

STATE OF MICHIGAN
IN THE SUPREME COURT
APPEAL FROM THE MICHIGAN COURT OF APPEALS
White, P.J., Zahra and Kelly, J.J.

INSURANCE INSTITUTE OF MICHIGAN,
HASTINGS MUTUAL INSURANCE
COMPANY, FARM BUREAU GENERAL
INSURANCE COMPANY OF MICHIGAN,
PROGRESSIVE MICHIGAN INSURANCE
COMPANY, FRANKENMUTH MUTUAL
INSURANCE COMPANY, WALTER
STAFFORD, JR., and MICHAEL FLOHR,
Plaintiffs-Appellees,

and

MICHIGAN INSURANCE COALITION and
CITIZENS INSURANCE COMPANY OF
AMERICA,

Intervenors-Appellees,

v

COMMISSIONER OF THE OFFICE OF
FINANCIAL & INSURANCE SERVICES,
DEPARTMENT OF LABOR AND
ECONOMIC GROWTH, STATE OF
MICHIGAN,

Defendant-Appellant.

Supreme Court No. 137400

Court of Appeals No. 262385

Barry County Circuit Court No. 05-156-CZ

**This appeal involves a ruling that a
provision of the Constitution, a statute, rule
or regulation, or other State governmental
action is invalid.**

OFIS COMMISSIONER'S REPLY BRIEF IN CASE NO. 137400

ORAL ARGUMENT REQUESTED

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ARGUMENT

- I. This case should not be remanded because this Court is no less well positioned than the Circuit Court to determine whether the Commissioner's factual determinations are arbitrary and capricious based on the administrative record.**

The Insurance Industry argues for the first time in its response brief that if judicial review is limited to the administrative record, then the case should be remanded to the Circuit Court.

Presumably the Insurers want the Circuit Court to determine whether there is a correlation between insurance scoring and risk of loss, whether insurance scoring discriminates against the poor, how pervasive are the inaccuracies in credit reports, and whether insurance scoring promotes the availability and affordability of insurance.¹ They assert that it is not the province of the appellate courts to resolve issues of fact, citing *Ghrist v Chrysler Corp.*²

The Insurance Industry, however, misunderstands the fundamental nature of this case. Judicial review of the validity of administrative rules is **not** an original action. In reviewing the validity of the Insurance Scoring rules, the Circuit Court is limited to the administrative record.³ This Court is no less well positioned to review that record than the Circuit Court, which erroneously held that the administrative record was inadmissible and irrelevant.⁴ The Circuit Court was not present at the Commissioner's four public hearings to observe the demeanor of witnesses or otherwise measure first hand their credibility. Unlike the Commissioner, the Circuit Court has no special expertise in insurance rate setting.

Moreover, *Ghrist* does not require remand. In *Ghrist*, this Court reviewed a circuit court order dismissing an original product liability suit without a trial. The majority noted the unremarkable principle that for purposes of a motion for summary disposition, the courts accept

¹ Insurance Industry's Response Brief in docket no. 137400, pp 27-37.

² *Ghrist v Chrysler Corp*, 451 Mich 242, 249, n 13; 547 NW2d 272 (1996).

³ Commissioner's principal brief in docket no. 137400, pp 12-14 and 43-48. Commissioner's response brief in docket no. 137407, pp 21-30.

⁴ Circuit Court Opinion and Order, April 25, 2005, p 3. Commissioner's Appendix pp 11a-16a.

the factual allegations of the complaint as true. It commented in a footnote that: "It is not the province of this Court to resolve issues of fact."⁵ *Ghrist* had nothing to do with judicial review of administrative rules. The Insurers are simply stalling. They have already tied this case up in the courts for more than four and one-half years. It is not in the public interest to needlessly delay a final decision by remanding this case for further Circuit Court proceedings while the Industry continues to impose rates that the Commissioner long ago determined were based on an impermissible rating classification.

