



PROPOSED RULE MAKING

CR-102 (October 2017)
(Implements RCW 34.05.320)
Do **NOT** use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: October 05, 2021

TIME: 1:39 PM

WSR 21-20-126

Agency: Office of the Insurance Commissioner

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 21-13-131 ; or

Expedited Rule Making--Proposed notice was filed as WSR _____; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or

Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject) **Temporary prohibition on use of credit history on some personal lines**

Insurance Commissioner Matter R 2021-07

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
November 23, 2021	9:30am	Zoom Meeting: Detailed information for attending the Zoom meeting posted on the OIC website here: https://www.insurance.wa.gov/temporary-prohibition-use-credit-history-r-2021-07	Due to the COVID-19 public health emergency, this meeting will be held via Zoom platform.

Date of intended adoption: November 24, 2021_ (Note: This is **NOT** the effective date)

Submit written comments to:

Name: David Forte

Address: PO Box 40260, Olympia, WA 98504-0260

Email: rulescoordinator@oic.wa.gov

Fax: 360-586-3109

Other:

By (date) November 22, 2021

Assistance for persons with disabilities:

Contact Melanie Watness

Phone: 360-725-7013

Fax: 360-586-2023

TTY: 360-586-0241

Email: MelanieW@oic.wa.gov

Other:

By (date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules: For all private passenger automobile coverage, renter's coverage, and homeowners coverage issued in the state of Washington, insurers shall not use credit history to determine personal insurance rates, premiums, or eligibility for coverage. The temporary prohibition shall remain in effect for three years following the day the national emergency concerning the novel coronavirus disease (COVID-19) outbreak declared by the President on March 13, 2020 under the National Emergencies Act (50 U.S.C. 1601 et seq.)

terminates, or the day the Governor's Proclamation 20-05, proclaiming a State of Emergency throughout the state of Washington as a result of the coronavirus disease 2019 (COVID-19) outbreak in the United States expires, whichever is later.

Reasons supporting proposal: The Commissioner is tasked with ensuring that insurance rates are not excessive, inadequate, or unfairly discriminatory, and with enacting rules that ensure the use of credit history and credit history factors in setting insurance premiums is not excessive, inadequate, or unfairly discriminatory.

Insurance companies which use credit-based insurance scoring claim that credit scoring is a predictive tool to identify risk of loss from a specific consumer. This credit-based insurance score is then used to determine premiums charged to each consumer.

On February 29, 2020, the Governor of the State of Washington issued Proclamation 20-05, proclaiming a State of Emergency throughout the state of Washington as a result of the coronavirus disease 2019 (COVID-19) outbreak in the United States. On March 13, 2020 under the National Emergencies Act (50 U.S.C. 1601 et seq.) the President of the United States declared a national emergency concerning the novel coronavirus disease (COVID-19) outbreak in the United States. Addressing the state of emergency caused by the coronavirus pandemic has required difficult steps that have had a severe financial impact on large groups within our state.

In part to mitigate the financial impacts of the COVID 19 pandemic to individual households, on March 27, 2020, the President of the United States signed the CARES Act (P.L. 116-136). Section 4021 of the CARES Act addresses credit reporting during the pandemic. The CARES Act requires financial institutions to report consumers as current if they were not previously delinquent or, for consumers that were previously delinquent, not to advance the level of delinquency, for credit obligations for which the furnisher makes payment accommodations to consumers affected by COVID-19 and the consumer makes any payments the accommodation requires. Section 4022 of the CARES Act requires certain lenders to offer forbearance options to borrowers, and imposed a moratorium on foreclosures for certain home loans. In addition, section 3513 of the CARES Act specifically addresses the furnishing of federally-held student loans for which payments are suspended. This provision results in all non-defaulted federally-held student loans being reported as current.

In addition, the Governor of the State of Washington has issued several emergency proclamations limiting state agencies from charging late fees and penalties, and placing a moratorium on garnishment actions (Emergency Proclamation 20-49, and subsequent amendments) and evictions (Emergency Proclamation 20-19, and subsequent amendments). The critical consumer protections included in these proclamations have also had the effect of preventing creditors from taking actions that are otherwise reportable on a consumer's credit history.

The result of the CARES Act is that all credit bureaus are collecting a credit history that is objectively inaccurate for some consumers and therefore results in an unreliable credit score being assigned to them. Consequently, this untrustworthy credit score degrades any predicative value that may be found in a consumer's credit-based insurance score.

