Measure 42

Easy-to-Read Voting Guide

Official Title – Prohibits insurance companies from using credit score or “credit worthiness” in calculating rates or premiums

The Way it is now:
Insurance companies can use credit scores or credit history to help decide how much to charge person who is applying for a new insurance policy for their car or home. Oregon law stops insurance companies from using credit scores to increase premiums for people who already have insurance. Also, a person’s credit score cannot be used as a reason for canceling insurance.

What Measure 42 would do:
Measure 42 would stop insurers from using credit scores or credit history to help decide how much to charge people for a new insurance policy for their car or home.

How much would it cost:
No new cost to the state.

Argument for: People with bad credit ratings are often charged more for insurance premiums, even if the bad credit is from having too many credit cards and too much credit. Having a low credit score doesn’t mean that a person is a greater insurance risk or is more likely to file insurance claims.

Argument against: Most Oregonians, 60-70%, have good credit history and high credit scores, which means they pay less for insurance. If credit scores are not used as a factor for new insurance applicants, Oregonians with good credit histories could pay more to make up for people with bad credit.

Regular Voters' Guide

Amends State Law: Prohibits insurance companies from using credit score or credit worthiness in calculating rates or premiums.

Initiative: This measure amends the Oregon Revised Statutes and was placed on the ballot by initiative petition with an estimated 84,408 signatures. Bill Sizemore and his mother, Grace Sizemore, were the chief petitioners with financial backing by Loren Parks, a Las Vegas businessman.

Financial Impact: There would be no financial effect on state or local government.

Yes Vote: If this measure passes, it would be added to the Oregon Revised Statutes to prohibit insurers from quoting or charging a rate or premium based solely or in part on the credit score or credit worthiness of an insurance policyholder or applicant.

No Vote: Current law remains in effect which limits insurers to using credit information only when deciding whether to issue a policy to a new applicant, and only if the applicant's credit score is used as part of an evaluation system that also relies on other factors.

Background Information: A credit score is a number insurance companies calculate based on a consumer's credit history. Companies may use credit history along with other factors to decide whether to issue a policy and to determine how much to charge. This credit history includes such things as bill-paying history, the number and type of credit accounts they have, late payments, collection action and outstanding debt. Credit information has been used as a rating factor for commercial insurance for many years. In 1995, insurers began using credit history for personal lines like auto and homeowners insurance. By 2002, most insurance companies were using credit scoring for personal lines. Insurance companies added credit information to their rate-setting criteria because several studies show a statistical correlation between financial responsibility and insurance losses. They believe that credit information is a reliable measure of financial responsibility. Insurers reason that those consumers who show less financial responsibility statistically file more claims and so they should pay more for their insurance. However, some insurers have chosen not to use credit scores as a rating factor. Nationally about 10% of the companies do not use credit scoring. The agent associations for State Farm and Allstate Insurance, for example, are on record as opposing the use credit scoring as a factor for determining insurability and setting premiums. These companies believe other rating factors, among them driving records and loss histories, will give them sufficient data to assess insurance risk.

In 2003, the Oregon Legislature passed Senate Bill 260, which prohibits the use of credit scoring to increase premiums or cancel coverage for existing policyholders. The law allows insurers to use credit scoring for new applicants as long as they also rely on other relevant factors like driving record, previous claims, etc. The law requires insurers to disclose the use of credit scoring to new applicants, prohibits the use of certain factors in credit scoring models, and requires insurers to file their credit scoring models with the Insurance Division of the Department of Consumer and Business Services. With the passage of the 2003 law, Oregon's consumer protection dealing with insurance credit scoring is as strong as any state in the nation with the exception of Hawaii which bans all credit scoring by insurers and two states which ban credit scoring partially: Maryland bans its use for homeowners insurance and California bans its use for auto insurance.

Proposal

The effect of this measure would be to ban the use of credit scoring by insurance companies in Oregon for personal insurance. At present, credit scoring in combination with other factors is allowed when deciding to issue a policy to a new applicant and to determine the rate. Measure 42 would ban this last use of credit scoring for personal lines in insurance. The ban would apply to insurance companies and their agents selling "medical, health, accident, automobile, fire or liability insurance, or any combination of policies providing such coverage to consumers." Homeowners insurance includes fire insurance. According to the state Insurance Division fact sheet, most auto and homeowner insurers - over 90 % of the market - use credit scoring for new business. Health and life insurers currently do not use credit scoring.

If Measure 42 passes, consumer's premiums may decrease if they have a low credit score. Supporters say that the current practice of insurers using credit scores to determine insurability is based on the false assumption that there is a correlation between credit scores and frequency of claims. They say that people often have bad credit due to no fault of their own but that doesn't make them a greater insurance risk. Opponents say the data clearly demonstrates a link between credit scores and increased risk of claims. They point to an Insurance Information Institute white paper, which shows that 76% of borrowers have good credit scores. In Oregon, 60-70% have good credit and those people benefit from insurance companies' use of credit information in setting rates. If Measure 42 passes and credit scoring is not used as a rating factor, consumer's insurance premiums may increase if they have a good credit score.