II. The statement of purpose adopted by the Legislature as part of the Essential Insurance Act is properly considered in determining the purpose of the Insurance Code in interpreting the scope of the Commissioner's rule-making authority under section 210 and the requirements for a valid discount plan under section 2110a.

The Insurers argue that this Court may not consider the statement of purpose that the Legislature adopted as part of the Essential Insurance Act (EIA).⁶ This argument defies both the law and logic.

Two critically important sections of the Insurance Code explicitly turn on the Legislature's purpose in enacting the Code. In section 210 the Legislature mandated that the Commissioner shall promulgate those rules "as he may deem necessary to effectuate the purposes and to execute and enforce the provisions of the insurance laws."⁷ Similarly, in section 2110a the Legislature explicitly authorized only those discounts plans that are "consistent with the purposes of this act."⁸ Thus, unlike more common instances of statutory interpretation, this case requires the Court to identify the Legislature's purpose to interpret these two provisions.

The Legislature declared in 1979 when it adopted the EIA that one of the Insurance Code's purposes is "to provide for the continuing availability and affordability of automobile and home

⁵ *Ghrist*, 451 Mich at 249, n 13.

⁶ Insurance Industry's Response Brief in docket no. 137400, p 41.

⁷ MCL 500.210 (emphasis added).

⁸ MCL 500.2110a (emphasis added).

insurance in this state and to facilitate the purchase of that insurance **by all residents** of this state at fair and reasonable rates."⁹ It is hard to imagine a more reliable indication of the Legislature's purpose than its own statement of purpose adopted as a part of the Insurance Code itself.

Contrary to the Insurers' claim, this Court has declared that such a statement may be considered in determining the purpose of legislation:

Although a preamble is not to be considered authority for construing an act, it is useful for interpreting its purpose and scope. 2A Sands, Sutherland Statutory Construction (4th ed), § 47.04, pp 126-128.¹⁰

The Legislature's statement of purpose is important because it supports the Commissioner's determination that insurance scoring is inconsistent with the purposes of the Code. The Insurers contend that insurance scoring makes insurance more affordable and available because it purportedly produces discounts for "the majority of Michigan residents."¹¹ But because insurance scoring is a zero sum game, the Insurance Industry finances these discounts by imposing large premium increases on disfavored policyholders with lower insurance scores. The validity of insurance scoring should not be measured by its effect on the favored policyholders; it must be measured by whether it facilitates the purchase of home and automobile insurance "by **all residents**." By that measure, insurance scoring fails miserably because it results in making insurance less affordable and available for the public as a whole.

III. The Insurance Industry failed to distinguish *In Re Fredericks* and *Viculin v Dep't of Civil Service*.

In *In Re Fredericks*¹² and *Viculin v Dep't of Civil Service*,¹³ this Court determined that the courts may not review the decisions of Executive Branch agencies de novo on a record to be created in the courts because doing so would invade the powers of the Executive Branch in

⁹ 1979 PA 145, § 1 (emphasis added).

¹⁰ *Malcolm v City of East Detroit*, 437 Mich 132, 134; 468 NW2d 479 (1991).

¹¹ Insurance Industry's Response Brief in docket no. 137400, p 41.

¹² *In Re Fredericks*, 285 Mich 262; 280 NW 464 (1938).

¹³ *Viculin v Dep't of Civil Service*, 386 Mich 375; 192 NW2d 449 (1971).

violation of the Separation of Powers Clause. This Court noted that although the Civil Service Commission's decision was "at the most a quasi-judicial act of an administrative tribunal,"¹⁴ the Commission "was nonetheless exercising the non-judicial function of a coordinate branch of government."¹⁵ Accordingly, the Insurance Industry's claim that the Circuit Court may review the validity of the Insurance Scoring Rules de novo based on a newly-created record violates the Separation of Powers Clause.¹⁶

