



Testimony of Daniel L. Sternberg

Consumer Watchdog

Before

The California Department of Insurance Investigatory Hearing on the Use of Group Rating
in Private Passenger Automobile Insurance

September 27, 2019

Consumer Watchdog is a nonprofit organization dedicated to providing an effective voice for taxpayers and consumers in an era when special interests dominate public discourse, government, and politics. A core focus of Consumer Watchdog's advocacy is the representation of the interests of insurance consumers and policyholders, particularly as they relate to the implementation and enforcement of Proposition 103, in matters before the California Department of Insurance (the "Department" or "CDI"), the Legislature, and the courts. Since 2003, Consumer Watchdog's challenges in rate proceedings before the CDI have saved consumers over \$3.4 billion.

Consumer Watchdog strongly supports the Department of Insurance's inquiry into whether the insurance industry's practice of surcharging motorists based on their occupations, education levels, or any generic classification pertaining to either, violates Proposition 103. The answer to this investigatory hearing's inquiry is that it does. Proposition 103 bars insurance companies from using occupation and education to set auto insurance rates and premiums: they have never been shown to have a substantial relationship to a driver's risk of loss and they have never been adopted by the Commissioner as rating factors. Across the nation, the insurance industry's use of occupation and education has been uniformly criticized. Massachusetts has explicitly banned education, income, and occupation as rating factors by a regulation adopted in 2007.¹

Consumer Watchdog, along with ten civil rights and public interest organizations, petitioned Commissioner Dave Jones for a regulation banning this practice in January 2014 and Commissioner Ricardo Lara five years later in February 2019. Still, rate applications with these disparities continue to be approved today. Consequently, low-income Californians are still paying unjustified and discriminatory surcharges based on their occupation or education. It is time to rid California's insurance marketplace of this pernicious form of discrimination.

¹ The Massachusetts Division of Insurance's rate regulations prohibit the use of rating factors based on sex, marital status, race, creed, national origin, age, occupation, income, education, or homeownership in classification plans, rules, rates, or rating plans. (211 Mass. Code Regs. 79.05(11)–(12).)

Consumer Watchdog urges the Commissioner to ban the use of occupation and education in setting rates and premiums, just as the Department did with the use of gender.

The purpose of Proposition 103 is clear. The voters of California passed Proposition 103 to ensure that insurance is fair, available, and affordable for all Californians. Auto insurance premiums in California have to be based primarily on a motorist's driving safety record, the number of miles driven annually, and the motorist's years driving experience. Insurance companies are allowed to consider other optional rating factors but only if the company can prove, in a public hearing, that they have a "substantial relationship to the risk of loss" and they are adopted by regulation as an approved optional rating factor by the elected Insurance Commissioner.² It is a system designed to make insurance rates fair and affordable, reward good drivers, and eliminate the arbitrary discrimination against the middle class that was rampant in the 1980s when the voters passed Proposition 103.

Unfortunately, as demonstrated by recent premium quotes obtained by Consumer Watchdog, this practice continues today.³ In fact, CDI's analysis of industry data obtained through this investigatory hearing confirms that "affinity" marketing plans based on drivers' occupational and educational background disproportionately and adversely impact drivers residing in ZIP codes with lower per capita incomes; lower levels of educational attainment; and with a lower percentage of Non-Hispanic White population.

Education and Occupation Are Being Used as Rating Factors and is Discriminatory

In California today, auto insurance companies are using motorists' education levels and occupations as unapproved rating factors that is resulting in rates that are unfairly discriminatory. A number of auto insurance companies, including seven of the top ten which collectively have over 50% of the market share, have submitted and had approved so-called "affinity group" programs as part of their applications to the Department of Insurance for rate or premium changes. These programs grant special discounts to those who happen to be employed in a professional or other preferred "occupation," usually one requiring a college degree or professional license such as attorneys, doctors and engineers.

Under California law, those who do not qualify for the "affinity" marketing plans must subsidize, through premium surcharges, those who do. This practice discriminates against drivers in less-skilled occupations and those without advanced degrees. Premium quotes obtained by Consumer Watchdog as recently as June 2019 show that education and occupation are being

² 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).) The current list of authorized optional rating factors can be found at 10 CCR § 2632.5(d).

