

The House Committee on Insurance offers the following substitute to HB 1115:

**A BILL TO BE ENTITLED**

**AN ACT**

1 To amend Chapter 9 of Title 33 of the Official Code of Georgia Annotated, relating to  
 2 regulation of insurance rates, underwriting rules, and related organizations, so as to  
 3 comprehensively regulate the use of credit reports, credit scores, and insurance scores in  
 4 connection with the underwriting of motor vehicle insurance policies; to provide definitions;  
 5 to provide for the filing of credit scoring models, methods, and programs; to provide for  
 6 licensing; to provide notice to insureds regarding use of credit scoring; to limit the use of  
 7 certain data in credit scoring; to require disclosure of reasons for adverse actions based upon  
 8 credit scoring; to provide for appeals; to require that certain records be maintained; to limit  
 9 certain financial interests by insurers in credit scoring and reporting entities; to amend Code  
 10 Section 33-39-2 of the Official Code of Georgia Annotated, relating to the applicability of  
 11 obligations imposed by Chapter 39 of Title 33, so as to require compliance with the  
 12 provisions of this Act by entities using credit scoring; to provide for related matters; to  
 13 provide an effective date; to repeal conflicting laws; and for other purposes.

14 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

**SECTION 1.**

15 Chapter 9 of Title 33 of the Official Code of Georgia Annotated, relating to regulation of  
 16 rates, underwriting rules, and related organizations, is amended by designating the existing  
 17 provisions as Article 1 and adding a new Article 2 to read as follows:  
 18

19 **"ARTICLE 2**

20 33-9-60.

21 The General Assembly acknowledges that the federal Fair Credit Reporting Act, 15 U.S.C.  
 22 Section 1681, et seq., permits the utilization of consumer reports or credit reports for the  
 23 purpose of serving as a factor in establishing a consumer's eligibility for insurance relating  
 24 to personal, family, or household purposes. The General Assembly is further aware that  
 25 the federal Fair Credit Reporting Act does not extend its regulation beyond individual

1 consumers. However, in this state, the General Assembly has long required that motor  
2 vehicles be insured by their owners, whether natural persons or corporations or other  
3 entities, so as to comply with the financial responsibility laws of this state. It is the purpose  
4 and intent of this article to ensure, to the extent credit information is gathered or compiled  
5 for use by insurers to determine acceptability of motor vehicle insurance risks, that such  
6 gathering or compilation and use shall be subject to the provisions of this article.

7 33-9-61.

8 As used in this article, the term:

9 (1) 'Adverse action' or 'adverse underwriting decision' means any denial, cancellation, or  
10 termination; any reduction or unfavorable change in terms or amount of coverage; any  
11 increase in premium; or any other additional charge in connection with any application  
12 for coverage or any existing coverage that is based, in whole or in part, on any  
13 information obtained by an insurer that differs from that which the applicant or  
14 policyholder furnished directly to the insurer or the insurer's agent.

15 (2) 'Advisory organization' means any individual person or any legal entity, other than  
16 an admitted insurer, regardless of where located, who prepares policy forms or makes  
17 underwriting rules incident to, but not including, the making of rates, rating plans, or  
18 rating systems, including, but not limited to, any individual person or any legal entity  
19 who collects and furnishes to insurers or rating organizations loss or expense statistics or  
20 data or any other statistical information or data, including any statistics or data relating  
21 to credit reports or credit scores, or any such person or entity who collects statistics or  
22 data for the purpose of compiling credit scores, but who does not and shall not act in any  
23 rate-making capacity. No duly licensed attorney at law acting in the usual course of his  
24 or her profession shall be deemed to be an advisory organization unless such attorney is  
25 engaging in the functions described in this paragraph.

26 (3) 'Applicant' means a person who applies for a policy of motor vehicle insurance  
27 coverage.

28 (4) 'Commissioner' means the Commissioner of Insurance.

29 (5) 'Consumer' means an individual or natural person.

30 (6) 'Consumer report' means any written, oral, or other communication of information  
31 bearing on a person's credit worthiness, credit standing, credit capacity, character,  
32 general reputation, personal characteristics, or mode of living which is collected from any  
33 source and is used or expected to be used, in whole or in part, as a factor in determining  
34 eligibility for motor vehicle insurance.

35 (7) 'Credit report' means a collection of data specific to a person's credit history, credit  
36 standing, credit capacity, or credit worthiness.