In response, the Insurance Industry attempts to distinguish these cases asserting that "[a]t issue in both cases was an *adjudicatory* proceeding."¹⁷ This is a meaningless distinction. Those cases did not turn on whether an administrative agency's actions are characterized as adjudicatory or rule making. The determining factor was that those activities are the responsibility of the Executive Branch and hence non-judicial. Determining whether government employees are properly dismissed is an Executive Branch function, just as promulgating rules under the Insurance Code and the APA is an Executive Branch function. When the Circuit Court relied on affidavits outside of the administrative record to impeach the Commissioner's decision regarding the unreliability of insurance scoring, the Circuit Court usurped the role of the agency – it acted as the Insurance Commissioner itself. Courts may not perform such non-judicial functions because they are the province of another branch. The Insurance Industry has pointed to nothing in *In Re Fredericks* or *Viculin* suggesting that the Judiciary may take over the rule-making functions of the Executive Branch agencies any more legitimately than it may usurp their quasi-adjudicatory functions. Under *Fredericks* and *Viculin*, the Supremacy Clause prohibits de novo review of administrative rules based on a newly-created record.

¹⁴ *In Re Fredericks*, 285 Mich at 266.

¹⁵ *Viculin*, 386 Mich at 397-98.

¹⁶ It also violates both the APA and the Insurance Code. Commissioner's principal brief in docket no. 137400, pp 38-48.

¹⁷ Insurance Industry's Response Brief in docket no. 137400, p 46 (emphasis in original).

IV. Contrary to the Insurance Industry's claim, the Commissioner's interpretation of section 2110a does not require a cause and effect relationship.

The Insurance Industry asserts—without reference to any of the Commissioner's briefs—that the Commissioner's interpretation of section 2110a requires insurers "to demonstrate that discount factors *cause* 'reasonably anticipated reductions in losses or expenses.'"¹⁸ This simply misstates the Commissioner's argument.

Contrary to the Insurance Industry's unsupported claim, the Commissioner is not arguing that a permissible discount plan must rest on a rating factor that causes a reduction in losses and expenses. Section 2110a only requires a correlation between the expected reduction and the discount plan. The plan must "reflec[t]" the expected reduction.¹⁹ But the Commissioner is arguing insurance scoring does not reflect expected **reductions**. At best, insurance scoring correlates to expected **variations** in losses and expenses between classes of policyholders. It is precisely because insurance scoring does not correlate to expected reductions in losses and expenses that insurers had to inflate their base rates in order to implement insurance scoring plans. There are no expected reductions in losses and expenses to allow reductions in premiums to those with better insurance scores. Insurance scoring discounts are possible only because the insurers raised the premiums on those with less favorable insurance scores.²⁰

V. The Insurance Industry's new severability argument is without merit.

In their response brief, the Insurers assert that the Commissioner admitted that insurance scoring is allowed under Chapters 24 and 26 if it is predictive of risk; that the Commissioner has not challenged the Circuit Court's finding to that effect; and therefore they are entitled to judgment on the theory that the insurance scoring rules are not severable.²¹ They are wrong on all

¹⁸ Insurance Industry's Response Brief in docket no. 137400, p 15 (emphasis in original).

¹⁹ MCL 500.2110a.

²⁰ Commissioner's principal brief in docket no. 137400, pp 18-22.

²¹ Insurance Industry's Response Brief in docket no. 137400, pp 12-13.

counts.

First, the Commissioner has consistently argued—and the agency record shows—that insurance scoring violates the Insurance Code because it produces rates that are unfairly discriminatory. The Commissioner made this argument in the Circuit Court, in the Court of Appeals, and in this Court.²² Contrary to the Industry's contention, the Commissioner has not admitted that insurance scoring is valid if it is predictive of risk.

Second, the Commissioner has challenged the notion that insurance scoring is actuarially sound. The OFIS Report challenges the validity of the studies submitted by the Insurers during the rule-making process.²³ Moreover, as the Commissioner previously pointed out, the Circuit Court's contrary conclusion rests on the Insurers' extra-record affidavits and disregards the agency record. Because judicial review is limited to the agency record, the Circuit Court's conclusion is legally unsupported.