³ Consumer Watchdog respectfully requests that its June 24, 2019 submission in response to the Department's May 24, 2019 request for information in advance of public hearing on group plans and rates be incorporated by reference into the investigatory record. Unless indicated otherwise, the exhibits referenced hereinafter refer to the materials appended to Consumer Watchdog's June 24 submission.

used as rating factors across the industry—with surcharges of up to 14.31% on those who do not have one of the preferred professional occupations.⁴

This summary of online premium test quotes based on occupation and education, obtained for AAA, Farmers, GEICO, Progressive, Allstate, Mercury, and Liberty Mutual, shows uniformly that individuals who are not employed in an insurer's selected group of professional occupations with advanced degrees pay more for the same coverage, all other rating characteristics being equal.⁵ These surcharges range from 1% to over 14% and are prohibited under Proposition 103.

For these premium test quotes, Consumer Watchdog created a driver profile to obtain online quotes from each company's website. The same driver profile was used for each online quote with the only change to the driver being that of the attribute tested for. Our test motorist was a 49-year-old female driver from Los Angeles with 33 years of driving experience. She is unmarried, owns her own car, primarily commutes to work, and her estimated annual mileage driven was between 11,001 and 12,000 miles.

Through Farmers' website we obtained premium test quotes for an accountant and a factory worker. With all attributes except profession being equal, our tests show that Farmers charges a factory worker \$172 more per year than an accountant. This is a surcharge of 13.97% because of the factory worker's profession.⁶ For Liberty Mutual, the attribute tested for was also occupation. Through Liberty Mutual's website we obtained premium test quotes for an attorney and a construction worker. With all attributes except profession being equal, our tests show that Liberty Mutual charges a construction worker \$50 more per year than an attorney. This is a surcharge of 5.45% because of nothing more than the construction worker's profession.⁷

For AAA, we obtained separate premium quotes controlling for both occupation and education level. Through AAA's website we obtained premium test quotes for an engineer and a motorist with no professional affiliation, as well as a motorist with an alumni association membership and one with no college affiliation. With all attributes except profession being equal, our tests show that AAA charges a driver with no professional affiliation \$76 more per year than an engineer. This is a surcharge of 8.07% because of the motorist's profession. Similarly, AAA charges a motorist with no college affiliation 8.07% more than a driver who is an alumni association member.⁸

While insurance companies may claim that certain occupations correlate to a lower risk of loss, they have never made public any data to prove this claim, nor has the Commissioner adopted through a regulation occupation or education level as an approved optional rating factor. As a result, the discounts and surcharges based on occupation and education level are not subjected to the required weighting methodology formula to ensure that their impact does not outweigh the mandatory rating factors.

⁴ See Ex. A-1 at 1–2.

⁵ *Id.* Consumer Watchdog's PowerPoint presentation reviewed at the September 17 hearing is appended as Ex. 1

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

Moreover, of the 168 companies actively selling private passenger automobile insurance in California, 167 refused to submit to the Department’s questioning at the public hearing concerning the disproportionate harm “affinity” marketing plans have on communities of color and lower wage, less educated, and blue-collar California motorists. In an email to drum up support for the use of these illegal rating factors, however, the American Property Casualty Insurance Association did contend that occupations like teachers, police, nurses, firefighters, and members of the military and unions are at lower risk for auto accidents than others. But one reason why the voters passed Proposition 103 is to force insurance companies to justify their actions by publicly disclosing the data.

The industry’s “affinity groups” are in fact actually nothing more than a marketing scheme—with insurers choosing which kinds of people they want to give preferential rates and, in turn, sell more insurance products to. Consumer Watchdog’s review of class plans and rate applications submitted by insurance companies pursuant to Proposition 103 show the arbitrariness with which discounts and surcharges based on education level and occupation are applied.

