



## Michigan Supreme Court Invalidates OFIS Rule Banning Use of Credit Scoring

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In a 4-3 decision handed down on July 8, 2010, the Michigan Supreme Court ruled that the Commissioner of Insurance does not have the authority to promulgate rules that ban the use of credit reports to establish discounted premiums for automobile and homeowner's insurance policies. *Insurance Institute of Michigan, et al. v Commissioner, Financial and Insurance Services, DLEG (137400, 137407)*.

MCL 500 2110a allows insurers to establish and maintain a premium discount plan without prior approval of the Legislature or the insurance commissioner. When insurance companies in Michigan began using insurance scoring to establish their discount plans, the Office of Financial and Insurance Services (OFIS) initially called for a legislative ban on the practice. When a Legislative ban was not forthcoming, OFIS promulgated rules to ban insurance scoring. Plaintiffs sued to enjoin enforcement of the rules.

The trial court ruled for Plaintiffs and granted the injunction. The Court of Appeals vacated the trial court's decision in a ruling that produced three separate opinions.

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The Supreme Court reversed, holding that scoring is permissible under the Insurance Code as long as the insurer's plan is consistent with the purposes of the act, reflects reasonably anticipated reductions in losses or expenses, and is uniformly applied to all of the insurer's insureds. The Supreme Court rejected Defendant's argument that scoring is not reasonable because credit reports are unreliable, noting that OFIS itself employs credit reports to make thousands of decisions each year that affect Michigan residents. "Because the Commissioner has no authority under the Insurance Code to ban a practice that the Code permits, the OFIS rules exceed the scope of the Commissioner's rulemaking authority under the Insurance Code." (Slip Opinion, p. 37).

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