

SENATE BILL REPORT

SB 6252

As Reported by Senate Committee On:
Labor, Commerce & Consumer Protection, February 2, 2010

Title: An act relating to using credit history, education, and income for insurance purposes.

Brief Description: Using credit history, education, and income for insurance purposes.

Sponsors: Senators Kohl-Welles, Kline and Gordon; by request of Insurance Commissioner.

Brief History:

Committee Activity: Labor, Commerce & Consumer Protection: 1/28/10, 2/02/10 [DPS, DNP].

SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

Majority Report: That Substitute Senate Bill No. 6252 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kohl-Welles, Chair; Keiser, Vice Chair; Franklin and Kline.

Minority Report: Do not pass.

Signed by Senators Honeyford and King.

Staff: Ingrid Mungia (786-7423)

Background: Insurance Scores. An insurance score is a number generated via a computer program that analyzes the data in an individual's credit report. The computer program uses an algorithm to reduce credit report data to a single numerical score. Generally, insurance scores are calculated either by insurers using their own computer model or by third-party vendors who contract with insurers to do credit score calculations. In 2002 Washington passed a law limiting the ways in which a credit history or an insurance score can be used by insurers in underwriting and rating personal insurance.

Personal Insurance. Personal insurance is defined as the following coverages:

- 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;

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- personal liability and theft coverage;
- personal inland marine coverage; and
- mechanical breakdown coverage for personal auto or home appliances

Insurance Scoring Models. Insurers may use credit history to determine premiums, rates, or eligibility for personal insurance coverage unless the insurer has filed the insurance scoring models with the Insurance Commissioner.

Credit Information That May not be Used by Insurers. There are certain types of credit history information that an insurer must not consider in rate setting or use to deny coverage, including:

- an absence of credit history;
- the number of credit inquiries;
- credit history related to medical care;
- entries related to the initial purchase or finance of a house or car;
- use of a particular type of credit, debit, or charge card; or
- the dollar amount of a consumer's available credit.

Applicants. An insurer is permitted to consider credit history in the evaluation of a new customer applying for insurance. Credit history must be considered with other substantive underwriting factors. An offer of placement with an affiliate insurer does not constitute a denial of coverage.

Denials. Insurers must not deny personal insurance coverage based on:

- the absence of credit history or the inability to determine the consumer's credit history, if the insurer has received accurate and complete information from the consumer;
- 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.

Cancellation and Nonrenewal. An insurer's decision to cancel or not renew an existing policy of personal insurance may not be based on an insured's credit history. However, an insurer may use credit history as the basis for placing an insured with another company affiliated with the insurer.

Notice to the Consumer. An insurer that takes any adverse action against a consumer based on credit history must provide the consumer with written notice. This includes placement with an affiliate that does not offer the lowest rates. The notice must identify those aspects of the consumer's credit history that played a significant role in the decision leading to the

adverse action. The insurer must also inform the consumer that the consumer is entitled to a free copy of his or her credit report.

Inaccurate Credit Histories. An insured is provided with certain remedies if his or her insurance coverage is adversely affected by an inaccurate credit history. If the insured is overcharged, they are ratered. If the insured is placed with an affiliate that charged more or has less favorable contract terms, the insurer must reissue or rerate the policy retroactive to the effective date of the current policy term. These remedies only apply if the insured resolves the dispute under the process set forth in the Fair Credit Reporting Act and notifies the insurer in writing that the dispute has been resolved.

Use of Education and Income Factors by Insurers. An insurer may consider education and/or income in determining rates or eligibility for insurance. The insurer must actuarially justify any proposed rates to the Office of the Insurance Commissioner (OIC) when submitting the rates for OIC approval. Rates may not be excessive, inadequate, or unfairly discriminatory.

Consumer Protection Act. The Consumer Protection Act (CPA) prohibits unfair or deceptive practices in trade or commerce. The Office of the Attorney General may bring an action in the name of the state on behalf of persons injured by a violation of the CPA. A private party may also bring an action to enforce the CPA. In an action for a CPA violation, a prevailing plaintiff may recover: (1) the actual damages sustained; (2) the costs of the suit; and (3) a reasonable attorney's fee. Additionally, the court has the discretion to award additional damages in the amount of up to three times the actual damages sustained by the plaintiff. These discretionary treble damages are limited to \$25,000.

Summary of Bill (Recommended Substitute): An insurer must not, in any manner, use a consumer's credit history, education, or income to determine personal insurance rates, premiums, or eligibility for coverage.

An insurer may offer a consumer a discount to rates or premiums in connection with the completion of a traffic safety course, or the achievement of a certain level of academic proficiency while enrolled in school or receiving home-based instruction, or both.

Violation of the provisions are subject to the Consumer Protection Act.

The definition of credit history is amended to any written, oral, or other communication of any information bearing on a consumer's creditworthiness, credit standing, or credit capacity, other than the insurer's own record of premium payments made to it by a consumer.

