



February 21, 2019

The Honorable Ricardo Lara
Insurance Commissioner
State of California
300 Capital Mall, Suite 1700
Sacramento, CA 95814
VIA OVERNIGHT MAIL AND EMAIL

Re: Stop Discriminatory Auto Insurance Overcharges
Petition for Rulemaking Pursuant to Government Code section 11340.6

Dear Commissioner Lara:

We write to you because insurance companies in California are improperly utilizing a person's occupation and education to set auto insurance premiums. The use of these unauthorized rating factors increases the cost of insurance for lower wage, less-educated and blue-collar California motorists and is a direct violation of Proposition 103. To end this discriminatory and unlawful practice, we request that you immediately initiate a rulemaking proceeding and promulgate an amendment to the Proposition 103 Automobile Rating Factor regulations (California Code of Regulations, title 10 ("10 CCR"), section 2632 et seq.) to prohibit auto insurance companies from surcharging motorists based on their occupation, education level, or any generic classification pertaining to occupation or education, many of which are thinly veiled surrogates for wealth, ethnicity and race.

Companies with at least seven of the ten largest auto insurance groups in California – including Farmers, GEICO, Progressive, AAA, Allstate, Mercury, and Liberty Mutual – surcharge drivers based on their occupation and education level. Attached is direct evidence of the financial impact of the unlawful use of occupation and education as rating factors. Most glaringly, working people with regular jobs are paying higher auto insurance premiums so that doctors, engineers and other high-income wage earners can pay less. For example, a basic limits policy¹ for two drivers with the same driver safety record, and everything else being equal:

- Farmers Insurance charges a factory worker a 14.5% higher annual premium than either an accountant or a physician (\$1,523 vs. \$1,330).² (Exh. A)
- Progressive Auto Insurance charges a factory worker 6.3% more in annual premiums than an attorney or a physician (\$878 vs. \$826). (Exh. B)
- GEICO charges a factory worker 14.7% higher annual premiums than the same driver who is a corporate CEO (\$977 vs. \$852). (Exh. C)

¹ Includes bodily injury/property damage liability (\$15K/\$30K/\$5K) and uninsured/underinsured motorist coverages (\$15K/\$30K).

² Includes medical payments (\$1K) coverage in addition to basic limits bodily injury/property damage liability and uninsured/underinsured motorist coverage.

Working people without college degrees are similarly paying more. For example, Progressive Auto Insurance charges an office manager with a high school diploma a 6.3% higher annual premium than the same driver with the same occupation who has an undergraduate degree (\$878 vs. \$826) (Exh. D). AAA charges a driver who is not a member of a college/university alumni association an 8.1% higher annual premium than a driver who is a member of an alumni association (\$1,017 vs. \$941) (Exh. E).

These recent premium quotes, obtained by Consumer Watchdog, support the findings of a national study by the Consumer Federation of America (CFA), which determined that “some major auto insurers charge higher rates to drivers with less education and lower-status jobs,” and concluded that “auto insurers are discriminating on the basis of income and race” – including in California. For example, GEICO was found to charge a factory worker in Oakland, California with a high school degree 33% more than an executive with a college degree with the same driver safety record, and everything else being equal. Liberty Mutual was found to charge a factory worker 20% more than an executive (\$1074 vs. \$892). (Exh. F, “Major Auto Insurers Charge Higher Rates to High School Graduates and Blue Collar Workers: National Consumer Survey Reveals that Large Majorities Reject the Use of Education and Occupation in Setting Auto Insurance Rates,” July 22, 2013, p. 1, 2.) “States should prohibit the use of these demographic factors that bear no logical relation to insurer risk,” CFA concluded.

Most insurance companies do not disclose how many people are impacted by their education and occupation surcharges. Farmers’ rate filings approved in October 2018, however, do disclose data about average premiums by coverage and number of drivers we can use to extrapolate the approximate cost per year to Californians of these discriminatory surcharges by this one company.