1 (8) 'Credit score' means a score, grade, or value that is derived by utilizing any or all data  
2 from a credit report in any type of model, method, or program whether electronically,  
3 from an algorithm, a computer software application model or program, or any other such  
4 process or otherwise for the purpose of grading or ranking credit report data.

5 (9) 'Eligibility' means the determination of whether an applicant is to be accepted or  
6 rejected for insurance coverage.

7 (10) 'Insurance' means motor vehicle insurance.

8 (11) 'Insurance score' has the same meaning as credit score.

9 (12) 'Motor vehicle' means a vehicle having more than three load-bearing wheels of a  
10 kind required to be registered under the laws of this state relating to motor vehicles and  
11 designed primarily for operation upon the public streets, roads, and highways and driven  
12 by power other than muscular power. The term includes a trailer drawn by or attached  
13 to such vehicle.

14 (13) 'Person' means a natural person and a sole proprietorship, partnership, corporation,  
15 limited liability company, or other legal entity, other than an insurer.

16 (14) 'Rating organization' means any individual or any legal entity, other than an  
17 admitted insurer, whether located inside or outside of this state, who collects and  
18 furnishes to admitted insurers or other rating organizations loss or expense statistics or  
19 other statistical information and data which may be used in the development of  
20 underwriting rules or guidelines; the making of rates, rating plans, or rating systems; the  
21 preparation of policy forms; or the making of underwriting rules. Two or more admitted  
22 insurers who act in concert for the purpose of making rates, rating plans, or rating  
23 systems and who do not operate within the specific authorizations contained in Code  
24 Sections 33-9-6, 33-9-7, 33-9-20, and 33-9-22 shall be deemed to be a rating  
25 organization.

26 (15) 'Transact' means solicitation or inducement, preliminary negotiations, or  
27 effectuation of a contract of insurance and includes any transaction of matters subsequent  
28 to the effectuation of the contract and arising out of it, including, but not limited to, the  
29 application process, binding of coverage, issuing of a policy, and subsequently endorsing  
30 or altering the policy or its terms or coverage.

31 (16) 'Underwrite' or 'underwriting' means the examination and evaluation of a risk, the  
32 determination by the insurer as to whether the risk is within the insurer's underwriting  
33 guidelines which are filed with the Commissioner, and the decision whether the risk will  
34 be accepted, accepted subject to specified modifications, or rejected.

1 33-9-62.

2 (a) Any credit scoring model, method, or program, by whatever name called, to be utilized  
3 under this article shall be filed with the Commissioner. The person filing such model shall  
4 provide sufficient information in the filing to substantiate to the Commissioner the  
5 relevance of the model to the risks associated with the underwriting of motor vehicle  
6 insurance.

7 (b) The model, method, or program may utilize any information or data, computer  
8 programs, algorithms, and the like which actually produce relevant statistics concerning  
9 the insuring of motor vehicles and which do not in any way conflict with this article or  
10 otherwise conflict with other relevant provisions of this title.

11 (c) Any person required to file under this Code section shall also be required to obtain a  
12 license as an advisory organization pursuant to the requirements of Code Section 33-9-12  
13 and shall be subject to all provisions relating to an advisory organization found in Article 1  
14 of this chapter and the provisions of Code Section 33-8-1 relating to fees for application  
15 and licensing of advisory organizations.

16 (d) If an insurer uses any model, method, or program to develop credit scores, then such  
17 model, method, or program must be developed solely by the insurer or insurer group for  
18 its own use or for use by a rating organization of which such insurer or insurer group is a  
19 member that is duly authorized to do business in this state. Any insurer utilizing any  
20 model, method, or program of developing credit scores of an advisory organization that is  
21 not properly licensed and authorized pursuant to this article and Article 1 of this chapter  
22 shall be subject to the fines, penalties, and other remedies provided for in Chapter 2 of this  
23 title.

24 (e) An insurer which develops its own model, method, or program for developing and  
25 utilizing credit scores for use in underwriting risks shall file such model with the  
26 Commissioner in accordance with the relevant provisions for filing rates, forms, and  
27 underwriting guidelines found in Article 1 of this chapter and Chapter 24 of this title.

28 (f) No person or insurer shall utilize any credit scoring model, method, or program, by  
29 whatever name called, until such has been filed with and approved by the Commissioner.