The Commissioner finds that the current protections to consumer credit history at the state and federal level have disrupted the credit reporting process. This disruption has caused credit-based insurance scoring models to be unreliable and therefore inaccurate when applied to produce a premium amount for an insurance consumer in Washington state. This makes the use of currently filed credit based insurance scoring models unfairly discriminatory within the meaning of RCW 48.19.020.

There is evidence that the negative economic impacts of the pandemic have disproportionately fallen on people of color. Therefore, when the CARES Act protections are eliminated, and negative credit information can be fully reported again, credit histories for people of color will have been disproportionately eroded by the pandemic.

Remaining consumer credit protections in the CARES Act will expire after the national state of emergency. When the CARES Act fully expires, a large volume of negative credit corrections will flood consumer credit histories. This flood of negative credit history has not been accounted for in the current credit scoring models. Without data to demonstrate that the predictive ability of credit scoring models based on pre-pandemic credit and claims histories is unchanged, the predicative ability of current credit scoring models cannot be assumed. This will make the use of currently filed credit based insurance scoring models unfairly discriminatory within the meaning of RCW 48.19.020.

It is impossible to know precisely when the state and federal states of emergency will end. Insurance companies must have an alternative to the currently unreliable credit scoring models they have in place before the protections of the CARES Act end. Therefore, it is necessary to immediately implement changes to the use of credit scoring.

The Commissioner is considering this rulemaking to support the effects of the emergency rule, on the same subject and as filed in WSR 21-07-103 and WSR 21-15-058, will last for three years after the public health emergency concludes

Statutory authority for adoption: RCW 48.02.060, 48.18.480, 48.19.020, 48.19.035, 48.19.080			
Statute being implemented: 48.18.480, 48.19.020			
Is rule necessary because of a:			
Federal Law?		<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Federal Court Decision?		<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?		<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If yes, CITATION:			
Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None			
Name of proponent: (person or organization) Mike Kreidler, Insurance Commissioner			<input type="checkbox"/> Private <input type="checkbox"/> Public <input checked="" type="checkbox"/> Governmental
Name of agency personnel responsible for:			
	Name	Office Location	Phone
Drafting:	David Forte	PO Box 40260, Olympia, WA 98504-0260	360-725-7042
Implementation:	Molly Nollette	PO Box 40260, Olympia, WA 98504-0260	360-725-7000
Enforcement:	Molly Nollette	PO Box 40260, Olympia, WA 98504-0260	360-725-7000
Is a school district fiscal impact statement required under RCW 28A.305.135?			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
If yes, insert statement here:			
<p>The public may obtain a copy of the school district fiscal impact statement by contacting:</p> <p>Name:</p> <p>Address:</p> <p>Phone:</p> <p>Fax:</p> <p>TTY:</p> <p>Email:</p> <p>Other:</p>			
Is a cost-benefit analysis required under RCW 34.05.328?			
<input checked="" type="checkbox"/> Yes: A preliminary cost-benefit analysis may be obtained by contacting:			
Name: David Forte Address: PO Box 40260, Olympia, WA 98504-0260 Phone: 360-725-7042 Fax: 360-586-3109 TTY: Email: rulescoordinator@oic.wa.gov Other:			
<input type="checkbox"/> No: Please explain:			

Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

- RCW 34.05.310 (4)(b) (Internal government operations)
- RCW 34.05.310 (4)(c) (Incorporation by reference)
- RCW 34.05.310 (4)(d) (Correct or clarify language)
- RCW 34.05.310 (4)(e) (Dictated by statute)
- RCW 34.05.310 (4)(f) (Set or adjust fees)
- RCW 34.05.310 (4)(g) ((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.030(1)(a).

Explanation of exemptions, if necessary: The proposed rule will not impose more than minor costs on businesses in an industry. See below for calculations and rationale.

COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency’s analysis showing how costs were calculated. RCW 19.85 states that “...an agency shall prepare a small business economic impact statement: (i) If the proposed rule will impose more than minor costs on businesses in an industry1...” The Small Business Economic Impact Statement (SBEIS) must include “...a brief description of the reporting, recordkeeping, and other compliance requirements of the proposed rule, and the kinds of professional services that a small business is likely to need in order to comply with such requirements... To determine whether the proposed rule will have a disproportionate cost impact on small businesses2”.

This rule proposal, or portions of the proposal, are exempt from requirements of the Regulatory Fairness Act under RCW 19.85.030(1)(a) – the proposed rule will not impose more than minor costs on businesses in an industry.

