

SENATE BILL REPORT

SB 5589

As Reported by Senate Committee On:
Business, Financial Services & Trade, February 20, 2025

Title: An act relating to conducting a study of credit history, credit-based insurance scores, and other rate factors that may disparately impact Washington residents, in making rates for personal insurance.

Brief Description: Conducting a study of credit history, credit-based insurance scores, and other rate factors in making rates for personal insurance.

Sponsors: Senators Hasegawa, Kauffman, Lovelett, Nobles, Saldaña, Stanford and Wilson, C.; by request of Insurance Commissioner.

Brief History:

Committee Activity: Business, Financial Services & Trade: 2/06/25, 2/20/25 [DP, DNP].

Brief Summary of Bill

- Requires the Office of the Insurance Commissioner (OIC) to conduct a study of insurers' use of credit history, credit-based insurance scores, other rate factors that may have disparate impacts on Washington residents, and alternatives to their use, for certain purposes.
- Requires authorized insurers transacting personal insurance to provide requested information to the OIC, and provides for confidentiality, privilege, and a public records exemption for the data.
- Authorizes the OIC to contract with actuaries and other consultants for the study.
- Requires reports to the Legislature with findings, policy options, and recommendations.

SENATE COMMITTEE ON BUSINESS, FINANCIAL SERVICES & TRADE

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: Do pass.

Signed by Senators Kauffman, Chair; Cortes, Vice Chair; Hasegawa, Lovick and Stanford.

Minority Report: Do not pass.

Signed by Senators Dozier, Ranking Member; Fortunato, McCune and Wilson, J..

Staff: John Kim (786-7453)

Background: Insurance Rate Standard. Current law provides that premium rates for insurance may not be excessive, inadequate, or unfairly discriminatory.

Use of Credit History or Insurance Scores in Making Personal Insurance Rates. Under current state law, each insurer that uses credit history or an insurance score to determine personal insurance rates, premiums, or eligibility for coverage must file all rates and rating plans for that line of coverage with the Office of the Insurance Commissioner (OIC).

A person's credit history is any written, oral, or other communication of any information by a consumer reporting agency bearing on that person's creditworthiness, credit standing, or credit capacity that is used or expected to be used, or collected in whole or in part, for the purpose of serving as a factor in determining personal insurance premiums or eligibility for coverage.

A person's insurance score is a number or rating that is derived from an algorithm, computer application, model, or other process that is based in whole or in part on credit history.

The definition of personal insurance under the state law includes:

- private passenger automobile coverage;
- homeowner's coverage, including mobile homeowners, manufactured homeowners, condominium owners, and renter's coverage;
- dwelling property coverage;
- earthquake coverage for a residence or personal property;
- personal liability and theft coverage;
- personal inland marine coverage; and
- mechanical breakdown coverage for personal auto or home appliances.

An insurer may not use the following types of credit history to calculate a personal insurance score or to determine personal insurance premiums or rates:

- the absence of credit history or the inability to determine the consumer's credit history, unless the insurer has filed actuarial data segmented by demographic factors in a manner demonstrating compliance with the general rate standard described above;
- the number of credit inquiries;
- credit history or an insurance score based on collection accounts identified with a

- medical industry code;
- the initial purchase or finance of a vehicle or house that adds a new loan to the consumer's existing credit history, if evident from the consumer report; however, an insurer may consider the bill payment history of any loan, the total number of loans, or both;
- the consumer's use of a particular type of credit card, charge card, or debit card; or
- the consumer's total available line of credit; however, an insurer may consider the total amount of outstanding debt in relation to the total available line of credit.

If a consumer is charged higher premiums due to a disputed credit history, the insurer must rerate the policy retroactive to the effective date of the current policy term. As rerated, the consumer must be charged the same premiums they would have been charged if accurate credit history was used to calculate an insurance score. These requirements apply only if the consumer resolves the dispute pursuant to the federal Fair Credit Reporting Act and notifies the insurer in writing that the dispute has been resolved.

Rules by the Office of the Insurance Commissioner and Rule Challenge. In March 2021, the OIC adopted emergency rules prohibiting the use of credit history by insurers in determining homeowners', renters, and private passenger automobile insurance rates, premiums, or eligibility for coverage or in placing coverage with an affiliated insurer. The emergency rules applied to new policies issued and existing policies renewed beginning in June 2021.

In February 2022, the OIC adopted a permanent rule specifying that the prohibition would remain in effect for three years following the later of the President's COVID-19 national emergency declaration on March 13, 2020, or the day the Governor's proclamation of a state of emergency regarding COVID-19 expired.

In adopting the rules, the OIC cited changes in the federal Coronavirus Aid, Relief, and Economic Security Act relating to credit reporting during the pandemic, forbearance options for certain loans, and a moratorium on foreclosures. The OIC made a finding that credit reporting processes were disrupted and therefore credit-based insurance scoring models were unreliable under state law.

The validity of the permanent rule was challenged in a petition for declaratory and injunctive relief filed by the National Association of Mutual Insurance Companies in February 2022 in Thurston County Superior Court. The action was consolidated with another petition filed by the American Property Casualty Insurance Association, the Professional Insurance Agents of Washington, and the Independent Insurance Agents and Brokers of Washington. In August 2022, Thurston County Superior Court issued an order declaring that the rule exceeded the OIC's statutory authority and that the petitioners were substantially prejudiced by the rule, and therefore the rule was invalid. The OIC did not appeal the decision.

Summary of Bill: Study by the Office of the Insurance Commissioner. The bill requires the OIC to conduct a study of insurers' use of credit history, credit-based insurance scores, other rate factors that may have disparate impacts on Washington residents, and alternatives to their use, in determining personal insurance premiums, rates, or eligibility for coverage, and the associated impacts to consumer costs and the availability of insurance.