30 (g) A filing shall contain all information, data, and statistics that are relevant to the subject  
31 matter of the filing. The Commissioner shall either approve or disapprove the filing and  
32 give written notice of same within 30 days after the Commissioner has received a complete  
33 filing. A filing shall be deemed complete when all information requested by the  
34 Commissioner has been received. If a filing is disapproved, notice of such disapproval  
35 order shall be given, specifying in what respects such filing fails to meet the requirements  
36 of this article or other relevant provisions of this title. The filer shall be given a hearing  
37 upon written request made by the filer within 30 days after issuance of the disapproval

1 order. The conduct of any original hearing, notices, subsequent hearing, issuance of orders,  
 2 or judicial review shall be governed by the provisions of Chapter 2 of this title. The burden  
 3 of persuasion that the filing should be approved shall fall upon the filer.

4 (h) Filings required pursuant to this Code section shall be accompanied by a fee or fees as  
 5 provided for in subparagraphs (P) and (Q) of paragraph (6) of Code Section 33-8-1 relating  
 6 to policy form and rate filings.

7 33-9-63.

8 (a) Any insurer utilizing a credit report or credit score in the underwriting or rating of  
 9 motor vehicle insurance shall comply with the requirements of this Code section. If a  
 10 credit report is used separately or in conjunction with other criteria to underwrite an  
 11 application or renewal of insurance, it may not include or be based, in whole or in part,  
 12 upon the race, income, gender, religion, or national origin of the applicant or insured.

13 (b) The following limitations shall apply to the use of credit scores or credit reports:

14 (1) Multiple credit inquiries associated with the purchase, or attempted purchase, of a  
 15 residence, manufactured home, automobile, boat, aircraft, or other major purchase of real  
 16 or personal property exceeding \$5,000.00 shall count as one inquiry if made within a  
 17 period of 90 days;

18 (2) Credit reports or credit scores shall be established and used only in a manner that is  
 19 not unfairly discriminatory;

20 (3) A credit report or credit score may be obtained or used only for the applicant for  
 21 insurance and for named drivers;

22 (4) Only one credit report or credit score model shall be used by an insurer for personal  
 23 private passenger motor vehicle insurance;

24 (5) In compiling a credit or insurance score from information in a credit report, an  
 25 insurer shall count only those inquiries which were initiated by the applicant or insured  
 26 and shall ignore those which were initiated by persons or entities seeking to prequalify  
 27 a person for solicitation for credit cards or other forms of credit; and

28 (6) A credit report or credit score which shows no credit history or such little credit  
 29 history as to be insufficient for valid analysis shall be treated as neutral or as a median  
 30 score by the insurer.

31 33-9-64.

32 (a) An insurer may not utilize a credit report or a credit or insurance scoring model that is  
 33 based, directly or indirectly, in whole or in part, upon race, creed, ethnic extraction, or  
 34 religion.

- 1 (b) A credit or insurance score may not include credit information pertaining to medical  
2 bills.
- 3 (c) Underwriting or rating decisions may not be based on a credit report or credit score  
4 related to a court decision in which it is clear that the applicant, the insured, or a named  
5 driver is not legally responsible for the reported items resulting in a negative credit report  
6 or score.
- 7 (d) An underwriting or rating decision may not be based upon an adverse credit report or  
8 credit score in which the status of an applicant, insured, or named driver is shown to be a  
9 victim of family violence, as such defined in paragraph (15) of subsection (b) of Code  
10 Section 33-6-4.
- 11 (e) An underwriting or rating decision may not be based upon a credit report or credit  
12 score containing erroneous information because of identity fraud perpetuated against any  
13 applicant, insured, or named driver.
- 14 (f) No credit report or credit score may be used for an applicant, insured, or named driver  
15 who is under the age of 21 or who is an unmarried full-time student.
- 16 (g) An insurer may not cancel or otherwise terminate or refuse to issue a policy solely on  
17 the basis of information contained in a credit report or solely on the basis of a credit score  
18 derived from information in a credit report.
- 19 (h) An insurer shall not base a decision not to renew a motor vehicle insurance policy on  
20 any factors not directly related to the claims record, driving record, or driving ability of the  
21 named insured or named drivers or base its decision on any reason other than those allowed  
22 in Code Section 33-24-45. However, with regard to a renewal, an insurer may use a credit  
23 report or credit score in order to provide a reduction or discount in premium in addition to  
24 any other such reduction or discount which would normally be applicable based on the  
25 insurer's filed rates and underwriting guidelines.
- 26 (i) No credit report or credit score may be utilized by an insurer unless the insurer or its  
27 agent has obtained from the applicant or insured an agreement:
- 28 (1) That is separate from the application;
- 29 (2) That is signed by the applicant or insured; and
- 30 (3) Which contains a statement that the applicant or insured understands that a credit  
31 report will be obtained, that a credit or insurance score will be derived from such report,  
32 that the applicant or insured agrees to allow such report or score to be obtained and  
33 utilized by the insurer, and that the applicant or insured fully understands how any credit  
34 information on such applicant or insured and any named drivers relates to the risks of  
35 owning, operating, and insuring motor vehicles.
- 36 (j) An application for motor vehicle insurance shall not contain any questions relating to  
37 a person's credit history, credit standing, credit worthiness, or credit capacity.