The prior approval rate template submitted by Farmers for drivers with its “Regular” (non-professionals) program proposed an average base premium of \$815 for bodily injury/property damage liability and uninsured motorist coverages for approximately 1,264,400 projected drivers. It proposed an average base premium of \$715.79 for the same coverages for approximately 431,104 drivers in its “Business and Professionals Group I” program (Exh. G). That is to say that the approximately 1.2 million regular drivers insured by Farmers each pay on average \$99.21 more per year than the higher-income professionals in the Business and Professions Group I program. Collectively, that overcharge amounts to approximately \$125,441,124 a year based solely on occupation.

These unfair surcharges drive up the cost of insurance for people who can least afford it. They also skirt civil rights protections to allow insurers to charge non-white, lower wage drivers more. Take for example California’s approximately 2.5 million undocumented immigrants.³ Most are from Latin American countries and work disproportionately in low-paying industries including agriculture, child care, restaurants, hotels and construction.

In 2013, the legislature enacted AB 60 giving undocumented immigrants the right to obtain drivers licenses in California. By April 2018, according to the California Department of

³ Public Policy Institute of California, “Undocumented Immigrants in California,” March 2017. https://www.ppic.org/content/pubs/jtf/JTF_UndocumentedImmigrantsJTF.pdf

Motor Vehicles, more than 1 million individuals had obtained licenses under the law. Yet California also mandates all drivers have auto insurance coverage. To drive legally and prevent seizure of their vehicles, and to protect other drivers on the road, those million new drivers must have access to affordable insurance.

The average basic liability insurance premium in California was \$520.81 in 2016.⁴ Drivers with GEICO pay 14.7% more a year for not having a high-paying job. If one million newly-licensed drivers with low-wage jobs sought insurance coverage from GEICO, they would be overcharged \$75,517,450 a year. This financial impact is borne by those drivers who are least able to afford it.

Undocumented drivers are, of course, only some of the millions of drivers impacted by this discriminatory practice. In 2017, just 32.6 percent of Californians over the age of 25 had a bachelor's degree or higher. That number falls to 12.2 percent of Latinx and 24 percent of black Californians with a bachelor's degree or higher.⁵

Communities of color in California also earn less and hold less wealth overall and thus bear a disproportionate burden from these surcharges. The California Senate Office of Research notes, for example, that, "for 2010-14, Latinos tended to earn less than non-Latinos and were underrepresented among higher income brackets, overrepresented at lower income brackets, and more likely to live in poverty."⁶ White households in Los Angeles in 2014 had a median net worth of \$355,000. In comparison, Mexican and African-American households had a median wealth of \$3,500 and \$4,000, respectively.⁷

A large percentage of drivers in California from lower-income communities of color thus pay more to fund discounts for a small cadre of college-educated, well-paid professionals. They should not, as the use of these characteristics is already illegal in California.

Proposition 103 Bars the Use of Unapproved Rating Factors

Prior to Proposition 103, "California ha[d] less regulation of insurance than any other state, and in California automobile liability insurance [was] less regulated than most other forms of insurance." (20th Century Ins. Co. v. Garamendi (1994) 8 Cal.4th 216, 240, quoting King v. Meese (1987) 43 Cal.3d 1217, 1221.) In particular, automobile insurance companies were free to set rates by whatever method they chose, often setting premiums based upon personal characteristics beyond the control of the applicant, or on factors that were completely unrelated to how safely the insured drove. Among these arbitrary rating factors were education level,

⁴ National Association of Insurance Commissioners, "2015/16 Auto Insurance Database Report," 2018. https://www.naic.org/prod_serv/AUT-PB-15.pdf

⁵ United States Census Bureau 2017. <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=CF>

⁶ California Senate Office of Research, "A Statistical Picture of Latinos in California 2017 Update," July 2017. <https://latinocaucus.legislature.ca.gov/sites/latinocaucus.legislature.ca.gov/files/forms/Statistical%20Picture%20of%20Latinos%20in%20California%20-%202017%20Update.pdf>

⁷ Duke University, et al, "The Color of Wealth in Los Angeles," March 2016. http://www.aasc.ucla.edu/besol/color_of_wealth_report.pdf

employment status, nature of job or business, and place of residence. (National Insurance Consumers Organization, *Insurance In California: A 1986 Status Report For The Assembly*, October 1986.)