Even if this Court were to find that Chapters 24 and 26 permit insurance scoring, the Insurance Scoring Rules should nevertheless be upheld as applied to policies subject to Chapter 21. The Legislature has chosen to regulate individual home and automobile insurance under Chapter 21 on terms that differ from other insurance. For example, Chapter 21 generally sets out the only permissible classification factors that insurers may use, it requires insurers to offer to insure any "eligible person," and it sets standards for discount plans offered to eligible persons. The Insurers offer no rationale for refusing to apply the Insurance Scoring Rules to Chapter 21 insurance other than their statement that "The commissioner obviously intended to adopt insurance scoring rules the would apply across the board, i.e. to all forms of automobile, home,

²² Commissioner's Circuit Court brief in opposition to the motion for preliminary injunction, pp 25-29; Commissioner's Brief on Appeal in the Court of Appeals, pp 32-37; Commissioner's principal brief in docket no. 137400, pp 25-31.

²³ OFIS Report, pp 18-25, pages ff to mm of the Addendum to the Commissioner's principal brief in docket no. 137400.

and casualty insurance and not just to group policies."²⁴ [sic, presumably the Insurers meant to say "not just to *individual* policies."] It is true that the Commissioner intended to prohibit insurance scoring for all policies covered by Chapters 21, 24, and 26. But the Commissioner states for the record that the rules were intended to apply to Chapter 21 even if the Court does not accept the Commissioner's determination that Chapters 24 and 26 prohibit insurance scoring. A major—though not the only—rationale for the rules is that insurance scoring is prohibited by Chapter 21 because it is not a permissible rating factor under section 2111 and is not a permissible discount plan under section 2110a whether or not it is predictive of risk.

MCL 8.5 provides that if a statute is partially invalid then it must be upheld and applied to the extent that it is valid. It reads:

In the construction of the statutes of this state the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the legislature, that is to say:

If any portion of an act **or the application thereof** to any person **or circumstances** shall be found to be invalid by a court, such invalidity **shall not affect** the remaining portions **or applications** of the act which can be given effect without the invalid portion or application, provided such remaining portions are not determined by the court to be inoperable, and to this end acts are declared to be severable. [Emphasis added.]

Applying that statute here,²⁵ the Insurance Scoring Rules would be properly severable if this Court were to determine that they are valid only when applied to policies subject to Chapter 21. Individual home and auto policies may logically be subject to different administrative rules just as they are regulated by different statutory provisions. The Commissioner intended the rules to apply to the greatest extent possible consistent with the law.

²⁴ Insurance Industry's Response Brief in docket no. 137400, p 13, n 12.

²⁵ Rules of statutory construction apply to administrative rules. *Ford Motor Co v City of Woodhaven*, 475 Mich 425, 448; 716 NW2d 247 (2006).

VI. The law does not provide for an evidentiary hearing before an agency may adopt administrative rules.

The Insurers protest that it is unfair that they were not afforded the opportunity for an evidentiary hearing where they could present their arguments and cross-examine their opponents.²⁶ Yet they do not even allege that the Commissioner failed to faithfully follow the rule-making requirements of the APA in adopting the Insurance Scoring Rules. In short, they did not have an evidentiary hearing because the APA does not provide for an evidentiary hearing. Instead the APA requires a "public hearing" that is "not subject to the provisions governing a contested case."²⁷ The Insurers were not deprived of anything they were entitled to.

It is true that the Agency Report noted that the studies submitted by insurers in the public hearing had not been tested pursuant to the rules of evidence. But that was not the only shortcoming in those studies pointed out in the Agency Report. The Report also points out that some studies were prepared on behalf of entities, like Fair Isaac, that have a vested interest in the continued use of insurance scoring. Other studies were of dubious value because they were limited to data from a single state (not Michigan) or were based on a single variable. The only study that included Michigan data produced a graph showing no correlation based on the Michigan data.²⁸ Moreover, the validity of the Insurance Scoring Rules does not depend on whether insurance scoring is or is not predictive of risk. Instead, the Commissioner determined that insurance scoring is not permissible under Chapters 21, 24, and 26 because insurance scoring is not a reasonable classification system and under Chapter 21 because an insurance score is not a

²⁶ Insurance Industry's Response Brief in docket no. 137400, pp 25-26.