1 (k) An insurer shall not utilize a credit report or a credit or insurance score for the purpose  
2 of rating or for moving or placing an applicant or insured in a higher tier rated program or  
3 with any affiliated insurer that has higher rates. Any insurer may use a credit score for the  
4 purpose of lowering premiums for an applicant or insured.

5 33-9-65.

6 (a) In addition to complying with the requirements of Chapter 39 of this title, an insurer  
7 using credit reports or credit scores for underwriting purposes shall provide to the applicant  
8 or insured a written notice containing a full and complete explanation or description  
9 regarding:

10 (1) The source of information collected;

11 (2) Each person about whom such information is collected;

12 (3) Both the types of information collected and how such information is used by the  
13 insurer;

14 (4) A description of the prohibited practices found in state or federal law relating to  
15 credit reports or credit scores; and

16 (5) A notice of the appeals process provided in Code Section 33-9-66.

17 (b) Any insurer or agent who chooses not to utilize, directly or indirectly in any manner,  
18 credit reports or credit or insurance scores in the underwriting or rating of motor vehicle  
19 insurance policies shall not be subject to the provisions of this article but shall be subject  
20 to and comply with all applicable provisions of Article 1 of this chapter and Chapter 39 of  
21 this title.

22 (c) The provisions of this article as well as all relevant provisions of Chapter 39 of this title  
23 shall apply to any insurers or insurance agents who utilize credit reports or credit or  
24 insurance scores for any purpose in transacting or underwriting motor vehicle insurance  
25 policies. Each such insurer shall furnish a brochure or similar written document providing  
26 a clear and understandable explanation of the use of credit reports and credit scores by the  
27 insurer to each insurance agent who holds a certificate of authority to write motor vehicle  
28 insurance on the insurer's behalf.

29 (d) If an insurer or agent utilizing credit reports or credit scores takes an adverse action,  
30 then the insurer or agent shall provide in writing to the applicant or insured each specific  
31 reason for such adverse action. Each specific reason shall be set forth in sufficient detail  
32 so that a reasonable person can understand the basis for the adverse action.

33 (e) If an insurer or agent takes an adverse action based on information obtained from or  
34 contained in a credit report or credit score, then the insurer or agent shall provide in writing  
35 to the applicant or insured the procedure on how to obtain a copy of the credit report or  
36 score on which the decision was based and the name, address, and telephone number of the

1 insurance support organization or advisory organization, as these terms are defined in this  
2 article or in Chapter 39 of this title, which provided the credit report or credit score  
3 information.

4 (f) Each insurer utilizing credit reports or credit scores for underwriting of motor vehicle  
5 insurance shall maintain records of all applications for which negative underwriting  
6 decisions have been made and shall keep records of all appeals and the outcome of such  
7 appeals. These records shall be available for examination by the Commissioner pursuant  
8 to the examination authority of Chapter 2 of this title and Article 1 of this chapter. The  
9 examination records of the Commissioner shall be confidential and shall not be available  
10 for public inspection under the open records laws of this state.

11 33-9-66.

12 (a) Each insurer subject to this article shall establish an appeal committee and an appeal  
13 process through which an applicant or insured may expeditiously resolve problems  
14 concerning a credit report or credit score. If any insurance was in effect at the time of the  
15 appeal, then it shall remain in effect during the appeals process. If the appeal is a result of  
16 the denial or cancellation of insurance, then the insurer shall provide the appropriate notice  
17 pursuant to Code Sections 33-24-44 and 33-24-45 as well as a notice which states in a clear  
18 and conspicuous manner that insurance coverage has been denied or canceled because of  
19 credit report or credit score information and that no coverage is in force or effect during the  
20 appeals process.

