

116TH CONGRESS
1ST SESSION

H. R. 3693

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

IN THE HOUSE OF REPRESENTATIVES

JULY 10, 2019

Mrs. WATSON COLEMAN (for herself, Ms. TLAIB, Ms. BASS, Mr. BUTTERFIELD, Mr. BISHOP of Georgia, Ms. FUDGE, Ms. JOHNSON of Texas, Ms. PRESSLEY, Ms. NORTON, Ms. OMAR, Mr. THOMPSON of Mississippi, Ms. KELLY of Illinois, and Ms. OCASIO-CORTEZ) introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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”.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) Private passenger automobile insurance
4 companies are institutions which help spread risk of
5 loss over a collective group of policyholders.

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

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

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

25 (5) A growing trend in the private passenger
26 automobile insurance industry is to use income prox-

1 ies for underwriting and rating. The use of income
2 proxies such as a driver's education level, occupa-
3 tion, employment status, home ownership status,
4 credit score, consumer report, previous insurer, and
5 prior purchase of insurance by the industry as vari-
6 ables that significantly influence the insurance pre-
7 miums charged to drivers has become commonplace.
8 Use of these income proxies in this fashion results
9 in higher rates being charged to lower income driv-
10 ers while lower rates are being charged to the more
11 affluent driver.

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

1 **SEC. 3. REQUIREMENTS FOR PRIVATE PASSENGER AUTO-**
2 **MOBILE INSURERS.**

3 (a) USE OF CERTAIN FACTORS AND INCOME PROX-
4 IES PROHIBITED.—It shall be unlawful for a private pas-
5 senger automobile insurer, or any of its affiliate insurers,
6 to take into consideration any of the factors described in
7 subsection (b) relating to a consumer in determining that
8 consumer’s eligibility for automobile insurance or in calcu-
9 lating the rate for that consumer.

10 (b) FACTORS.—The factors referred to in subsection
11 (a) are—

- 12 (1) gender;
- 13 (2) level of education;
- 14 (3) occupation;
- 15 (4) employment status;
- 16 (5) home ownership status;
- 17 (6) zip code or adjacent zip codes;
- 18 (7) census tract;
- 19 (8) marital status;
- 20 (9) credit score or credit-based insurance score;
- 21 (10) consumer report;
- 22 (11) previous insurer; or
- 23 (12) prior purchase of insurance of a consumer
24 from that automobile insurer.

25 (c) PUBLIC AVAILABILITY OF INFORMATION.—All
26 underwriting rules and rate filings for use by any private

1 passenger automobile insurer shall be available for public
2 inspection and may not be considered proprietary trade
3 secret information.

4 (d) REASONABLE PROCEDURES TO ASSURE COMPLI-
5 ANCE.—No person shall be held liable for any violation
6 of this Act if the person shows by a preponderance of the
7 evidence that at the time of the alleged violation the per-
8 son maintained reasonable procedures to assure compli-
9 ance with the provisions of this Act.

10 (e) RULES OF CONSTRUCTION.—

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

22 (A) the determination of a consumer's eli-
23 gibility for automobile insurance or the calcula-
24 tion of the rate for that consumer;

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

3 (C) an action which prevents a consumer
4 from obtaining insurance from an automobile
5 insurer or any of its affiliate companies;

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

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

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

18 **SEC. 4. ENFORCEMENT.**

19 (a) ENFORCEMENT BY FEDERAL TRADE COMMIS-
20 SION.—

21 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
22 TICES.—A violation of this Act shall be treated as
23 an unfair and deceptive act or practice proscribed
24 under section 5 of the Federal Trade Commission
25 Act (15 U.S.C. 57a(a)(1)(B)).

1 (2) POWERS OF COMMISSION.—The Federal
2 Trade Commission shall enforce this Act in the same
3 manner, by the same means, and with the same ju-
4 risdiction, powers, and duties as though all applica-
5 ble terms and provisions of the Federal Trade Com-
6 mission Act (15 U.S.C. 41 et seq.) were incor-
7 porated into and made a part of this Act. Any per-
8 son who violates this Act shall be subject to the pen-
9 alties and entitled to the privileges and immunities
10 provided in the Federal Trade Commission Act.

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

15 (4) REGULATIONS.—The Federal Trade Com-
16 mission shall prescribe, in accordance with section
17 553 of title 5, United States Code, such regulations
18 as are necessary to carry out the purposes of this
19 Act, including regulations as may be necessary or
20 appropriate to administer and carry out the pur-
21 poses and objectives of this Act, and to prevent eva-
22 sions thereof or to facilitate compliance therewith.

23 (b) ACTIONS BY CONSUMERS.—

24 (1) WILLFUL VIOLATIONS.—Any private pas-
25 senger automobile insurer who willfully violates this

1 Act with respect to any consumer is liable to that
2 consumer in an amount equal to the sum of—

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

5 (B) such amount of punitive damages as
6 the court may allow; and

7 (C) in the case of any successful action to
8 enforce any liability under this paragraph, the
9 costs of the action together with reasonable at-
10 torneys' fees as determined by the court.