Opponents and supporters of Measure 42 disagree about what will happen if the measure passes. The opponents believe the wording of the measure would apply not only to personal insurance but to commercial and business insurance also. They say the measure was drafted in broad, largely undefined language without reference to sections of Oregon law it is supposed to amend. Unclear at the state level is who would enforce the measure, the Attorney General's office or the Insurance Division. The interpretation of the measure may be challenged in the courts.

Supporters say:

- Individuals have been assigned low credit scores, which have resulted in being charged more for insurance premiums because they have too many credit cards, even though they have never had a late payment, and carry low balances.
- More than 90% of people with low credit scores have normal insurance claim frequencies. Insurers should stop using credit scores and rely on more relevant factors to assess insurance risk.
- Even some insurers are against credit scoring. The agent associations for State Farm and Allstate Insurance oppose the use of credit scoring for determining insurability and rate setting.

Opponents say:

- The 60-70 percent of Oregonians with good credit will pay more for their insurance while people with bad credit will pay less. Oregonians with good credit histories would subsidize individuals with bad credit.
- Oregon consumer protection laws, among the most restrictive in the country, already prohibit insurance companies from raising rates or dropping current customers based on credit.
- With the 2003 consumer protections placed in Oregon law regarding credit scoring, few complaints have been received on this issue by the state Insurance Division showing that there simply is not a problem with the use of credit scoring in Oregon.

Sources

- Text of the proposed initiative provided by the Oregon Secretary of State, January 5, 2005

- Explanatory Statement for Ballot Measure 42 written by Bill Sizemore, et al., July 28, 2006.
- Email communication from Pat McCormick, spokesman for "Oregonians Against Insurance Rate Increases" committee. Aug. 12, 2006
- Website for "NO on 42", www.stop42.com
- Interview with Joel Ario, Oregon Insurance Administrator, Insurance Division, Dept. of Consumer & Business Services, August 16, 2006
- Fact Sheet on Credit Scoring in Insurance provided by Joel Ario, Insurance Administrator
- The Oregonian, *Sizemore back on ballot; this time, about insurance*, August 20, 2006
- Statesman-Journal, *Sizemore gets insurance-regulation initiative on fall ballot* , July, 2006
- Electronic Privacy Information Center, "Credit Scoring" http://www.epic.org/privacy/creditscoring
- Washington State Office of the Insurance Commissioner, "Questions and Answers on Credit Scoring and How Insurers Use Credit Information" September, 2003. Http//www.insurance.wa.gov/factsheets/factsheet_detail.asp?FctShtRcdNum=16
- Text of Enrolled Senate Bill 260, Oregon Legislative Assembly, 2003 Session
- Text of Enrolled Senate Bill 573, Oregon Legislative Assembly, 2005 Session

SECRETARY OF STATE'S INFORMATION

Measure 42 Ballot Title
PROHIBITS INSURANCE COMPANIES FROM USING CREDIT SCORE OR "CREDIT WORTHINESS" IN CALCULATING RATES OR PREMIUMS

RESULT OF "YES" VOTE: "Yes" vote prohibits insurance companies and their agents from using the credit score or "credit worthiness" of insured or applicant in calculating rates or premiums.

RESULT OF "NO" VOTE: "No" vote retains existing law, which restricts, but does not prohibit, the use of credit scores or "credit worthiness" in calculating insurance rates or premiums.

SUMMARY: Current state law requires certain disclosures before a consumer's credit history may be obtained by an insurance company or agent and provides certain restrictions on the use of a consumer's credit history in determining insurance rates. This measure prohibits insurance companies and agents that sell or market medical, health, accident, automobile, fire, or liability insurance, or any combination of policies providing such coverage to consumers from quoting, offering, or charging, directly or indirectly, rates or premiums based solely or in part upon the credit score or "credit worthiness" of an insured or an applicant for insurance. This measure does not apply to policies already in effect, but it shall apply to all policies commenced, changed, amended, or renewed after the measure's effective date. Other provisions.

Explanatory Statement

Ballot Measure 42 prohibits insurance companies selling or marketing medical, health, accident, automobile, fire, or liability insurance, or any combination of policies providing such coverage, from calculating insurance rates or premiums based on the credit history of an insured person or someone applying for insurance.

