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(Original Signature of Member)

119TH CONGRESS
1ST SESSION

H. R. _____

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

IN THE HOUSE OF REPRESENTATIVES

Mrs. WATSON COLEMAN introduced the following bill; which was referred to the Committee on _____

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” or the “PAID 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, ZIP Code, census tract, previous
15 insurer, and prior purchase of insurance may be sig-
16 nificant factors used to determine eligibility for pre-
17 ferred auto insurance rates regardless of the per-
18 son's driving history. As a result of the individual's
19 ineligibility for preferred rates, the driver's policy
20 and rate will be only offered from an affiliate com-
21 pany that has higher rates.

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

24 (a) USE OF CERTAIN FACTORS AND INCOME PROX-
25 IES PROHIBITED.—It shall be unlawful for a private pas-

1 senger automobile insurer, or any of its affiliate insurers,
2 to take into consideration any of the factors described in
3 subsection (b) relating to a consumer in determining that
4 consumer's eligibility for automobile insurance or in calcu-
5 lating the rate for that consumer.

6 (b) FACTORS.—The factors referred to in subsection
7 (a) are—

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

21 (c) SUBMISSIONS TO FTC REGARDING CERTAIN
22 BUSINESS PRACTICES.—Not later than 1 year after the
23 date of the enactment of this Act, and every 2 years there-
24 after, each private passenger automobile insurer, and each
25 of its affiliate insurers, shall submit to the Federal Trade

1 Commission such information as the Commission may re-
2 quire to demonstrate that the marketing, underwriting,
3 rating, claims handling, and fraud investigations of such
4 private passenger automobile insurer or affiliate insurer
5 (as the case may be), and any algorithm or model used
6 by such private passenger automobile insurer or affiliate
7 insurer (as the case may be) for such marketing, under-
8 writing, rating, claims handling, or fraud investigations,
9 do not disparately impact any group of customers based
10 on race, color, national or ethnic origin, religion, sex, sex-
11 ual orientation, disability, gender identity, or gender ex-
12 pression.

13 (d) PUBLIC AVAILABILITY OF INFORMATION.—All
14 underwriting rules and rate filings for use by any private
15 passenger automobile insurer shall be available for public
16 inspection and may not be considered proprietary trade
17 secret information.

18 (e) REASONABLE PROCEDURES TO ASSURE COMPLI-
19 ANCE.—No person shall be held liable for any violation
20 of this Act if the person shows by a preponderance of the
21 evidence that at the time of the alleged violation the per-
22 son maintained reasonable procedures to assure compli-
23 ance with the provisions of this Act.

24 (f) RULES OF CONSTRUCTION.—

1 (1) FACTORS AND METHODS INFLUENCING
2 PREMIUMS.—For the purposes of this Act, a viola-
3 tion of subsection (a) shall be considered to have oc-
4 curred whenever the consideration of any of the fac-
5 tors described in subsection (b) prevents the con-
6 sumer from obtaining insurance at the lowest rate
7 available to the consumer from a private passenger
8 automobile insurer or any of its affiliates. Actions
9 considered a violation of such subsection include the
10 usage or consideration of any such factor resulting
11 in—

12 (A) the determination of a consumer's eli-
13 gibility for automobile insurance or the calcula-
14 tion of the rate for that consumer;

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

17 (C) an action which prevents a consumer
18 from obtaining insurance from an automobile
19 insurer or any of its affiliate companies;

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

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

24 (2) AUTHORITY OF FEDERAL AND STATE AGEN-
25 CIES.—Nothing in this Act is intended to affect the

1 authority of any Federal or State agency to enforce
2 a prohibition against unfair or deceptive acts or
3 practices, including the making of false or mis-
4 leading statements in connection with a credit or in-
5 surance transaction that is not initiated by the con-
6 sumer.

7 **SEC. 4. ENFORCEMENT.**

8 (a) ENFORCEMENT BY FEDERAL TRADE COMMIS-
9 SION.—

10 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
11 TICES.—A violation of this Act shall be treated as
12 an unfair or deceptive act or practice proscribed
13 under section 5 of the Federal Trade Commission
14 Act (15 U.S.C. 45).

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

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

5 (4) REGULATIONS.—The Federal Trade Com-
6 mission shall prescribe, in accordance with section
7 553 of title 5, United States Code, such regulations
8 as are necessary to carry out the purposes of this
9 Act, including regulations as may be necessary or
10 appropriate to administer and carry out the pur-
11 poses and objectives of this Act, and to prevent eva-
12 sions thereof or to facilitate compliance therewith.

13 (b) ACTIONS BY CONSUMERS.—

14 (1) WILLFUL VIOLATIONS.—Any private pas-
15 senger automobile insurer who willfully violates this
16 Act with respect to any consumer is liable to that
17 consumer in an amount equal to the sum of—

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

20 (B) such amount of punitive damages as
21 the court may allow; and

22 (C) in the case of any successful action to
23 enforce any liability under this paragraph, the
24 costs of the action together with reasonable at-
25 torneys' fees as determined by the court.

1 (2) NEGLIGENCE VIOLATIONS.—Any private pas-
2 senger automobile insurer who is negligent in failing
3 to comply with any requirement imposed under this
4 Act with respect to any consumer is liable to that
5 consumer in an amount equal to the sum of—

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

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

12 (3) ATTORNEYS' FEES.—Upon a finding by the
13 court that an unsuccessful pleading, motion, or other
14 paper filed in connection with an action under this
15 subsection was filed in bad faith or for purposes of
16 harassment, the court shall award to the prevailing
17 party attorneys' fees reasonable in relation to the
18 work expended in responding to the pleading, mo-
19 tion, or other paper.

