

116TH CONGRESS
2D SESSION

S. 4755

To prohibit private passenger automobile insurers from using certain income proxies to determine insurance rates and eligibility.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 29, 2020

Mr. BOOKER introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To prohibit private passenger automobile insurers from using certain income proxies to determine insurance rates and eligibility.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Prohibit Auto Insur-
5 ance Discrimination Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) Private passenger automobile insurance
9 companies are institutions which help spread risk of
10 loss over a collective group of policyholders.

1 (2) Private passenger automobile insurance is
2 mandated in all States but New Hampshire. Legal
3 penalties for operating a vehicle without liability in-
4 surance in these States range from fines, to license
5 suspensions or revocations, to imprisonment.

6 (3) The private passenger automobile insurance
7 industry uses different variables to predict the over-
8 all costs and risks of drivers. The analysis and use
9 of these variables ultimately help the automobile in-
10 surer set premium rates charged to consumers which
11 the automobile insurer determines to be actuarially
12 supported.

13 (4) A pure loss ratio, a measurement of profit-
14 ability in insurance, is defined as losses divided by
15 premiums. Statistical correlations between certain
16 variables and pure loss ratios should be interpreted
17 to mean that the selected variable relates to profit-
18 ability, but not necessarily to the risk that an indi-
19 vidual will get into an automobile accident.

20 (5) A growing trend in the private passenger
21 automobile insurance industry is to use income prox-
22 ies for underwriting and rating. The use of income
23 proxies such as a driver's education level, occupa-
24 tion, employment status, home ownership status,
25 credit score, consumer report, previous insurer, and

1 prior purchase of insurance by the industry as vari-
2 ables that significantly influence the insurance pre-
3 miums charged to drivers has become commonplace.
4 Use of these income proxies in this fashion results
5 in higher rates being charged to lower income driv-
6 ers while lower rates are being charged to the more
7 affluent driver.

8 (6) The American public is largely unaware
9 that a person's education level, occupation, employ-
10 ment status, home ownership status, credit score,
11 consumer report, zip code, census tract, previous in-
12 surer, and prior purchase of insurance may be sig-
13 nificant factors used to determine eligibility for pre-
14 ferred auto insurance rates regardless of the per-
15 son's driving history. As a result of the individual's
16 ineligibility for preferred rates, the driver's policy
17 and rate will be only offered from an affiliate com-
18 pany that has higher rates.

19 **SEC. 3. REQUIREMENTS FOR PRIVATE PASSENGER AUTO-**
20 **MOBILE INSURERS.**

21 (a) USE OF CERTAIN FACTORS AND INCOME PROX-
22 IES PROHIBITED.—It shall be unlawful for a private pas-
23 senger automobile insurer, or any of its affiliate insurers,
24 to take into consideration any of the factors described in
25 subsection (b) relating to a consumer in determining that

1 consumer's eligibility for automobile insurance or in calcu-
2 lating the rate for that consumer.

3 (b) FACTORS.—The factors referred to in subsection
4 (a) are—

5 (1) gender;

6 (2) level of education;

7 (3) occupation;

8 (4) employment status;

9 (5) home ownership status;

10 (6) zip code or adjacent zip codes;

11 (7) census tract;

12 (8) marital status;

13 (9) credit score or credit-based insurance score;

14 (10) consumer report;

15 (11) previous insurer; or

16 (12) prior purchase of insurance of a consumer
17 from that automobile insurer.

18 (c) PUBLIC AVAILABILITY OF INFORMATION.—All
19 underwriting rules and rate filings for use by any private
20 passenger automobile insurer shall be available for public
21 inspection and may not be considered proprietary trade
22 secret information.

23 (d) REASONABLE PROCEDURES TO ASSURE COMPLI-
24 ANCE.—No person shall be held liable for any violation
25 of this Act if the person shows by a preponderance of the

1 evidence that at the time of the alleged violation the per-
2 son maintained reasonable procedures to assure compli-
3 ance with the provisions of this Act.