In conducting the study, the OIC must collect information from authorized insurers transacting personal insurance, who must provide the requested information to the OIC. The OIC must investigate and obtain any other relevant information that may assist the OIC with the purposes of the study.

The OIC must also contract with actuaries and other consultants, as needed, to:

- analyze insurers' use of credit history, credit-based insurance scoring models, or other rate factors that may disparately impact Washington residents, in determining premiums, rates, and eligibility for coverage for people of various races, ethnicities, sexes, socioeconomic status, and national origins;
- identify and analyze alternative rate factors that could be used to determine premiums, rates, and eligibility for coverage that neither rely on credit history or credit-based insurance scoring models, nor disparately impact Washington residents of various races, ethnicities, sexes, socioeconomic status, or national origins;
- analyze the likely impact of the above factors on consumer costs, rates, premiums eligibility for coverage, and availability of insurance for people of various races, ethnicities, sexes, socioeconomic status, and national origins; and
- develop for legislative consideration policy options and their likely impacts on consumer costs, premiums, rates, eligibility for coverage, and the availability of personal insurance, of use of rate plans that include and exclude credit history, credit-based insurance scoring models, or other rate factors that may have a disparate impact on Washington residents.

Report to the Legislature. The OIC must submit a preliminary report to relevant legislative policy committees by December 31, 2025, and a final report by September 15, 2026, with review findings, policy options, and recommendations regarding:

- allowance, prohibition, or contingent use, of credit history, credit-based insurance scoring models, other disparately impactful rating factors, and alternatives to their use, for personal insurance; and
- the associated impacts on consumer costs, premiums, rates, eligibility for coverage, and availability of insurance for people of various races, ethnicities, sexes, socioeconomic status, and national origins.

Confidentiality, Privilege, and Public Records Exemption. Data requested by, or provided to, the OIC and the OIC's contracted consultants for the purpose of complying with the study and reporting requirements is confidential, privileged, and exempt from public disclosure under the Public Records Act.

The OIC may prepare and publish reports, analyses, or other documents using the data so long as the data is in aggregate form and does not permit the identification of information related to individual companies. Data in the aggregate form is deemed open records available for public inspection.

Expiration. The section in the Revised Code of Washington created by the bill expires December 31, 2033.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: We want the information to ascertain whether there are disparities within the insurance rating system and whether they are justifiable. This bill gives the OIC a mandate to make sure insurance rates are being fairly set without the use of surrogate data like what zip code you live in or what your income level is as opposed to your experience rating.

The bill will direct the OIC to conduct a study of how credit history and other rating factors like gender, occupation, or education are currently being used by insurers. The intent is to provide legislators and policymakers with data points on the impact of these rate factors and underwriting practices on Washington consumers. State legislatures across the country have taken varying stances on the issue. In homeowners' insurance, there are typically 30 to 40 different buckets of rate factors considered. The credit-based insurance score, which includes nonpublic components of rate factors, often includes items not associated with credit including education and occupation. For auto, there are also a number of different factors considered.

The bill will provide badly needed information about the unfair impact of socioeconomic factors on consumers. The Consumer Federation of America's research found that insurance companies use socioeconomic factors that result in consumers getting charged higher premiums, especially in auto and homeowners' insurance. In our 2023 report, we found that Washington drivers with excellent credit paid an average annual premium of \$397, while drivers with fair credit paid an average of \$572 and those with poor credit paid an average of \$769. We found auto insurers charged more if people don't have a college degree, work in blue-collar jobs, or live in certain zip codes or are renters.

Consumer Reports did a research project on the impact of credit history on auto insurance premiums and found it had a very large impact, such that you could be an excellent driver but have high premiums if you have fair or poor credit. We do not believe the insurance

industry has determined a direct causal relationship. We're also concerned about the quality of data due to substantial errors in credit data. Insurance credit scores are secret and proprietary and the consumer cannot get a look at how their premium is being determined.

OTHER: The inclusion of other rating factors is a very open-ended term. Without being fully and properly defined, it should not be included in the bill. The National Association of Mutual Insurance Companies' members ask the committee to consider placing the study with an outside disinterested study, such as a university or professional group. Proper sideboards should be in place regarding the collection of data. Data calls are very expensive and are labor-intensive.

Credit-based insurance scoring has been one of the most researched and studied topics in all of insurance regulation recently. Since 2005, at least 15 major studies have been conducted across the United States, five by state insurance regulators, one by the District of Columbia, three by federal agencies or independent research groups, and six by universities and industry experts. These studies span more than two decades and have examined every major policy concern surrounding credit-based insurance scores. It is reasonable to consider whether another study will produce new insights or simply repeat what has already been well-examined.

In Oregon, the insurance commissioner is proposing to initiate a study on the rating factors affecting auto insurance. One difference is that the Oregon study will be designed and developed in a public-facing, stakeholder-involved hearing process that will gather data for at least two years. We would like the opportunity to work on amendments that will ensure a transparent process and an objective and unbiased study.

Persons Testifying: PRO: Senator Bob Hasegawa, Prime Sponsor; Michael DeLong, Consumer Federation of America; Charles Bell, Consumer Reports; Rory Paine-Donovan, Office of the Insurance Commissioner; David Forte, Office of the Insurance Commissioner.

OTHER: Kris Tefft, American Property Casualty Insurance Association; Kenton Brine, NW Insurance Council; Brandon Vick, National Association of Mutual Insurance Companies.

Persons Signed In To Testify But Not Testifying: No one.