For example, in the underwriting guidelines submitted with a rate application currently pending before the Department, Farmers claims that insureds who have an occupation listed in its Business and Professional Group I (which includes CPAs, dentists, doctors, educators and engineers) and Group II (which includes firefighters, nurses, librarians, police officers, and small business owners) “will be given the highest qualifying discount.” But in actuality, in its Rate Templates, Farmers is actually proposing to charge its Group II—including firefighters, nurses, and police officers—base premiums that are almost **5% more** than those of individuals not employed in any of these business and professional fields, and almost **7% more** than those of its Business and Professionals Group I—including doctors, dentists and engineers.⁹

Consumer Watchdog’s review of Farmers’ rate templates also shows that firefighters, nurses, police officers, and librarians are currently being charged higher rates than teachers, and its proposed rates will maintain that disparity.¹⁰ What Farmers is marketing as an “affinity” discount to firefighters, nurses, police officers, librarians, and small business owners ***is in fact a premium surcharge.***

The wide variation of these discounts and surcharges between different insurance companies is further proof that occupation and education background are not substantially related to the risk of loss and result in unfairly discriminatory rates. Insurance companies want to attract customers who they deem desirable and are perhaps likely to buy more insurance. By adding a person’s occupation or education level into the equation, insurance companies are squeezing out those less economically advantaged by charging them more. As documented in Consumer Watchdog’s February 21, 2019 petition for rulemaking, education and occupation

⁹ See Ex. A-3.

¹⁰ *Id.* Consumer Watchdog also found surcharges based on occupation in Mercury Insurance Company Rate Manual for private passenger auto class plan reflecting rates and class plan approved May 6, 2019. See Ex. A-4. A copy of our April 1, 2019 letter to Commissioner Lara apprising him of this information is appended as Ex. 2 to Consumer Watchdog’s written testimony, and we request that the letter be included in the record of this proceeding.

levels are simply thinly veiled surrogates for wealth, ethnicity, and race, which is unfair discrimination prohibited by Proposition 103.¹¹

Because communities of color in California earn less and hold less wealth overall, African American and Latinx motorists 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.”¹² 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.¹³

The Voters Passed Proposition 103 to Allow Consumers to Negotiate Group Insurance Policies Under Insurance Code Section 1861.12—The Voters Did Not Authorize “Affinity” Marketing and Unfair Rate Discrimination

Insurance companies contend that their “affinity” marketing plans that set rates and premiums based on a driver’s education level or occupation are authorized by Insurance Code section 1861.12. This argument is spurious. Section 1861.12 was enacted to permit groups of consumers to independently join together to negotiate a “group plan” with a single insurance company (much like group health plans), which historically had not been allowed in the property-casualty insurance market in California and across the nation. It is a provision that allows organized groups to negotiate collectively with insurance companies to achieve discounts based upon their shared characteristics as members of a legitimate, organized group and efficiencies in the sale and administration of policies.

“Affinity groups,” by contrast, are used as marketing schemes concocted by insurance companies based on impermissible rating characteristics such as insurers’ selected occupations and levels of education attained. The only thing that “affinity groups” have in common with Insurance Code section 1861.12 is the word “group,” chosen by the industry to try to fabricate an exemption from Insurance Code section 1861.02, which regulates auto insurance rating factors. The suggestion that these “affinity” marketing plans are authorized by Insurance Code section 1861.12 cannot be squared with Insurance Code section 1861.02’s system of mandatory and permissible rating factors. Such an interpretation would establish a loophole in Proposition 103 that would allow insurance companies to evade the voters’ explicit direction in Insurance Code section 1861.02 and the auto rating factor regulations that implement it.

This interpretation of Insurance Code section 1861.12 conflicts with the principles of statutory interpretation which require the text of each provision to be construed and harmonized as a whole in light of the voters’ intent and to achieve the stated purpose of the statute – to ensure

¹¹ See Ex. A-7.

¹² 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>; see also Ex. A-7.

¹³ Duke University et al., “The Color of Wealth in Los Angeles,” March 2016, http://www.aasc.ucla.edu/besol/color_of_wealth_report.pdf; see also Ex. A-7.

that insurance is fair, available, and affordable. 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 occupation “groups” that fit their preferred unfairly discriminatory marketing and rating practices.

Conclusion

The use of occupation and education as 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. The use of any rating factor that has not been adopted by the Commissioner by regulation and does not appear on the list of approved optional rating factors “shall constitute unfair discrimination,” which is a violation of Insurance Code sections 1861.02(c) and 1861.05(a). Yet that is exactly what is happening across California. These unfair surcharges drive up the cost of insurance for people who can least afford it, and skirt civil rights protections to allow insurers to charge non-white, lower wage drivers more.

