A. 2003 Supp. 40-5107.) This language should be altered to clarify that only reasons based upon the applicant or policy holders credit-based insurance score apply.

- Section (c) of Regulation K.A.R. 40-1-50 states:

“Each insurer using credit information for the purpose of rating shall have specific, written criteria governing how credit information is utilized by the insurer in underwriting, tier placement, and insurance scoring.”

This section is unnecessary and also not consistent with the Act. K.S.A. 2003 Supp. 40-5108 requires insurance companies using credit scores to file their models and processes with the insurance department and states that such models and processes are to be considered trade secret and confidential under the open records law.

- Section (d)(1) of Regulation K.A.R. 40-1-50 states:

“Maintain evidence of the notice to the consumer and a record of the contents of the credit information used for a minimum of **five years** after the adverse action was taken;”

This procedure is also not called for in the Act. Furthermore, requiring companies to maintain records for at least five years is burdensome and does not recognize that many companies use third party vendors and therefore do not receive actual credit information but simply receive a numerical score. In addition, it does not account for consumers that are no longer insured. Would this provision require insurers to retain records for consumers that are no longer policy holders?

**NAMIC Recommendation:** NAMIC does not believe Regulation K.A.R. 40-1-50 is consistent with current law as defined by the Kansas Insurance Score Act (K.S.A. 2003 Supp. 40-5101, *et seq.*) and we respectfully request that the current regulation and the proposed bulletin be revised and rewritten to reflect the Department’s current authority regarding credit-based insurance scores.

Again, thank you for this opportunity to express our views on proposed Bulletin 2004-6 and current Regulation K.A.R. 40-1-50 regarding implementation of the Kansas Insurance Score Act.

If you have questions or require further information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Thesing". The signature is written in a cursive style with a large initial "J" and a distinct "T".

Joe Thesing  
State Affairs Manager  
Central Region