

# TECHNICAL ADVISORY

## INDEPENDENT INSURANCE AGENTS OF LOUISIANA

TA 163

AUGUST 10, 2000

**SUBJECT:** THE FAIR CREDIT REPORTING ACT (FCRA)  
PART 1 - MVRs AND THE FCRA

**BACKGROUND:** Motor Vehicle Reports (MVRs) are a commonplace tool for underwriting automobile insurance (and often watercraft liability insurance). Since agencies review sometimes dozens of MVRs a day, they can seem a routine and even mundane part of insurance processing. However, extreme caution must be used in handling MVRs, due to various provisions of the FCRA.

**MAIN POINTS:** The FCRA was originally enacted in 1970, primarily for the dual purposes of protecting the *privacy* and *accuracy* of certain defined "consumer reports." To that end, the FCRA: (1) restricts access and use of consumer reports; (2) requires certain prescribed disclosures; (3) requires the written permission of the consumer under certain circumstances; (4) provides a process for the consumer to dispute inaccurate information; and (5) provides for both civil and criminal penalties for noncompliance.

**Definitions.** Given the broad definition in Section 603 of the statute, MVRs would almost certainly be considered included:

*603.(d) The term "consumer report" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for*  
*(A) credit or insurance to be used primarily for personal, family, or household purposes;*  
*(B) employment purposes;*

(C) any other purpose authorized under section 604.

Section 603 also defines an additional type of consumer report called an "investigative consumer report," which could also be a factor in processing automobile or homeowners insurance.

*603.(e) The term "investigative consumer report" means a consumer report or portion thereof in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends or associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any such items of information.*

Should the use of a "consumer report" result in any "adverse action" against the consumer, certain disclosures are required, and the consumer has the right that any incorrect information not be used, and in fact be deleted from their records. Here is the definition from the statute.

*603.(k)(1)(B) Adverse action means*  
*(i) a denial or cancellation of, any 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 insurance;*  
*(ii) a denial of employment or any other decision for employment that adversely affects any current or prospective employee.*

Section 604 provides for eleven general categories of "permissible purposes" for which any consumer report may be used. Among them are the *underwriting of insurance* and *employment*. It is a violation of the FCRA to use any consumer report for a purpose not permitted under the statute.

**Disclosures.** Another provision of the FCRA relating to the use of consumer reports is the requirement that consumers receive certain disclosures, as developed by the Federal Trade Commission (FTC), which regulates the FCRA. In the routine use of MVRs to *underwrite insurance*, there appears no disclosure requirement. However, should any sort of investigation be conducted, such would be considered an

"investigative consumer report," and Section 606 requires written disclosure to the consumer, as follows:

*606.(a) A person may not procure or cause to be procured an investigative consumer report on any consumer unless*

*(1) it is clearly and accurately disclosed to the consumer that an investigative consumer report including information as to his character, general reputation, personal characteristics and mode of living, whichever are applicable, may be made, and such disclosure*

*(A) is made in a writing mailed, or otherwise delivered, to the consumer, not later than three days after the date on which the report was first requested, and*

*(B) includes a statement informing the consumer of his right to request the additional disclosures provided for under subsection (b) of this section and the written summary of the rights of the consumer prepared pursuant to Section 609(c); and*

*(2) the person certifies or has certified to the consumer reporting agency that*

*(A) the person has made the disclosures to the consumer required by paragraph (1); and*

*(B) the person will comply with subsection (b).*

The ACORD applications for Personal Auto and Homeowners contain the following language to meet this requirement:

*Important notice regarding the Fair Credit Reporting Act: In making this application for insurance, it is understood that as a part of our underwriting procedure, an investigative consumer report may be prepared whereby information is obtained through personal interviews with your neighbors, friends, or others with whom you are acquainted. This inquiry includes information as to your character, general reputation, personal characteristics and mode of living. If an investigation is made, you can be assured that it will be handled in the strictest confidence. If you wish information on the nature and scope of the customer report which may be requested, ask your agent for the address of the company handling your account.*

**Permission.** When MVRs are used to *underwrite insurance*, permission of the consumer is not required. However, if an MVR (or any other "consumer report") is used for *employment*, written permission is required, along with certain disclosures.