²⁷ MCL 24.241(4) provides: "The public hearing shall comply with any applicable statute, but is not subject to the provisions governing a contested case."

²⁸ OFIS Report, pp 18-25, pages ff to mm of the Addendum to the Commissioner's principal brief in docket no. 137400. The graph was attachment 5 to the OFIR Report, and is reproduced in the addendum to this reply brief.

permissible rating factor or the basis for a permissible discount plan.

In addition, the Insurance Code provides for a hearing under section 2111(9) for an insurer that wants the Commissioner to permit the use of factors in addition to those specifically allowed by section 2111.²⁹ If the Insurers wanted an evidentiary hearing, they could have asked the Commissioner to approve insurance scoring under that section. The Commissioner has held hearings and allowed at least one additional rating factor under this discretionary section.

The Insurers were allowed to present all manner of documentary support for their position during the public hearings. They simply failed to convince the Commissioner.

VII. The fact that the Commissioner first sought to work with the Legislature before commencing the rules process does not impugn the validity of the rules.

Finally, the Insurance Industry asserts—without citation to authority—that the Commissioner usurped the power of the Legislature because she first tried to find a legislative solution before initiating the rule-making process. The Insurance Industry's brief proclaims, "[i]ndeed, it is hard to fathom a more blatant violation of the separation of powers doctrine than the Commissioner's effort to achieve through rulemaking what the Legislature already rejected when it declined her request to amend the Insurance Code to prohibit insurance scoring."³⁰

This argument confuses inaction by the Legislature with action by the Legislature. If the Legislature had enacted a statute permitting insurance scoring or allowing it with restrictions, then clearly the Commissioner would have no power to change that statute by adopting rules. But in this case, the Legislature failed to act. It did not enact any provision with respect to insurance scoring. This failure to act does not establish public policy.

It is hardly surprising that the Insurance Industry is unable to cite any authority for this proposition because the truth is that little can be garnered from the Legislature's failure to act.

²⁹ MCL 500.2111(9).

³⁰ Insurance Industry's Response Brief in docket no. 137400, p 42.

- It is mere speculation to conclude that the failure to prohibit insurance scoring means that the Legislature approved it. Legislators may have felt that the Insurance Code already prohibited insurance scoring so additional legislation was superfluous.
- The Legislature also failed to authorize insurance scoring. Perhaps the Court should conclude therefore that the Legislature opposed insurance scoring.
- At least one bill, HB 5803, introduced while the rules were being considered would have prohibited insurance scoring unless insurers implemented certain safeguards. Does the failure to enact HB 5803 mean that the Legislature approved of insurance scoring in the absence of the safeguards or does it mean that the Legislature disapproved of insurance scoring even with these safeguards? In the absence of an enacted law, there is no basis upon which to conclude what the Legislature intends.

Besides being a logical quagmire, if adopted by this Court the Insurance Industry's argument would discourage agencies from working with the Legislature to resolve a problem for fear of undermining their own authority. And as the Commissioner has previously pointed out in another context, the question is whether the Commissioner acted within her authority in promulgating the rules without regard to the motive the Insurers attribute to her.³¹

RELIEF SOUGHT

The Commissioner respectfully requests that the Court reverse the Circuit Court Opinion and Order and affirm the validity of the Insurance Scoring Rules.

