

115TH CONGRESS
2D SESSION

H. R. 5502

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

IN THE HOUSE OF REPRESENTATIVES

APRIL 12, 2018

Mrs. WATSON COLEMAN 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”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

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

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

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

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

23 (5) A growing trend in the private passenger
24 automobile insurance industry is to use income prox-
25 ies for underwriting and rating. The use of income

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

11 (6) The American public is largely unaware
12 that a person's education level, occupation, employ-
13 ment status, home ownership status, credit score,
14 consumer report, previous insurer, and prior pur-
15 chase of insurance are significant factors used to de-
16 termine eligibility for preferred auto insurance rates
17 regardless of the person's driving history. As a re-
18 sult of the individual's ineligibility for preferred
19 rates, the driver's policy and rate will be only offered
20 from an affiliate company that has higher rates.

21 **SEC. 3. REQUIREMENTS FOR PRIVATE PASSENGER AUTO-**
22 **MOBILE INSURERS.**

23 (a) USE OF CERTAIN INCOME PROXIES PROHIB-
24 ITED.—It is unlawful for a private passenger automobile
25 insurer, or any of its affiliate insurers, to take into consid-

1 eration the level of education, occupation, employment sta-
2 tus, home ownership status, credit score, consumer report,
3 previous insurer, or prior purchase of insurance of a con-
4 sumer in determining that consumer's eligibility for auto-
5 mobile insurance or in calculating the rate for that con-
6 sumer.

7 (b) PUBLIC AVAILABILITY OF INFORMATION.—All
8 underwriting rules and rate filings for use by any private
9 passenger automobile insurer shall be available for public
10 inspection and may not be considered proprietary trade
11 secret information.

12 (c) REASONABLE PROCEDURES TO ASSURE COMPLI-
13 ANCE.—No person shall be held liable for any violation
14 of this Act if the person shows by a preponderance of the
15 evidence that at the time of the alleged violation the per-
16 son maintained reasonable procedures to assure compli-
17 ance with the provisions of this Act.

18 (d) RULES OF CONSTRUCTION.—

19 (1) FACTORS AND METHODS INFLUENCING
20 PREMIUMS.—For the purposes of this Act, a viola-
21 tion of subsection (a) shall be considered to have oc-
22 curred whenever a consumer's education, occupation,
23 employment status, home ownership status, credit
24 score, consumer report, previous insurer, or prior
25 purchase of insurance prevents the consumer from

1 obtaining insurance at the lowest rate available to
2 the consumer from a private passenger automobile
3 insurer or any of its affiliates. Actions considered a
4 violation of such subsection include the usage or
5 consideration of any such factor resulting in—

6 (A) the determination of a consumer's eli-
7 gibility for automobile insurance or the calcula-
8 tion of the rate for that consumer;

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

11 (C) an action which prevents a consumer
12 from obtaining insurance from an automobile
13 insurer or any of its affiliate companies;

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

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

18 (2) AUTHORITY OF FEDERAL AND STATE AGEN-
19 CIES.—Nothing in this Act is intended to affect the
20 authority of any Federal or State agency to enforce
21 a prohibition against unfair or deceptive acts or
22 practices, including the making of false or mis-
23 leading statements in connection with a credit or in-
24 surance transaction that is not initiated by the con-
25 sumer.

1 **SEC. 4. ENFORCEMENT.**

2 (a) ENFORCEMENT BY FEDERAL TRADE COMMIS-
3 SION.—

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

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

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

23 (4) REGULATIONS.—The Federal Trade Com-
24 mission shall prescribe, in accordance with section
25 553 of title 5, United States Code, such regulations
26 as are necessary to carry out the purposes of this

1 Act, including regulations as may be necessary or
2 appropriate to administer and carry out the pur-
3 poses and objectives of this Act, and to prevent eva-
4 sions thereof or to facilitate compliance therewith.

5 (b) ACTIONS BY CONSUMERS.—

6 (1) WILLFUL VIOLATIONS.—Any private pas-
7 senger automobile insurer who willfully violates 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;

12 (B) such amount of punitive damages as
13 the court may allow; and

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

18 (2) NEGLIGENT VIOLATIONS.—Any private pas-
19 senger automobile insurer who is negligent in failing
20 to comply with any requirement imposed under this
21 Act with respect to any consumer is liable to that
22 consumer in an amount equal to the sum of—

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

(B) in the case of any successful action to enforce any liability under this paragraph, the costs of the action together with reasonable attorneys' fees as determined by the court.

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

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

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

(B) 5 years after the date on which the violation that is the basis for such liability occurs.

1 (c) ACTIONS BY STATES.—

2 (1) IN GENERAL.—In any case in which the at-
3 torney general of a State, or an official or agency of
4 a State, has reason to believe that an interest of the
5 residents of such State has been or is threatened or
6 adversely affected by an act or practice in violation
7 of this Act, the State, as *parens patriae*, may bring
8 a civil action on behalf of the residents of the State
9 in an appropriate State court or an appropriate dis-
10 trict court of the United States to—

11 (A) enjoin such act or practice;

12 (B) enforce compliance with this Act;

13 (C) obtain damages, restitution, or other
14 compensation on behalf of residents of the
15 State; or

16 (D) obtain such other legal and equitable
17 relief as the court may consider to be appro-
18 priate.

19 (2) NOTICE.—Before filing an action under this
20 subsection, the attorney general, official, or agency
21 of the State involved shall provide to the Federal
22 Trade Commission a written notice of such action
23 and a copy of the complaint for such action. If the
24 attorney general, official, or agency determines that
25 it is not feasible to provide the notice described in

1 this paragraph before the filing of the action, the at-
2 torney general, official, or agency shall provide writ-
3 ten notice of the action and a copy of the complaint
4 to the Federal Trade Commission immediately upon
5 the filing of the action.

6 (3) AUTHORITY OF FEDERAL TRADE COMMIS-
7 SION.—On receiving notice under paragraph (2) of
8 an action under this subsection, the Federal Trade
9 Commission shall have the right—

10 (A) to intervene in the action;

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

13 (C) to file petitions for appeal.

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

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

24 This Act does not annul, alter, affect, or exempt any
25 person subject to the provisions of this Act from complying

1 with the laws of any State with respect to the collection,
2 distribution, or use of any information on consumers, the
3 prevention or mitigation of identity theft, or the regulation
4 of the business of insurance, except to the extent that
5 those laws are inconsistent with any provision of this Act,
6 and then only to the extent of the inconsistency.

7 **SEC. 6. DEFINITIONS.**

8 For the purposes of this Act, the following definitions
9 apply:

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

18 (A) through the ownership of voting securi-
19 ties;

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

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

25 (D) by common management.

1 Control shall be presumed to exist if an entity and
2 its affiliates directly or indirectly own, control, hold
3 with the power to vote, or hold proxies representing
4 10 percent or more of the voting interests of an enti-
5 ty.

6 (2) AUTOMOBILE INSURER.—The term “auto-
7 mobile insurer” means an insurer authorized to
8 transact or transacting automobile insurance, motor
9 vehicle insurance, automobile or motor vehicle liabil-
10 ity insurance, or any similar insurance business in
11 the United States.

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

19 (4) 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 (5) 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 (6) 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 (7) 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 (8) OCCUPATION.—The term “occupation”
17 means a consumer's current lawful employment posi-
18 tion in a career or identifiable trade category.

19 (9) 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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