Consumer Watchdog respectfully requests that the Department immediately proceed to a formal rulemaking barring the use of occupation and education as unapproved rating factors, and urges the Department to put in place a moratorium on “affinity” marketing plans based on a driver’s education level or occupation during the pendency of this investigatory hearing. Until the Department fully investigates and determines what, if any, uses of true group insurance plans—as intended by the voters under Insurance Code section 1861.12—should be permitted, no insurer should be permitted to submit rate applications that contain new education level- or occupation-based rates and premiums.

Exhibit 1

Every Doe



Female
DOB 1-1-1970
Los Angeles, CA
90004
Unmarried
Rents her home

Her Car

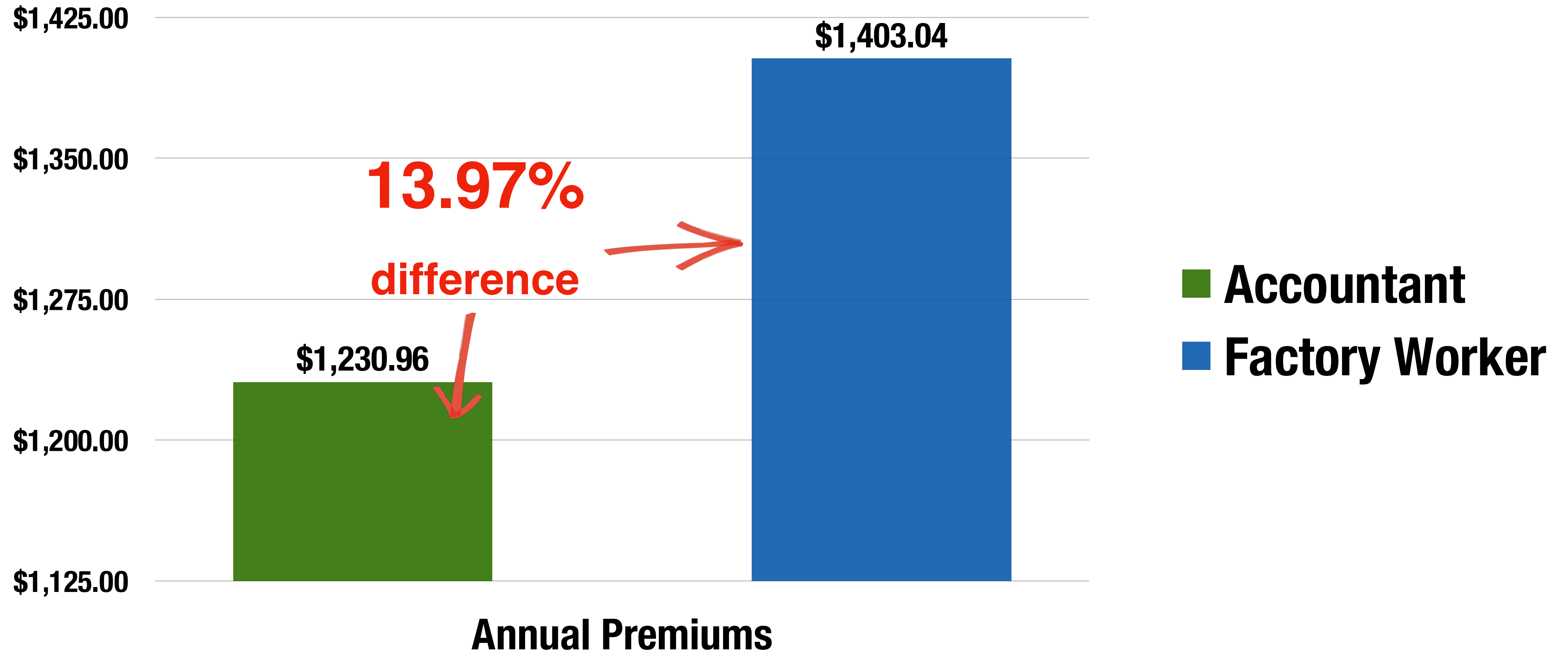


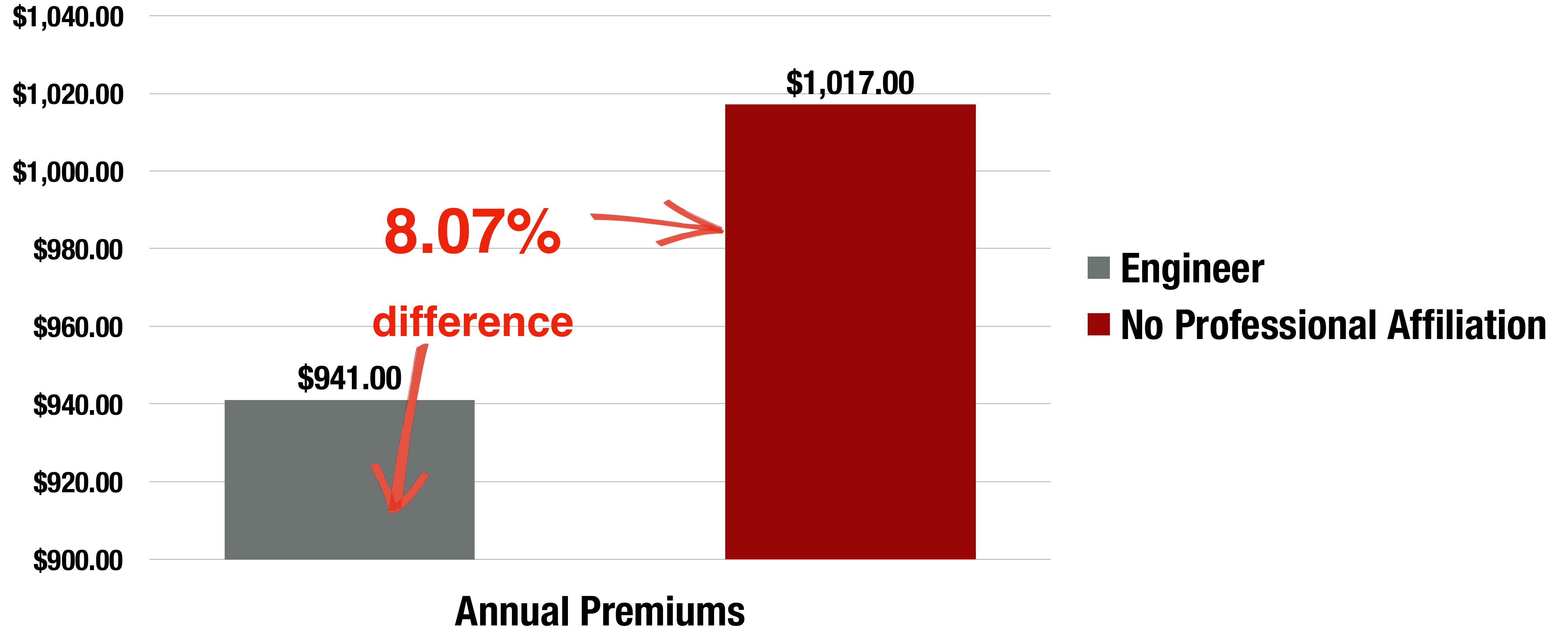
2012 Lexus ES 350
She owns her car
Commutes to work 5 days/week
5 miles each way

