



ISSUE BRIEF

OIC Ban on Credit History

Key facts

- The Office of the Insurance Commissioner (OIC) issued two concurrent emergency rules banning the use of credit history in determining personal insurance rates and premiums, and pursued permanent rulemaking.
- A Thurston County judge overturned the latest emergency rule, stating that it did not constitute an emergency.
- The OIC adopted a permanent rule on February 1, 2022, effective March 4, 2022.

Background

In early 2021, many insurance customers experienced rate increases following the Insurance Commissioner's adoption of an emergency rule banning the use of credit history in calculating insurance premium rates. Emergency rules last for up to 120 days and may not be subsequently extended unless a permanent rule is being pursued. The [first emergency rule](#) was adopted March 22, 2021.

Emergency rules must have justification for enactment as outlined in [RCW 34.05.350](#). The Commissioner is tasked with ensuring that insurance rates are not excessive, inadequate, or unfairly discriminatory ([RCW 48.18.020](#)). The [CR-103E](#) filed by the OIC outlines their justification: "The result of the CARES Act is that all credit bureaus are collecting 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." Due to this "unreliable" data, the OIC believes this would disproportionately fall on people of color. The Commissioner argues that 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. This erosion will result in a flood of negative credit history that has not been accounted for in the current credit scoring models. The OIC believes that this will make the use of currently filed credit-based insurance scoring models unfairly discriminatory. Read more [here](#).

What's the rule?

The rule temporarily prohibits insurers from using credit history to determine personal insurance rates, premiums, or eligibility for coverage for private passenger automobile coverage, renter's coverage, and homeowner's coverage until three years after the termination of either the national emergency concerning coronavirus (COVID-19) outbreak declared by the President or the Governor's state of emergency on the same subject, whichever is later.

Timeline

March 22, 2021: The OIC adopts an emergency rule to temporarily ban the use of credit history in calculating insurance rates for three years following the conclusion of either the Governor's state of emergency or the national emergency declaration, whichever is later.

June 22, 2021: The OIC files a CR-101: Preproposal to adopt permanent rule.

July 15, 2021: The OIC adopts a subsequent, identical emergency rule as the last one was set to expire July 20. This is allowed under the Administrative Procedures Act as long as a permanent rule is being pursued.

October 8, 2021: A [Thurston County judge overturns](#) emergency rule, stating that Commissioner Kreidler did not have "good cause" to file it as an emergency.

February 1, 2022: The OIC adopts a [permanent rule](#).

What happens now?

The rule has been adopted, therefore, insurers will have to comply by March 4th. As written, this rule will remain effective until three years after the termination of either the national emergency concerning coronavirus (COVID-19) outbreak declared by the President or the Governor's state of emergency on the same subject, whichever is later. There is always a chance this is challenged legally.

Additional information

March 22, 2021 Emergency Rule: <https://www.insurance.wa.gov/emergency-rule-temporarily-prohibiting-use-credit-history-r-2021-02>

February 1, 2022 Permanent Rule: <https://www.insurance.wa.gov/temporary-prohibition-use-credit-history-r-2021-07>

RCW 34.05.350: Emergency Rules and Amendments: <https://app.leg.wa.gov/rcw/default.aspx?cite=34.05.350>

Judge overturns emergency order (KIRO-7): <https://www.kiro7.com/news/jesse-jones/judge-overturns-emergency-order-removing-credit-scoring-insurance-rates/I6F6TPPTVBAUFAHRNRF56XKA2Q/>