Respectfully submitted,

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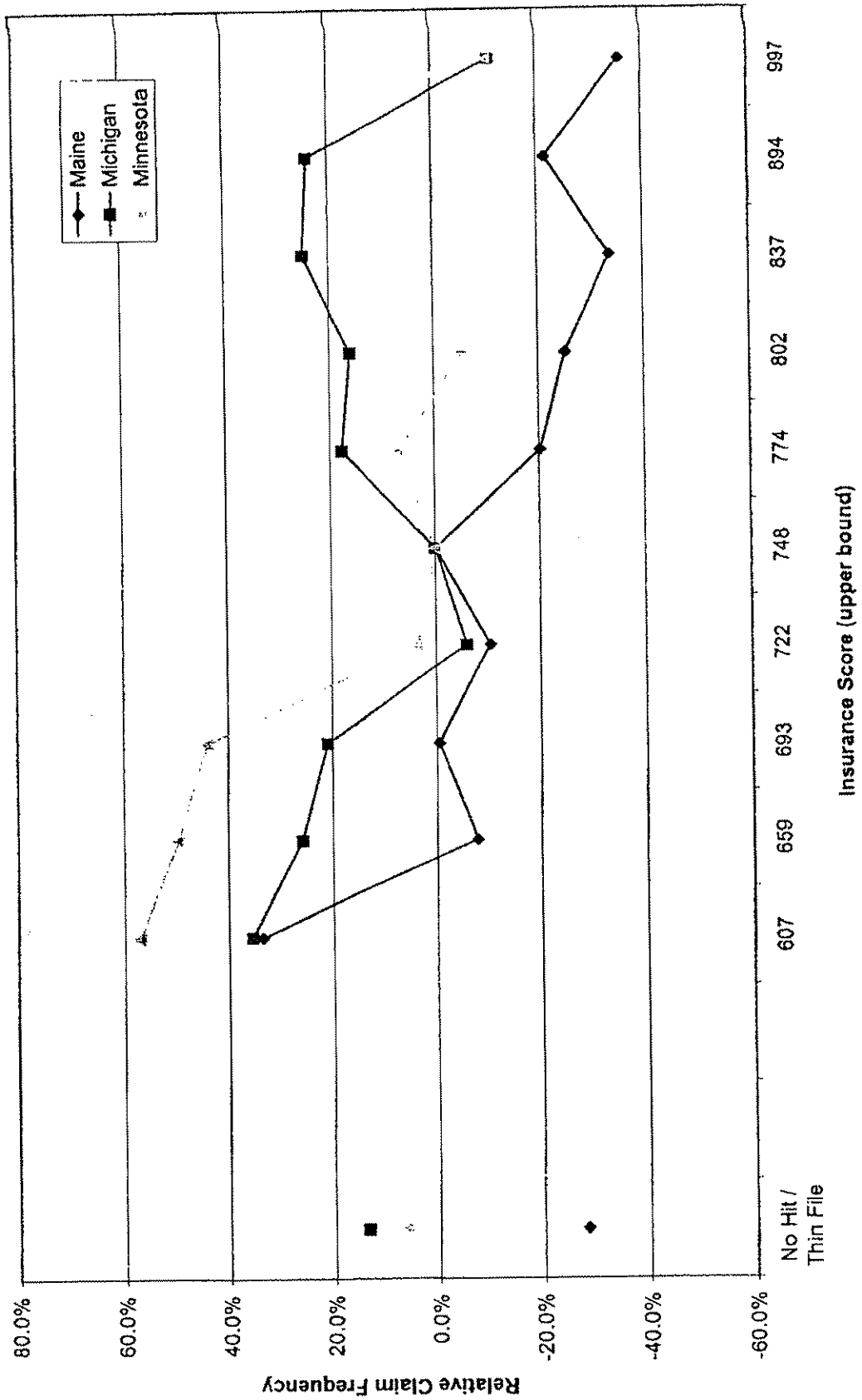
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³¹ Commissioner's response brief in docket no. 137400, p 19.