4 (e) RULES OF CONSTRUCTION.—

5 (1) FACTORS AND METHODS INFLUENCING
6 PREMIUMS.—For the purposes of this Act, a viola-
7 tion of subsection (a) shall be considered to have oc-
8 curred whenever the consideration of any of the fac-
9 tors described in subsection (b) prevents the con-
10 sumer from obtaining insurance at the lowest rate
11 available to the consumer from a private passenger
12 automobile insurer or any of its affiliates. Actions
13 considered a violation of such subsection include the
14 usage or consideration of any such factor resulting
15 in—

16 (A) the determination of a consumer's eli-
17 gibility for automobile insurance or the calcula-
18 tion of the rate for that consumer;

19 (B) an action which prevents a consumer
20 from receiving certain rebates or discounts;

21 (C) an action which prevents a consumer
22 from obtaining insurance from an automobile
23 insurer or any of its affiliate companies;

24 (D) a denial, cancellation, non-renewal, or
25 change in policy or coverage terms; or

1 (E) any other impact on a consumer's pre-
2 mium for insurance.

3 (2) AUTHORITY OF FEDERAL AND STATE AGEN-
4 CIES.—Nothing in this Act is intended to affect the
5 authority of any Federal or State agency to enforce
6 a prohibition against unfair or deceptive acts or
7 practices, including the making of false or mis-
8 leading statements in connection with a credit or in-
9 surance transaction that is not initiated by the con-
10 sumer.

11 **SEC. 4. ENFORCEMENT.**

12 (a) ENFORCEMENT BY FEDERAL TRADE COMMIS-
13 SION.—

14 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
15 TICES.—A violation of this Act shall be treated as
16 a violation of a rule defining an unfair or deceptive
17 act or practice under section 18(a)(1)(B) of the Fed-
18 eral Trade Commission Act (15 U.S.C.
19 57a(a)(1)(B)).

20 (2) POWERS OF COMMISSION.—The Federal
21 Trade Commission shall enforce this Act in the same
22 manner, by the same means, and with the same ju-
23 risdiction, powers, and duties as though all applica-
24 ble terms and provisions of the Federal Trade Com-
25 mission Act (15 U.S.C. 41 et seq.) were incor-

1 porated into and made a part of this Act. Any per-
2 son who violates this Act shall be subject to the pen-
3 alties and entitled to the privileges and immunities
4 provided in the Federal Trade Commission Act.

5 (3) AMOUNT OF PENALTY.—Notwithstanding
6 the penalties set forth in section 18 of such Act, a
7 person who violates this Act shall be liable for a civil
8 penalty of not less than \$2,500 per violation.

9 (4) REGULATIONS.—The Federal Trade Com-
10 mission shall prescribe, in accordance with section
11 553 of title 5, United States Code, such regulations
12 as are necessary to carry out the purposes of this
13 Act, including regulations as may be necessary or
14 appropriate to administer and carry out the pur-
15 poses and objectives of this Act, and to prevent eva-
16 sions thereof or to facilitate compliance therewith.

17 (b) ACTIONS BY CONSUMERS.—

18 (1) WILLFUL VIOLATIONS.—Any private pas-
19 senger automobile insurer who willfully violates this
20 Act with respect to any consumer is liable to that
21 consumer in an amount equal to the sum of—

22 (A) any actual damages sustained by the
23 consumer as a result of the failure;

24 (B) such amount of punitive damages as
25 the court may allow; and

1 (C) in the case of any successful action to
2 enforce any liability under this paragraph, the
3 costs of the action together with reasonable at-
4 torneys' fees as determined by the court.

5 (2) NEGLIGENT VIOLATIONS.—Any private pas-
6 senger automobile insurer who is negligent in failing
7 to comply with any requirement imposed under this
8 Act with respect to any consumer is liable to that
9 consumer in an amount equal to the sum of—

10 (A) any actual damages sustained by the
11 consumer as a result of the failure; and

12 (B) in the case of any successful action to
13 enforce any liability under this paragraph, the
14 costs of the action together with reasonable at-
15 torneys' fees as determined by the court.