11 (2) NEGLIGENT VIOLATIONS.—Any private pas-
12 senger automobile insurer who is negligent in failing
13 to comply with any requirement imposed under this
14 Act with respect to any consumer is liable to that
15 consumer in an amount equal to the sum of—

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

18 (B) in the case of any successful action to
19 enforce any liability under this paragraph, the
20 costs of the action together with reasonable at-
21 torneys' fees as determined by the court.

22 (3) ATTORNEYS' FEES.—Upon a finding by the
23 court that an unsuccessful pleading, motion, or other
24 paper filed in connection with an action under this
25 subsection was filed in bad faith or for purposes of

1 harassment, the court shall award to the prevailing
2 party attorney's fees reasonable in relation to the
3 work expended in responding to the pleading, mo-
4 tion, or other paper.

5 (4) JURISDICTION OF COURTS; LIMITATION OF
6 ACTIONS.—An action to enforce any liability created
7 under this subsection may be brought in any appro-
8 priate United States district court, without regard to
9 the amount in controversy, or in any other court of
10 competent jurisdiction, not later than the earlier
11 of—

12 (A) 2 years after the date of discovery by
13 the plaintiff of the violation that is the basis for
14 such liability; or

15 (B) 5 years after the date on which the
16 violation that is the basis for such liability oc-
17 curs.

18 (c) ACTIONS BY STATES.—

19 (1) IN GENERAL.—In any case in which the at-
20 torney general of a State, or an official or agency of
21 a State, has reason to believe that an interest of the
22 residents of such State has been or is threatened or
23 adversely affected by an act or practice in violation
24 of this Act, the State, as *parens patriae*, may bring
25 a civil action on behalf of the residents of the State

1 in an appropriate State court or an appropriate dis-
2 trict court of the United States to—

3 (A) enjoin such act or practice;

4 (B) enforce compliance with this Act;

5 (C) obtain damages, restitution, or other
6 compensation on behalf of residents of the
7 State; or

8 (D) obtain such other legal and equitable
9 relief as the court may consider to be appro-
10 priate.

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

23 (3) AUTHORITY OF FEDERAL TRADE COMMIS-
24 SION.—On receiving notice under paragraph (2) of

1 an action under this subsection, the Federal Trade
2 Commission shall have the right—

3 (A) to intervene in the action;

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

6 (C) to file petitions for appeal.

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

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

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

1 **SEC. 6. DEFINITIONS.**

2 For the purposes of this Act, the following definitions
3 apply:

4 (1) **AFFILIATE.**—The term “affiliate” means an
5 entity that, directly or indirectly, through one or
6 more intermediaries, controls, is controlled by, or is
7 under common control with another entity. For pur-
8 poses of this paragraph, the term “control” means
9 the possession, directly or indirectly, of the power to
10 direct or cause the direction of the management and
11 policies of the entity, whether—

12 (A) through the ownership of voting securi-
13 ties;

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

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

19 (D) by common management.

20 Control shall be presumed to exist if an entity and
21 its affiliates directly or indirectly own, control, hold
22 with the power to vote, or hold proxies representing
23 10 percent or more of the voting interests of an enti-
24 ty.

25 (2) **AUTOMOBILE INSURER.**—The term “auto-
26 mobile insurer” means an insurer authorized to

1 transact or transacting automobile insurance, motor
2 vehicle insurance, automobile or motor vehicle liability
3 insurance, or any similar insurance business in
4 the United States.

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

9 (4) CONSUMER REPORT.—The term “consumer
10 report” has the meaning given such term in section
11 603 of the Fair Credit Reporting Act (15 U.S.C.
12 1681a), except that such term does not include any
13 communication to the extent such communication re-
14 lates to the driving history or place of residence of
15 a consumer.

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

23 (6) CREDIT SCORE.—The term “credit score”
24 has the meaning given such term in section

1 609(f)(2) of the Fair Credit Reporting Act (15
2 U.S.C. 1681g(f)(2)).

3 (7) EMPLOYMENT STATUS.—The term “employ-
4 ment status” means a consumer’s status as a cur-
5 rent full-time employee, part-time employee, em-
6 ployed, unemployed, underemployed, or any other
7 such designation which indicates a consumer’s work
8 status.

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

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

21 (10) OCCUPATION.—The term “occupation”
22 means a consumer’s current lawful employment posi-
23 tion in a career or identifiable trade category.

24 (11) PRIVATE PASSENGER AUTOMOBILE.—The
25 term “private passenger automobile” means a 4-

1 wheel motor vehicle, whether owned or leased to an
2 individual or individuals, and that is of a private
3 passenger or station wagon type, or that is a motor
4 vehicle with a pickup body, a delivery sedan, a pas-
5 senger van, a sports utility vehicle, or a panel truck
6 or a camper type vehicle, and that—

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

9 (B) is not rented to others;

10 (C) has a gross vehicle weight of less than
11 15,000 pounds; and

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

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

20 **SEC. 7. EFFECTIVE DATE.**

21 This Act shall take effect 1 year after the date of
22 enactment of this Act.

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