ADDENDUM

Relative Claim Frequency By Insurance Score



Expertise ♦ Professionalism ♦ Independence ♦ Credibility

No Hit /
Thin File

Industry Insurance Score Analysis Claim Frequency by Insurance Score by State

State	No Hit / Thin File	607	659	693	722	748	774	802	837	894	997
Alaska	3.1%	7.3%	5.1%	3.4%	3.2%	3.9%	3.4%	3.1%	3.2%	2.1%	2.3%
Alabama	3.6%	4.5%	3.8%	3.5%	3.5%	3.7%	2.6%	3.3%	3.3%	3.4%	2.1%
Arkansas	4.4%	6.6%	5.1%	5.4%	5.2%	4.8%	4.5%	3.1%	2.8%	3.7%	3.0%
Arizona	3.7%	6.2%	5.1%	4.6%	4.3%	4.9%	3.2%	3.3%	3.4%	3.1%	2.9%
California	4.6%	6.5%	5.8%	5.5%	5.0%	4.7%	4.7%	4.4%	3.9%	3.8%	3.2%
Colorado	3.5%	6.4%	4.8%	4.0%	4.1%	3.9%	4.7%	3.7%	2.8%	3.1%	2.7%
Connecticut	4.4%	6.7%	4.4%	5.4%	4.4%	4.2%	3.5%	3.5%	3.5%	4.0%	3.0%
District of Columbia	4.3%	7.6%	8.0%	7.6%	5.9%	4.6%	5.6%	4.6%	5.4%	4.9%	4.4%
Delaware	4.7%	7.2%	6.6%	5.4%	4.9%	3.8%	2.6%	3.4%	3.0%	2.6%	2.4%
Florida	4.0%	5.9%	5.0%	4.6%	4.2%	4.0%	3.7%	3.5%	3.2%	3.3%	3.3%
Georgia	4.7%	6.1%	5.9%	4.9%	4.8%	4.2%	3.4%	4.0%	3.2%	3.3%	3.4%
Hawaii	3.7%	6.1%	3.8%	4.6%	3.7%	4.3%	4.0%	3.2%	3.3%	3.0%	3.0%
Iowa	3.3%	5.1%	5.2%	4.3%	4.5%	3.2%	3.5%	3.2%	3.9%	2.9%	3.2%
Idaho	3.0%	5.1%	5.0%	3.5%	3.7%	3.0%	3.2%	2.3%	3.0%	2.9%	2.3%
Illinois	4.7%	6.7%	6.0%	5.3%	5.0%	5.1%	4.4%	4.6%	4.4%	4.1%	3.5%
Indiana	4.3%	5.6%	5.6%	4.2%	4.9%	3.9%	3.6%	3.8%	3.3%	3.1%	2.3%
Kansas	4.6%	6.4%	4.9%	5.1%	3.7%	4.0%	3.5%	4.0%	3.7%	3.5%	2.8%
Kentucky	3.4%	5.4%	4.6%	4.8%	3.4%	3.5%	2.5%	2.8%	3.3%	3.2%	3.3%
Louisiana	4.4%	6.3%	6.4%	5.0%	4.8%	4.2%	4.0%	4.9%	4.2%	4.0%	3.9%
Massachusetts	4.6%	7.9%	6.3%	5.2%	4.5%	5.1%	4.4%	4.0%	4.2%	3.6%	3.3%
Maryland	4.9%	7.7%	6.8%	6.2%	5.9%	5.4%	4.8%	4.2%	4.2%	4.2%	3.5%
Maine	3.3%	6.0%	4.2%	4.5%	4.1%	4.5%	3.6%	3.4%	3.0%	3.6%	2.9%
Michigan	0.7%	0.8%	0.8%	0.7%	0.6%	0.6%	0.7%	0.7%	0.8%	0.7%	0.5%
Minnesota	4.3%	6.4%	6.1%	5.9%	4.2%	4.1%	4.3%	3.8%	3.3%	3.7%	3.6%