16 (3) ATTORNEYS' FEES.—Upon a finding by the
17 court that an unsuccessful pleading, motion, or other
18 paper filed in connection with an action under this
19 subsection was filed in bad faith or for purposes of
20 harassment, the court shall award to the prevailing
21 party attorney's fees reasonable in relation to the
22 work expended in responding to the pleading, mo-
23 tion, or other paper.

24 (4) JURISDICTION OF COURTS; LIMITATION OF
25 ACTIONS.—An action to enforce any liability created

1 under this subsection may be brought in any appro-
2 priate United States district court, without regard to
3 the amount in controversy, or in any other court of
4 competent jurisdiction, not later than the earlier
5 of—

6 (A) 2 years after the date of discovery by
7 the plaintiff of the violation that is the basis for
8 such liability; or

9 (B) 5 years after the date on which the
10 violation that is the basis for such liability oc-
11 curs.

12 (c) ACTIONS BY STATES.—

13 (1) IN GENERAL.—In any case in which the at-
14 torney general of a State, or an official or agency of
15 a State, has reason to believe that an interest of the
16 residents of such State has been or is threatened or
17 adversely affected by an act or practice in violation
18 of this Act, the State, as *parens patriae*, may bring
19 a civil action on behalf of the residents of the State
20 in an appropriate State court or an appropriate dis-
21 trict court of the United States to—

22 (A) enjoin such act or practice;

23 (B) enforce compliance with this Act;

1 (C) obtain damages, restitution, or other
2 compensation on behalf of residents of the
3 State; or

4 (D) obtain such other legal and equitable
5 relief as the court may consider to be appro-
6 priate.

7 (2) NOTICE.—Before filing an action under this
8 subsection, the attorney general, official, or agency
9 of the State involved shall provide to the Federal
10 Trade Commission a written notice of such action
11 and a copy of the complaint for such action. If the
12 attorney general, official, or agency determines that
13 it is not feasible to provide the notice described in
14 this paragraph before the filing of the action, the at-
15 torney general, official, or agency shall provide writ-
16 ten notice of the action and a copy of the complaint
17 to the Federal Trade Commission immediately upon
18 the filing of the action.

19 (3) AUTHORITY OF FEDERAL TRADE COMMIS-
20 SION.—On receiving notice under paragraph (2) of
21 an action under this subsection, the Federal Trade
22 Commission shall have the right—

23 (A) to intervene in the action;

24 (B) upon so intervening, to be heard on all
25 matters arising therein; and

1 (C) to file petitions for appeal.

2 (4) RULE OF CONSTRUCTION.—For purposes of
3 bringing a civil action under this subsection, nothing
4 in this Act shall be construed to prevent an attorney
5 general, official, or agency of a State from exercising
6 the powers conferred on the attorney general, offi-
7 cial, or agency by the laws of such State to conduct
8 investigations, administer oaths and affirmations, or
9 compel the attendance of witnesses or the production
10 of documentary and other evidence.

11 **SEC. 5. RELATION TO STATE LAW.**

12 This Act does not annul, alter, affect, or exempt any
13 person subject to the provisions of this Act from complying
14 with the laws of any State with respect to the collection,
15 distribution, or use of any information on consumers, the
16 prevention or mitigation of identity theft, or the regulation
17 of the business of insurance, except to the extent that
18 those laws are inconsistent with any provision of this Act,
19 and then only to the extent of the inconsistency.