21 (b) The insurer's appeal committee shall be made up of at least three upper level  
22 management personnel and shall not include any personnel involved in the original  
23 underwriting decision. An applicant or insured shall have the right of appeal if such  
24 applicant or insured believes that the insurer's decision was contrary to the provisions of  
25 this article or other applicable provisions of this title or the federal Fair Credit Reporting  
26 Act, 15 U.S.C. Section 1681, et seq. An appeal shall be made in writing within 15 days of  
27 the notification of an adverse action and shall state the specific reasons why the applicant  
28 or insured believes that such action was in error. The insurer shall have 30 days after  
29 receipt of the appeal to render a written decision to the applicant or insured based on the  
30 facts presented.

31 (c) If the applicant prevails in the appeals process, then, for a period of at least 12 months  
32 from the date of the appeals decision, the insurer shall insure the applicant without applying  
33 any credit score to the underwriting of the policy. The starting date of the 12 month period  
34 shall be the date requested by the applicant but may not be earlier than the date of the  
35 appeals decision.

36 (d) Each appeal and its disposition shall be reported pursuant to Code Section 33-9-67.

1 33-9-67.

2 (a) Each insurer and agent subject to this article shall maintain a record of all requested  
3 quotations, whether written, verbal, or electronic on which a negative underwriting action  
4 occurred. The insurer shall be responsible for developing and implementing systems that  
5 will enable agents to capture data necessary to complete the required reports.

6 (b) The reports shall include the date of the underwriting decision; unique identifying code  
7 or transaction number, which shall not be a person's social security number, which allows  
8 the agent or insurer to readily identify the applicant or insured; line of coverage; ZIP Code;  
9 the underwriting decision; reason or reasons for the adverse action and appeals; and the  
10 disposition of appeals. These reports shall be submitted to the Commissioner on a  
11 quarterly basis and shall be available for public inspection, except for the unique  
12 identifying code or transaction number.

13 33-9-68.

14 (a) No insurer shall have any financial interest, directly or indirectly, through any  
15 subsidiary, affiliate, parent company, holding company, investment pool, or any other  
16 arrangement in any entity that compiles or provides credit reports, consumer reports, or  
17 credit scores to any insurer. This prohibition shall not prevent the indirect investment in  
18 such entity through ownership of common or preferred stocks, bonds, senior or  
19 subordinated debentures, notes, or other financial instruments so long as such investments  
20 are disclosed and filed with the Commissioner and, in the aggregate, such investments do  
21 not exceed one-half of 1 percent of the insurer's investable assets and do not exceed, in the  
22 aggregate, more than one-quarter of 1 percent of the entity's authorized or issued stocks,  
23 bonds, debentures, notes, or other financial instruments.

24 (b) Upon any initial investment in such entity, an insurer shall file and disclose the amount  
25 and type of investment with the Commissioner on forms prescribed by the Commissioner.  
26 After the required initial disclosure, the insurer shall amend such filing within ten days of  
27 any change in the amount or types of such investments.

28 (c) Any failure by an insurer to comply with this Code section shall subject such insurer  
29 to the fines, penalties, and administrative procedures as provided in Chapter 6 of this title.

30 33-9-69.

31 Any insurer or agent determined to be in noncompliance with or in violation of this article  
32 shall be subject to the fines, penalties, and administrative remedies as provided in Chapter  
33 2 of this title."

**SECTION 2.**

Code Section 33-39-2 of the Official Code of Georgia Annotated, relating to the applicability of obligations imposed by Chapter 39 of Title 33, is amended by adding a new subsection (e) to read as follows:

"(e) In addition to complying with the provisions of this chapter, any entity subject to the provisions of this chapter who utilizes any credit or insurance score, as such term is defined in Code Section 33-9-61; method; or process for underwriting or rating the types of insurance subject to this chapter shall comply with the provisions of Code Sections 33-9-62 through 33-9-68 as if those Code sections applied to the types of insurance covered under this chapter."

**SECTION 3.**

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

**SECTION 4.**

All laws and parts of laws in conflict with this Act are repealed.