20 (4) JURISDICTION OF COURTS; LIMITATION OF
21 ACTIONS.—An action to enforce any liability created
22 under this subsection may be brought in any appro-
23 priate United States district court, without regard to
24 the amount in controversy, or in any other court of

1 competent jurisdiction, not later than the earlier
2 of—

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

6 (B) 5 years after the date on which the
7 violation that is the basis for such liability oc-
8 curs.

9 (c) ACTIONS BY STATES.—

10 (1) IN GENERAL.—In any case in which the at-
11 torney general of a State, or an official or agency of
12 a State, has reason to believe that an interest of the
13 residents of such State has been or is threatened or
14 adversely affected by an act or practice in violation
15 of this Act, the State, as *parens patriae*, may bring
16 a civil action on behalf of the residents of the State
17 in an appropriate State court or an appropriate dis-
18 trict court of the United States to—

19 (A) enjoin such act or practice;

20 (B) enforce compliance with this Act;

21 (C) obtain damages, restitution, or other
22 compensation on behalf of residents of the
23 State; or

1 (D) obtain such other legal and equitable
2 relief as the court may consider to be appro-
3 priate.

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

16 (3) AUTHORITY OF FEDERAL TRADE COMMIS-
17 SION.—On receiving notice under paragraph (2) of
18 an action under this subsection, the Federal Trade
19 Commission shall have the right—

20 (A) to intervene in the action;

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

23 (C) to file petitions for appeal.

24 (4) RULE OF CONSTRUCTION.—For purposes of
25 bringing a civil action under this subsection, nothing

1 in this Act shall be construed to prevent an attorney
2 general, official, or agency of a State from exercising
3 the powers conferred on the attorney general, official,
4 or agency by the laws of such State to conduct
5 investigations, administer oaths and affirmations, or
6 compel the attendance of witnesses or the production
7 of documentary and other evidence.

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

9 This Act does not annul, alter, affect, or exempt any
10 person subject to the provisions of this Act from complying
11 with the laws of any State with respect to the collection,
12 distribution, or use of any information on consumers, the
13 prevention or mitigation of identity theft, or the regulation
14 of the business of insurance, except to the extent that
15 those laws are inconsistent with any provision of this Act,
16 and then only to the extent of the inconsistency.

17 **SEC. 6. DEFINITIONS.**

18 For the purposes of this Act, the following definitions
19 apply:

20 (1) AFFILIATE.—The term “affiliate” means an
21 entity that, directly or indirectly, through one or
22 more intermediaries, controls, is controlled by, or is
23 under common control with another entity. For purposes
24 of this paragraph, the term “control” means
25 the possession, directly or indirectly, of the power to

1 direct or cause the direction of the management and
2 policies of the entity, whether—

3 (A) through the ownership of voting securi-
4 ties;

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

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

10 (D) by common management.

11 Control shall be presumed to exist if an entity and
12 its affiliates directly or indirectly own, control, hold
13 with the power to vote, or hold proxies representing
14 10 percent or more of the voting interests of an enti-
15 ty.

16 (2) AUTOMOBILE INSURER.—The term “auto-
17 mobile insurer” means an insurer authorized to
18 transact or transacting automobile insurance, motor
19 vehicle insurance, automobile or motor vehicle liabil-
20 ity insurance, or any similar insurance business in
21 the United States.

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

1 (4) CONSUMER REPORT.—The term “consumer
2 report” has the meaning given such term in section
3 603 of the Fair Credit Reporting Act (15 U.S.C.
4 1681a), except that such term does not include any
5 communication to the extent such communication re-
6 lates to the driving history or place of residence of
7 a consumer.

8 (5) CREDIT-BASED INSURANCE SCORE.—The
9 term “credit-based insurance score” means a rating
10 based in whole or in part on a consumer’s credit in-
11 formation used in underwriting and rating of con-
12 sumers that takes into account certain elements of
13 an individual’s credit history to predict how likely
14 such individual is to have an insurance loss.

15 (6) CREDIT SCORE.—The term “credit score”
16 has the meaning given such term in section
17 609(f)(2) of the Fair Credit Reporting Act (15
18 U.S.C. 1681g(f)(2)).

19 (7) EMPLOYMENT STATUS.—The term “employ-
20 ment status” means a consumer’s status as a cur-
21 rent full-time employee, part-time employee, em-
22 ployed, unemployed, underemployed, or any other
23 such designation which indicates a consumer’s work
24 status.

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

5 (9) LEVEL OF EDUCATION.—The term “level of
6 education” refers to the highest grade level com-
7 pleted in a secondary school or trade school, a pro-
8 fessional licensure or certification, or the highest un-
9 dergraduate or graduate college degree obtained.
10 Such term does not include the completion of a traf-
11 fic safety course or scholastic achievement while en-
12 rolled in a school, college, or university.

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

16 (11) PRIVATE PASSENGER AUTOMOBILE.—The
17 term “private passenger automobile” means a 4-
18 wheel motor vehicle, whether owned or leased to an
19 individual or individuals, and that is of a private
20 passenger or station wagon type, or that is a motor
21 vehicle with a pickup body, a delivery sedan, a pas-
22 senger van, a sports utility vehicle, or a panel truck
23 or a camper type vehicle, and that—

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

1 (B) is not rented to others;

2 (C) has a gross vehicle weight of less than
3 15,000 pounds; and

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

7 Such term includes a motor vehicle owned by a farm
8 family co-partnership or farm family corporation,
9 which is principally garaged on a farm or ranch and
10 otherwise meets the definition contained in this
11 paragraph.

12 **SEC. 7. EFFECTIVE DATE.**

13 This Act shall take effect 1 year after the date of
14 enactment of this Act.