Current law prohibits insurance companies from canceling, re-rating or failing to renew presently issued insurance policies based on credit history or credit-based insurance scores. When a consumer seeks new personal insurance coverage, insurance companies may only use a consumer's credit history to decline that coverage when it is considered in combination with other substantive underwriting factors. An insurance company accepting a consumer's application for new insurance may offer higher rates
or premiums because of an underwriting decision based on the consumer's less favorable credit history. An insurance company is required to notify the consumer in writing of the specific reasons for this decision. Insurance companies must also explain the consumer's right to request annually that the insurance company re-rate the consumer and explain any potential negative consequences of re-rating. Additionally, insurance companies may use credit-based scoring in setting rates and premiums only
if the companies have filed their credit-based scoring models with the Oregon Insurance Commissioner.
Ballot Measure 42 repeals restrictions in current law on the use of credit information in setting insurance rates and premiums, and bans the use of credit information on establishing insurance rates or premiums.

The ballot measure does not affect insurance policies in force at the time it is enacted, but affects policies that are commenced, changed, amended or renewed after the measure takes effect.

Estimate of Financial Impact:
There is no financial effect on state or local government expenditures or revenues.

Arguments For
http://www.sos.state.or.us/elections/nov72006/military_vp/m42_fav.pdf (10 pages)
Arguments Against 1
http://www.sos.state.or.us/elections/nov72006/military_vp/m42_opp.pdf (20 pages)
Arguments Against 2
http://www.sos.state.or.us/elections/nov72006/military_vp/m42_opp2.pdf (14 pages)

Speaker's Kit Information for Ballot Measure 42

How do insurance companies use credit history?

Currently, many personal auto and homeowners insurance companies in Oregon look at consumer credit information for two things:

Underwriting - whether to issue an insurance policy

Rating - determine how much premium to charge for the insurance coverage

Where do insurance companies obtain information to determine a credit score or credit worthiness?

The Oregon Insurance Division fact sheet on credit scoring in insurance and the Washington State Office of the Insurance Commissioner say that insurance companies can purchase the credit history of an individual from one or more of the three credit bureaus (Equifax, Experian, or TransUnion). Both the federal and state Fair Credit Reporting Acts (FCRA) say that insurance companies can access credit information without the person's permission. Then, the insurance company can a) go to another location or business and purchase a computer model or formula which uses the individual's credit history to come up with a credit score or b) come up with a formula on their own using credit history and other factors. Some of the other factors that are used in the model or formula include driving record, type of car, and where a person lives. For Homeowner premiums, these factors include such things as where the house is located, cost to replace the home, claims history, etc. Oregon law requires that insurers use other factors along with credit scoring to determine insurability and rates for new applicants.

Individual insurance companies use different scoring calculations and place greater emphasis on different factors. So there is no uniformity in credit scores from company to company. That is why many people shop around for the best insurance rates.

Individuals can check their credit history by obtaining a copy of their credit report once a year from each of the three national credit bureaus mentioned above.

Is credit scoring unfair to the poor and minorities?

A spokesperson at the Oregon Insurance Division reported they knew of no studies proving discrimination against the poor in the use of credit scoring by insurance companies. The problem with proving discrimination against any group is the lack of uniformity in credit-scoring models which companies use. There are no standards and insurers weigh credit information differently. Some factors may seem to target low-income consumers while other factors apparently have no relationship to consumer income. Insurers have no legal obligation to disclose their scoring models and few do so.

Whether credit scoring discriminates against minorities is a disputed question. Insurance companies maintain that credit scoring is not unfairly discriminatory because it is a valid predictor of risk and there is no intent to discriminate. Critics argue that credit scoring does discriminate because minorities have lower credit scores on average than the total population and therefore are unfairly affected when credit scoring is applied to everyone. However, there are no definitive studies as to whether minorities or other protected classes have lower than average credit scores. The Federal Trade Commission is currently conducting such a study, but the results are not expected until after the November election. Also, there are no definitive court decisions as to whether a disproportionate impact on minorities or other protected classes would make credit scoring illegal, according to the Oregon Insurance Division Fact Sheet on Credit Scoring.

Interpretations of the Measure

The measure, as it is written, is open to many interpretations which may result in legal challenges if it passes. According to the opposition, the measure does not specify which statutes it intends to amend and does not follow the formula for drafting legislation set forth in Article IV, Section 22 of the Oregon Constitution. There is no definition for the word "consumer" so it is unclear if this measure applies to both individuals and businesses or just to individuals. The state insurance administrator, Joel Ario, states that the enforcement part of the measure is not spelled out and it is unclear who would have that responsibility.

Text of the Measure

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OREGON:

The Oregon Revised Statutes are amended by adding the following section, which section shall read:

Section 1. No insurance company, or agent acting on the part of an insurance company, which sells or markets medical, health, accident, automobile, fire, or liability insurance, or any combination of policies providing such coverage to consumers, shall quote, offer, or charge, either directly or indirectly, a rate or premium which is based solely or in part upon the credit score or credit worthiness of the insured or applicant for insurance.

This 2006 Act shall not affect policies in force at the time it is enacted, but shall affect policies which are commenced, changed, amended, or renewed after the effective date hereof.

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