Missouri	5.1%	7.0%	5.9%	5.0%	4.8%	5.0%	4.6%	3.8%	3.9%	3.2%	2.6%
Mississippi	3.6%	4.5%	3.6%	3.5%	2.9%	3.7%	3.2%	2.2%	2.2%	2.4%	2.6%
Montana	3.2%	8.1%	4.6%	4.8%	4.6%	3.4%	3.6%	2.4%	3.1%	2.5%	1.7%
North Carolina	2.8%	5.6%	4.4%	3.9%	3.1%	3.3%	3.1%	3.1%	3.3%	2.5%	2.6%
North Dakota	3.4%	4.5%	4.7%	5.0%	3.7%	3.3%	3.5%	3.0%	3.1%	2.5%	2.7%
Nebraska	4.7%	6.4%	6.2%	4.7%	3.8%	3.7%	4.0%	3.9%	3.5%	2.7%	2.6%
New Hampshire	3.5%	5.7%	4.5%	4.6%	4.0%	5.2%	3.8%	3.5%	3.1%	3.4%	2.9%
New Jersey	3.9%	5.8%	5.0%	4.5%	4.2%	3.8%	3.4%	3.6%	3.1%	3.1%	2.9%
New Mexico	3.5%	6.2%	5.5%	4.2%	3.3%	3.6%	3.1%	3.4%	3.1%	2.9%	1.9%
Nevada	4.6%	6.3%	4.9%	4.6%	3.5%	3.7%	3.1%	2.9%	2.5%	2.8%	2.3%
New York	4.6%	6.9%	5.4%	5.3%	4.4%	4.3%	3.9%	4.0%	3.6%	3.5%	3.3%
Ohio	4.1%	5.9%	4.8%	4.4%	4.7%	4.1%	3.9%	3.4%	3.3%	3.4%	3.3%
Oklahoma	4.7%	6.6%	5.9%	4.1%	4.3%	4.6%	3.7%	2.7%	2.8%	3.2%	3.6%
Oregon	3.9%	5.9%	4.8%	3.8%	4.3%	4.1%	3.2%	3.1%	2.9%	3.0%	2.3%
Pennsylvania	3.6%	7.0%	5.2%	5.0%	4.6%	4.2%	3.4%	3.6%	3.4%	3.5%	3.6%
Rhode Island	5.6%	6.7%	7.0%	5.4%	4.7%	4.4%	5.0%	4.6%	3.4%	4.3%	4.0%
South Carolina	3.8%	6.3%	4.2%	4.2%	3.9%	3.3%	3.0%	3.2%	3.9%	3.2%	2.6%
South Dakota	2.6%	3.7%	5.2%	3.9%	2.4%	4.3%	3.1%	2.6%	2.8%	2.9%	2.2%
Tennessee	3.7%	5.1%	4.6%	4.2%	3.8%	3.3%	2.7%	3.0%	2.5%	2.6%	3.1%
Texas	4.8%	7.0%	6.1%	5.8%	5.4%	5.2%	4.9%	4.9%	4.3%	4.2%	4.2%
Utah	3.9%	6.8%	6.0%	4.8%	4.1%	4.6%	3.3%	3.3%	3.4%	2.8%	2.9%
Virginia	3.0%	4.2%	4.8%	4.2%	3.6%	3.7%	3.6%	3.0%	3.7%	3.1%	3.2%
Vermont	3.4%	5.9%	5.2%	7.2%	5.6%	3.6%	4.4%	3.3%	4.2%	2.6%	3.5%
Washington	4.4%	6.2%	5.4%	4.7%	4.6%	4.6%	4.2%	4.0%	3.7%	3.5%	3.2%
Wisconsin	2.5%	4.8%	4.4%	4.1%	3.9%	3.8%	3.7%	3.0%	3.3%	2.8%	2.5%
West Virginia	4.1%	5.4%	5.7%	3.3%	2.1%	2.4%	2.0%	2.3%	3.1%	2.0%	1.6%
Wyoming	3.0%	5.5%	3.2%	3.2%	4.1%	2.9%	3.4%	2.9%	2.9%	2.6%	1.6%