*604.(b)(2)(A) Except as provided in subparagraph (B), a person may not procure a consumer report, or cause a consumer report to be procured, for employment purposes with respect to any consumer, unless*

*(i) a clear and conspicuous disclosure has been made in writing to the consumer at any time before the report is procured or caused to be procured, in a document that consists solely of the disclosure, that a consumer report may be obtained for employment purposes; and*

*(ii) the consumer has authorized in writing (which authorization may be on the document referred to in clause (i)) the procurement of the report by that person.*

If "adverse action" is taken against the employee or prospective employee, Section 604 contains certain disclosure requirements:

*604.(b)(3) Except as provided in subparagraph (B), in using a consumer report for employment purposes, before taking any adverse action based in whole or in part on the report, the person intending to take such adverse action shall provide to the consumer to whom the report relates:*

*(i) a copy of the report; and*

*(ii) a description in writing of the rights of the consumer under this title, as prescribed by the Federal Trade Commission under Section 609(c)(3).*

The description of consumer rights referenced above was developed by the FTC as required under the FCRA, and is titled, "A Prescribed Summary of Consumer Rights." A copy is included in this Technical Advisory.

**Dangers to the agency.** Many agencies frequently receive requests from commercial insureds to provide an MVR on an employee or prospective employee. As discussed above, using an MVR to *underwrite insurance* is clearly a "permissible purpose" under the FCRA, and neither permission nor disclosure is required. However, if the

employer will use the MVR (or any other consumer report) for *employment*, in whole or in part, then the guidelines outlined above would apply. Many legal authorities believe that an agency which provides copies of MVRs to commercial insureds on their employees could possibly be named in a lawsuit by the employee against the employer, if any "adverse action" is taken against the employee (or prospective employee) as a result of information in the MVR, which was provided by the agency.

While compliance with the FCRA can seem cumbersome and difficult at times, the safeguards provided to consumers are very important. If, for example, an employee's MVR contains erroneous information, it is vitally important that the employee be fully informed before any "adverse action" is taken, to prevent a serious injustice to the employee. In addition, the employee must be given disclosures outlining how the errors can be corrected. Similarly, consumers expect a certain level of privacy of their personal information. Consumer reports such as MVRs and credit reports contain private, confidential information, and agencies should be extremely careful about how such information is handled, and to whom it is given.

Due to concerns about adverse legal action, a number of insurers have begun warning agencies against providing MVRs to commercial insureds on their employees or prospective employees.

Similarly, some third party providers of consumer reports (including credit scores, MVRs, etc.), have recently sent warnings to agencies about not providing MVRs of individual employees to commercial insureds. Here are some two samples:

*“Customers are not allowed to order MVRs for underwriting purposes and then pass the data to their clients for employment purposes. If your organization is currently processing data in this manner, you must stop immediately. This is a violation of the federal Fair Credit Reporting Act.”*

*“All reports, whether oral or written, will be kept strictly confidential. Except as required by law, no information from reports will be revealed to any person except the subject of the report or a person whose duty requires him/her to pass on the*

*transaction in relation to which the report was ordered. No information will be requested for the use of any other person, agency or organization except with our written permission. Reports may not be resold or transferred to any other person.”*

While agencies usually seek to accommodate a large commercial insured, providing an MVR to a commercial insured, when such action is expressly prohibited by the insurer and/or third-party provider, would leave the agency vulnerable in at least two ways. Not only do most contracts with third-party providers require the agency to hold the providers harmless, but such action would quite likely violate the agency/company agreement as well.

Additionally, as noted above, the agency could be brought into a lawsuit between the employee and employer, if “adverse action” was taken by the employer based on information supplied by the agency. This would probably happen regardless of *how* the agency conveyed the information to the employer/commercial insured. Some agencies mail MVRs to commercial insureds, while others report the information over the phone (especially if the MVR shows serious violations). Following either practice could be very dangerous to the agency.

**Some suggestions and guidelines.** In situations where an agency is going to provide MVRs to commercial insureds on their individual employees, (assuming the insurer or third party provider has not prohibited such practice), certain guidelines should be followed.

Recently, the Independent Insurance Agents of America (IIAA) released a report on the FCRA, which included some suggested letters for agencies to use if they elect to provide MVRs to commercial insureds on their employees. In the first letter, the *employee* (or prospective employee) gives written permission for the employer and the agency to obtain his/her MVR (as required by the FCRA). In the second letter, the *employer* sends the agency a letter certifying that the employer/commercial insured has reviewed its obligations under the FCRA, and will fully comply with all requirements. Both sample letters are included with this Technical Advisory.

The IAA also suggests that the agency include with each MVR sent to a commercial insured on an employee, a copy of the FTC's "Prescribed Summary of Consumer Rights." Also, IAA suggests that the agency initially send the commercial insured/employer one copy of the FTC's "Prescribed Notice of User Responsibilities." A copy is included with this Technical Advisory.

For a copy of IAA's complete report on the FCRA, refer to IIAL Technical Advisory #142 of July 26, 1999. A copy can also be obtained from the IAA website, at [www.independentagent.com](http://www.independentagent.com). The report is found in the Legal Group section, after the Member Log-In procedure is completed.

**NECESSARY  
ACTION:**

Distribute copies of this Technical Advisory to all appropriate agency staff.