RCW 19.85.030(1)(a) states that “...an agency shall prepare a small business economic impact state: (i) If the proposed rule will impose more than minor costs on businesses in an industry...”. An analysis conducted by the OIC determined that this rule would not impost more than minor costs on businesses.

OIC determined that both property and casualty insurance companies and insurance agencies and brokerages are impacted by the implementation of this rule. Based on 2019 Bureau of Labor Statistics (BLS) data, direct property and casualty insurers are not considered small businesses, as they have on average 74 employees per firm (6,393 total employees in WA / 87 average number of firms in WA). Small business is defined as a business entity that has fifty or fewer employees (RCW 19.85.020). Insurance agencies and brokerages are estimated to have on average 6 employees per firm (15,498 total employees in WA / 2,471 average number of firms in WA) according to the same BLS data, and are therefore considered to be small businesses under RCW 19.85.020.

Using 2019 BLS data, the average weekly pay for individuals employed by Insurance Agencies and brokerages in Washington is \$1,626. Assuming a 40-hour work week, that equates to approximately \$40.65 per hour. We also assume one hour per employee for communicating with clients regarding premium changes. This is likely an overestimate, as each employee of the agencies and brokerages will not be communicating with the insured. Additional information from the 2019 Bureau of Labor Statistics indicates the average number of firms (2,471), and the total average annual employment (15,498). Using this information, we can determine the cost of communicating with insured regarding premium changes per firm:

¹ Chapter 19.85.030: <http://app.leg.wa.gov/RCW/default.aspx?cite=19.85.030>

² RCW 19.85.040: <http://app.leg.wa.gov/RCW/default.aspx?cite=19.85.040>

$$\$40.65 \text{ per hour} * 1 \text{ hour} * (15,498 / 2,471) = \$254.95$$

Based on these assumptions, we calculate a per firm cost of \$254.95. We can use this figure as a cost of compliance when determining whether the rule is below or exceeds the minor cost threshold. The below chart shows the estimated cost of compliance (calculated above), as well as the minor cost estimate, which is the larger of either 1% of the average annual payroll or 0.3% of the average annual gross business income. When the cost of compliance is estimated to be \$254.95, it is well under the minor cost estimate of \$4,879.47. The second row is an alternate estimated cost of compliance. In this scenario, we have increased the cost of compliance to \$1,000, and it is still well below the minor cost estimate. Even if we use the minimum of either the 1% of average annual payroll or the 0.3% of average annual gross business income (which would be \$2,407.22 in this case), both scenarios are still well below the minor cost estimate.

2017 Industry NAICS Code	Estimated Cost of Compliance	NAICS Code Title	Minor Cost Estimate	1% of Avg Annual Payroll	0.3% of Avg Annual Gross Business Income
524210	\$254.95	Insurance Agencies and Brokerages	\$4,879.47	\$4,879.47	\$2,407.22
524210	\$1,000.00	Insurance Agencies and Brokerages	\$4,879.47	\$4,879.47	\$2,407.22


Evidently, the estimated cost of compliance is below the minor cost threshold. The figures used for this calculation are drawn from relevant data from the US Bureau of Labor Statistics and the Washington Department of Revenue.

OIC determines that this rule is exempt from small business economic impact statement requirements.

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

- Name:
- Address:
- Phone:
- Fax:
- TTY:
- Email:
- Other:

Date: October 5, 2021	Signature: 
Name: Mike Kreidler	
Title: Insurance Commissioner	

WAC 284-24A-050 What types of information must an insurer include in a multivariate analysis? (1) A multivariate statistical analysis must evaluate the rating factors listed below (if applicable to the rating plan, and to the extent that data are credible):

(a) For (~~homeowners, dwelling property,~~) earthquake(~~(r)~~) and personal inland marine insurance:

- (i) Insurance score;
- (ii) Territory and/or geographic area;
- (iii) Protection class;
- (iv) Amount of insurance;
- (v) Surcharges or discounts based on loss history;
- (vi) Number of family units; and
- (vii) Policy form relativity.

(b) For (~~private passenger automobile,~~) personal liability and theft, and mechanical breakdown insurance:

- (i) Insurance score;
- (ii) Driver class;
- (iii) Multicar discount;
- (iv) Territory and/or geographic area;
- (v) Vehicle use;
- (vi) Rating factors related to driving record; and
- (vii) Surcharges or discounts based on loss history.

(2) An insurer must provide a general description of the model used to perform the multivariate analysis, including the:

- (a) Formulas the model uses;
- (b) Rating factors that are included in the modeling process; and
- (c) Output from the model, such as indicated rates or rating factors.