In 1988, finding that “the existing laws inadequately protect consumers and allow insurance companies to charge excessive, unjustified and arbitrary rates,” California voters established a process by which the rating factors used by insurance companies to set auto insurance premiums are strictly regulated. Insurance Code section 1861.02(a) requires that premiums be determined principally by three specified rating factors – the insured’s driving safety record, annual mileage, and years of driving experience – and, to a lesser extent, by any optional rating factors that “the commissioner may *adopt by regulation* and that have a substantial relationship to the risk of loss.” (Ins. Code § 1861.02(a)(4) [emphasis added].) The current list of authorized optional rating factors can be found at 10 CCR 2632.5(d). (See Exh. H.) The use of any rating factor that has not been adopted by the Commissioner by regulation – that does not appear on that list – “shall constitute unfair discrimination,” which is a violation of Insurance Code section 1861.05(a).

In recent years, insurance companies have sought to evade these legal requirements by marketing what they call “affinity groups” to California residents, promising premium reductions to those who qualify. Examples of “affinity groups” include generic categories of occupations such as lawyers, doctors, engineers, business professionals, college graduates, homeowners, and other “groups” fabricated by insurance companies solely for the purpose of discriminating against motorists to whom the insurance companies do not want to sell insurance. (See Exh. I, which lists the occupation classifications used by Farmers, Allstate, Mercury, GEICO, AAA, Progressive and Liberty Mutual to rate drivers as disclosed in their automobile rate and class plan filings insurers are required to file pursuant to Proposition 103.)

However, no insurance company has presented *any evidence* that any education level, occupation or any other so-called “affinity group” bears *any* relationship to the risk of loss, much less the “*substantial* relationship” to the risk of loss required by the statute. Nor has the Commissioner ever adopted, by regulation, any “affinity group” classification as an optional automobile rating factor. Moreover, because “affinity groups” have not been subjected to the automobile rating factor rules set forth in the regulation, it is possible that these classifications have a greater weight and impact on premiums than the three factors that the voters mandated be the principal determinants of auto premiums – a result that violates Proposition 103.⁸

⁸ Insurance companies contend that “affinity groups” are authorized by Insurance Code section 1861.12. The argument is incorrect. Section 1861.12 was enacted to permit groups of *consumers* to independently join together to negotiate a “group plan” with a single insurance company. “Affinity groups,” by contrast, are marketing schemes concocted by insurance companies based on impermissible rating characteristics such as occupational and educational status. The suggestion that “affinity groups” are authorized by section 1861.12 cannot be squared with section 1861.02; such an interpretation would establish a loophole in Proposition 103 that would allow insurance companies to evade the voters’ explicit direction in section 1861.02 and the auto rating factor regulations that implement it. Obviously, the voters would not have enacted stringent regulation of automobile rating factors only to allow insurance companies to override section 1861.02 by creating an unregulated patchwork of “groups” that fit their preferred unfairly discriminatory rating categories.

Because the auto rating factor process established by Proposition 103 is a revenue-neutral, “zero-sum” system (see generally *The Foundation for Taxpayer and Consumer Rights v. Garamendi* (2005) 132 Cal. App. 4th 1352, 1367-1368), those who aren’t members of elite professions, people who have lost jobs or are otherwise unemployed, students, and retired people are paying higher premiums to subsidize those who do qualify. That is precisely the kind of arbitrary, unjust and discriminatory rating system that Proposition 103 was enacted by the voters to prevent.