20 **SEC. 6. DEFINITIONS.**

21 For the purposes of this Act, the following definitions
22 apply:

23 (1) AFFILIATE.—The term “affiliate” means an
24 entity that, directly or indirectly, through one or
25 more intermediaries, controls, is controlled by, or is

1 under common control with another entity. For pur-
2 poses of this paragraph, the term “control” means
3 the possession, directly or indirectly, of the power to
4 direct or cause the direction of the management and
5 policies of the entity, whether—

6 (A) through the ownership of voting securi-
7 ties;

8 (B) by contract other than a commercial
9 contract for goods or non-management services;

10 (C) by contract for goods or non-manage-
11 ment services where the volume of activity re-
12 sults in a reliance relationship; or

13 (D) by common management.

14 Control shall be presumed to exist if an entity and
15 its affiliates directly or indirectly own, control, hold
16 with the power to vote, or hold proxies representing
17 10 percent or more of the voting interests of an enti-
18 ty.

19 (2) AUTOMOBILE INSURER.—The term “auto-
20 mobile insurer” means an insurer authorized to
21 transact or transacting automobile insurance, motor
22 vehicle insurance, automobile or motor vehicle liabil-
23 ity insurance, or any similar insurance business in
24 the United States.

1 (3) CENSUS TRACT.—The term “census tract”
2 means any small, relatively permanent statistical
3 subdivision of a county, as used by the United
4 States Census Bureau.

5 (4) CONSUMER REPORT.—The term “consumer
6 report” has the meaning given such term in section
7 603 of the Fair Credit Reporting Act (15 U.S.C.
8 1681a), except that such term does not include any
9 communication to the extent such communication re-
10 lates to the driving history or place of residence of
11 a consumer.

12 (5) CREDIT-BASED INSURANCE SCORE.—The
13 term “credit-based insurance score” means a rating
14 based in whole or in part on a consumer’s credit in-
15 formation used in underwriting and rating of con-
16 sumers that takes into account certain elements of
17 an individual’s credit history to predict how likely
18 such individual is to have an insurance loss.

19 (6) CREDIT SCORE.—The term “credit score”
20 has the meaning given such term in section
21 609(f)(2) of the Fair Credit Reporting Act (15
22 U.S.C. 1681g(f)(2)).

23 (7) EMPLOYMENT STATUS.—The term “employ-
24 ment status” means a consumer’s status as a cur-
25 rent full-time employee, part-time employee, em-

1 employed, unemployed, underemployed, or any other
2 such designation which indicates a consumer's work
3 status.

4 (8) HOME OWNERSHIP STATUS.—The term
5 “home ownership status” refers to whether a con-
6 sumer currently owns any real property which may
7 be used as a residence.

8 (9) LEVEL OF EDUCATION.—The term “level of
9 education” refers to the highest grade level com-
10 pleted in a secondary school or trade school, a pro-
11 fessional licensure or certification, or the highest un-
12 dergraduate or graduate college degree obtained.
13 Such term does not include the completion of a traf-
14 fic safety course or scholastic achievement while en-
15 rolled in a school, college, or university.

16 (10) OCCUPATION.—The term “occupation”
17 means a consumer's current lawful employment posi-
18 tion in a career or identifiable trade category.

19 (11) PRIVATE PASSENGER AUTOMOBILE.—The
20 term “private passenger automobile” means a 4-
21 wheel motor vehicle, whether owned or leased to an
22 individual or individuals, and that is of a private
23 passenger or station wagon type, or that is a motor
24 vehicle with a pickup body, a delivery sedan, a pas-

1 senger van, a sports utility vehicle, or a panel truck
2 or a camper type vehicle, and that—

3 (A) is not used as a public or livery con-
4 veyance for passengers;

5 (B) is not rented to others;

6 (C) has a gross vehicle weight of less than
7 15,000 pounds; and

8 (D) is not primarily used in the course of
9 an occupation, profession, or business of a per-
10 son other than farming or ranching.

11 Such term includes a motor vehicle owned by a farm
12 family co-partnership or farm family corporation,
13 which is principally garaged on a farm or ranch and
14 otherwise meets the definition contained in this
15 paragraph.

16 **SEC. 7. EFFECTIVE DATE.**

17 This Act shall take effect 1 year after the date of
18 enactment of this Act.

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