(3) An insurer must show how the proposed rates or rating factors are related to the multivariate analysis.

(4) The temporary prohibition in WAC 284-24A-090 on the use of credit history to determine personal insurance rates, premiums, or eligibility for coverage for all homeowners and private passenger automobile coverage will remain in effect for three years following the day the national emergency concerning the novel coronavirus disease (COVID-19) outbreak declared by the President on March 13, 2020, under the National Emergencies Act (50 U.S.C. 1601 et seq.) terminates, or the day the Governor's Proclamation 20-05, proclaiming a state of emergency throughout the state of Washington as a result of the coronavirus disease 2019 (COVID-19) outbreak in the United States expires, whichever is later.

(a) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(i) Homeowners coverage includes dwelling property, mobile homeowners, manufactured homeowners, renters, and condominium owner's coverage.

(ii) Private passenger automobile coverage includes motorcycles and recreational vehicle coverage.

(b) The temporary prohibition on the use of credit history to determine personal insurance rates, premiums, or eligibility for homeowners and private passenger automobile coverage does not apply to commercial lines, personal liability and theft, earthquake, personal inland marine, or mechanical breakdown coverage.

NEW SECTION

WAC 284-24A-090 Temporary prohibition of use of credit history.

(1) Notwithstanding any other provision of this chapter, this section applies to all homeowners and private passenger automobile insurance pertaining to and issued in the state of Washington while this rule is effective.

(2) The insurance commissioner finds that as a result of the broad negative economic impact of the coronavirus pandemic, the disproportionately negative economic impact the coronavirus pandemic has had on communities of color, and the disruption to credit reporting caused by both the state and federal consumer protections designed to alleviate the economic impacts of the pandemic, for homeowners and private passenger automobile coverage issued in the state of Washington, the use of insurance credit scores results in premiums that are excessive, inadequate, or unfairly discriminatory within the meaning of RCW 48.19.020 and 48.18.480.

(3) For all homeowners and private passenger automobile coverage issued in the state of Washington, insurers must not use credit history to determine personal insurance rates, premiums, or eligibility for coverage.

(4) For purposes of this section, insurers must not:

(a) Use credit history to place insurance coverage with a particular affiliated insurer or insurer within an overall group of affiliated insurance companies.

(b) Use credit history to determine a consumer's eligibility for any payment plan.

(5)(a) In order to comply with this section, insurers subject to this rule may substitute any insurance credit score factor used in a rate filing with a neutral rating factor.

(b) For purposes of this section, insurers may, but are not required to, implement the neutral factor by peril or coverage.

(6) Insurers may not include rate stability rules in filings submitted to comply with this section.

(7) This subsection applies to insurers that have used credit history to place insurance coverage with a particular affiliated insurer or insurer within a group of insurance companies. For each such impacted insured, the insurer:

(a) Must provide the following notification to each impacted insured, no later than 60 calendar days prior to renewal: "You are currently insured with (COMPANY NAME) at least in part due to your credit history. You may also be eligible for coverage in one or more of our affiliated companies, which may provide a more competitive premium or broader coverage options. Factors other than credit history may still limit your eligibility for coverage. Please contact your Agent/Broker for further assistance. If you do not have an Agent/Broker, you may contact our customer service representatives directly at (PHONE NUMBER) for assistance. This notice does not constitute an offer of renewal or guaranteed coverage.";

(b) Must allow an impacted insured to either secure quotes, or secure coverage, or both, in an affiliated insurer that provides the same line of insurance; and

(c) May not consider the insured's prior company placement when determining premiums or eligibility for coverage for the impacted insured in an affiliated insurer that provides the same line of insurance.

(8) The temporary prohibition on the use of credit history in this section will remain in effect for three years following the day the national emergency concerning the novel coronavirus disease (COVID-19) outbreak declared by the President on March 13, 2020, under the National Emergencies Act (50 U.S.C. 1601 et seq.) terminates, or the day the Governor's Proclamation 20-05, proclaiming a state of emergency throughout the state of Washington as a result of the coronavirus disease 2019 (COVID-19) outbreak in the United States expires, whichever is later.

(9) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) Homeowners coverage includes dwelling property, mobile homeowners, manufactured homeowners, renters, and condominium owner's coverage.

(b) Private passenger automobile coverage includes motorcycles and recreational vehicle coverage.

(c) "Neutral factor" means a single constant factor calculated such that, when it is applied in lieu of insurance-score-based rating factors to all policies in an insurer's book of business, the total premium for the book of business is unchanged.