Education is defined as enrollment in a public or private school, college, or university, receiving home-based instruction, or completion of a grade level, a diploma, or a degree. It does not mean completion of a traffic safety course or scholastic achievement while enrolled in a school, college, or university.

The provisions apply to all personal insurance policies issued or renewed on or after July 1, 2011.

EFFECT OF CHANGES MADE BY LABOR, COMMERCE & CONSUMER PROTECTION COMMITTEE (Recommended Substitute): The recommended substitute bill:

1. adds home-based instruction to the definition of education.
2. adds language that an insurer may offer a consumer a discount to rates or premiums in connection with the completion of a traffic safety course, or the achievement of a certain level of academic proficiency while enrolled in school or receiving home-based instruction, or both.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill takes effect on July 1, 2011.

Staff Summary of Public Testimony on Original Bill: PRO: Eight years ago we attempted to restrain the use of credit scores in Washington. What we have found in the past eight years is that it is not enough, and consumers are angry and confused. We have received thousands of complaints from consumers about the use of credit scores for insurance purposes and don't understand what it has to do with how they drive a car or maintain their property. Credit scores can have a huge impact. If you have a low credit score it can make a difference in two to three times the cost of an insurance policy. The use of credit scores also has a disparate impact on people of color and protected classes. The use of credit scores is a 21st century form of red lining. The state of Maryland banned the use of credit scoring for homeowners insurance and the states homeowners insurance rates didn't go up after all. It is time to ban this practice. It is unfair, arbitrary, and certainly a surrogate for race. Please do not penalize me by allowing insurance companies to charge me more because I am unemployed. Please protect people who do not have credit history. Help provide Washingtonians with equal coverage for equal cost. Just by virtue of one being poor, one has a lower credit score and then higher insurance premium. We see this as being very unfair, especially for those who live in rural areas and have little access to public transportation. Insurance companies will figure out a way not to use credit scores for insurance purposes. States that have banned credit scoring have thriving insurance markets. The education component in this bill does not relate to good students qualification, it is about how insurance companies rate a person based on their education attainment. In the state of Washington we require the recipients of public assistance to do everything in their power to move into the world of work, and in this state working is highly correlated to having transportation and automobiles. Because we are a mandatory auto insurance state, many people have to make a decision about complying with the law or feeding their families. Low income people often have bad credit scores, which hampers their ability to become self-sufficient if they are discriminated against in their insurance costs.

CON: Opposed to this bill because credit scoring is a terrifically, accurate, predictive tool relative to the prospect of risks of loss for both homeowner and automobile lines of insurance. Two studies, one by FTC in 2007, specifically showed that credit-based insurance scores have little effect as a proxy for membership in racial and ethnic groups in decisions

relating to insurance. The Department of Insurance in Texas, indicated credit scoring is not inherently discriminatory. The National Association of Insurance Commissioners' study shows that in the state of Maryland homeowner insurance went up 54 percent in the first four years following the ban on the use of credit scores. The insurance buying public would be damaged by the ban on using credit scores because the insurance buying public typically has favorable insurance scores. If credit scoring is banned, under the federal Fair Credit Reporting Act, the big 1-800 companies can use the advantages of credit reporting for marketing activities and the local insurance companies could not use it as a tool. The Legislature could just change the existing parameters on the use of credit, but a straight ban would hurt the independent insurance companies in the state against the large insurance companies. The evidence shows that consumers have benefited from the use of credit scores in the past. In replacing credit scoring as a predictability for the risk of loss, the industry is about ten years out from finding something 50 percent of predictability. If we can't ask about enrollment in school, we are not sure how we can ask about grades in school. Sixty-two percent of Farmers customers would see an increase in their bill if this bill passes. If credit scoring was to be banned in Washington State, it would result in a certain segment of the market subsidizing a different segment of the market. Credit is one of those tools that is extremely predictive. Taking away credit scoring would result in a rate increase for our customers.

OTHER: Request technical amendment. Include home based instruction in the definition of education.

Persons Testifying: PRO: Mike Kreidler, Washington State Insurance Commissioner; Birny Birnbaum, Center for Economic Justice; Dusty Howler, Washington Local 32; Robin Zukoski, Columbia Legal Services; Stephanie Dotson, Blair Patrick, citizens; Jim Morris, Governor's Committee on Disability Issues; Steve Weber, Statewide Poverty Action Network.

CON: Cliff Webster, American Insurance Association, Consumer Data Industry Association; Bill Stauffacher, Insurance Agents & Brokers of Washington; Jessica Duple-Harbin, Farmers Insurance; Carrie Telifson, Progressive Insurance; Jean Leonard, Washington Insureres; Mel Sorenson, Property Casualty Insurance.

OTHER: Dianna Brannan, Christian Homeschool Network.