A Regulation Is Urgently Needed to Protect the Public

The Department last held three informal workshops on “affinity groups” in 2014-2015, but unfortunately that inquiry never proceeded to a rulemaking hearing or adoption of any regulation. As a result, a growing number of Californians are being subjected to unlawful surcharges.

The public rulemaking process established by California law and expressly required by Proposition 103 is the most efficient method for addressing what has now become a nearly industry-wide abuse. Indeed, in an Allstate auto rate proceeding, the Administrative Law Judge agreed with the insurer and the Department that a rulemaking proceeding was preferable:

As suggested by Allstate and the Department, a rulemaking proceeding would be a desirable way of resolving some of the doubts about the affinity programs, since, given the Department’s consistent practice of approving them, a decision in this area could have far-reaching, industry-wide consequences. The many carriers using such programs, and the consumer organizations opposing or seeking to modify them, should have a full opportunity to be heard in formulating appropriate standards and clarifying regulations, and should not otherwise have the issues resolved in the context of reviewing a stipulated settlement of a single prior approval rate case.

(Proposed Decision, *In the Matter of the Rate Application of Allstate Insurance Company, Allstate Indemnity Company, Northbrook Indemnity Company*, File No. PA – 2013-00003, Nov. 14, 2013, pp. 24-25.)

Finally, a rulemaking will obviate the need for litigation to remedy the abuse. A proposed regulation is included below.

10 CCR 2632.4 Use of Rating Factors and Discounts is amended to add subdivision (c):

(c) No insurer shall use occupation, education level, or any surrogate for occupation or education level, or any generic classification pertaining to occupation or education, as a criterion for determining eligibility for an automobile insurance policy, or for determining automobile rates, premiums, discounts, or surcharges under Insurance Code sections 1861.02, 1861.05, or 1861.12 unless it has been adopted by the Commissioner as a rating factor as set forth in section 1861.02 (a)(4).

Authority for Petition and Rulemaking

The undersigned organizations submit this Petition pursuant to Government Code section 11340.6, which provides that “any interested person may petition a state agency requesting the adoption, amendment, or repeal of a regulation.”

As Insurance Commissioner, you have both the authority and the responsibility to enforce Proposition 103 and in particular, to take such actions as are necessary to protect California consumers and to obtain full compliance with California law. (Ins. Code § 12921(a).) The courts have recognized that the Commissioner has the necessary authority to implement and enforce the requirements of Proposition 103. (*Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805, 824.)

Insurance Code section 1861.02(e) expressly vests the Commissioner with the responsibility and authority to promulgate regulations to enforce the law’s auto rating factor requirements.⁹

Immediate Moratorium on Further “Affinity Group” Programs

In connection with this request for a rulemaking, the undersigned organizations ask that you immediately order a moratorium on the processing of any applications that propose new automobile affinity group programs or changes to existing programs, effective until such time as a regulation is promulgated. Imposing a moratorium on further agency action is needed to protect California consumers as well as public confidence in the integrity of the agency you oversee.

Conclusion

As California’s elected Insurance Commissioner, you have the ability and responsibility to take immediate action to protect California’s communities against the use of unlawful, unauthorized and discriminatory rating factors. We look forward to your response to this Petition within thirty days, as required by Government Code section 11340.7, and to working with you to end this discriminatory practice in California.

Sincerely,



Harvey Rosenfield
Consumer Watchdog

Amy Bach
United Policyholders

Guillermo Mayer
Public Advocates Inc.

⁹ Your predecessors utilized this authority to promulgate an amendment to the auto rating factor regulations in circumstances identical to these. For example, in 2002, the Commissioner amended those regulations to bar insurance companies from applying the “persistence” optional rating factor in a manner that would allow an insurance company to consider an applicant’s prior insurance coverage – a rating factor expressly barred by Proposition 103. (See Cal. Code Regs., tit. 10, § 2632.5(d)(11).)

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