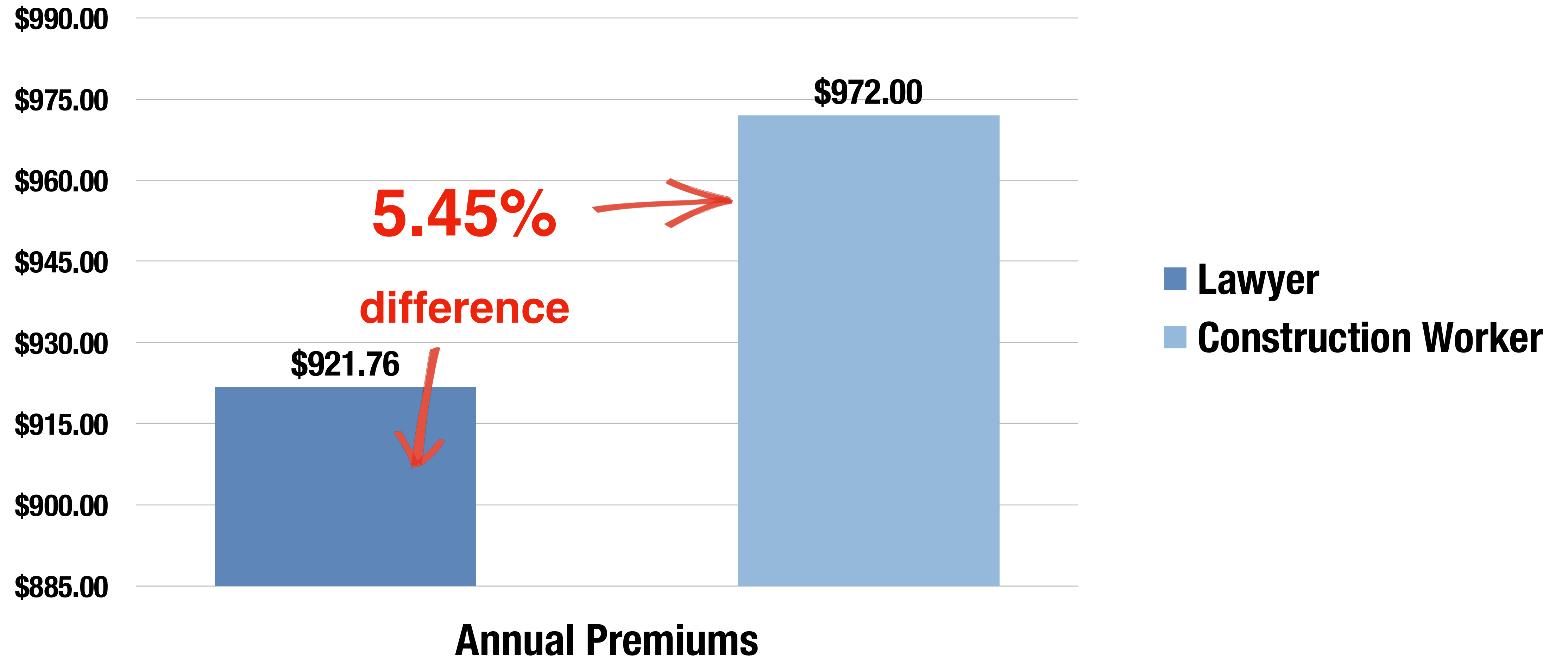
Her Insurance



Total Bodily Injury Limits of
\$15,000/\$30,000
First drivers license at age 16










Consumer Watchdog Premium Test Quotes Based on Occupation and Education

Insurance Company	Professional Occupation	Nonprofessional Occupation	Surcharge for Nonprofessional Occupations	Education Level (Bachelor's Degree)	Education Level (no college degree)	Surcharge Based on Education Level
GEICO	\$835.36/year (physician or CPA)	\$954.96/year (factory worker)	14.31 %			
Farmers	\$1,230.96/year (accountant)	\$1,403.04/year (factory worker)	13.97%			
AAA	\$941/year (engineer)	\$1,017/year (no professional affiliation)	8.07%	\$941/year (alumni association member)	\$1,017/year (no college affiliations)	8.07%
Progressive	\$825.76/year (attorney or engineer)	\$881.76/year (factory worker)	6.78%			
Mercury	\$731.76/year (engineer or scientist)	\$779.76/year (no affiliations)	6.55%			
Liberty Mutual	\$921.76/year (lawyer)	\$972/year (construction worker)	5.45%			
Allstate	\$932/year (lawyer)	\$942/year (construction worker)	1.07%	\$932/year (lawyer, advanced degree)	\$942/year (construction worker, bachelor's degree)	1.07%

Farmers' Business & Professional Group Surcharges

Coverage	Group I Occupations	Group II Occupations	Surcharge based on Occupation
All coverages combined	\$1,387.14/year	\$1,483.60/year	6.95%
Coverage	Group I Occupations	Regular Program	Surcharge based on Occupation
All coverages combined	\$1,387.14/year	\$1,416.66/year	2.12%
Coverage	Regular Program	Group II Occupations	Surcharge based on Occupation
All coverages combined	\$1,416.66/year	\$1,483.60/year	4.72%

Group I	Group II
Certified Public Accountants (CPA's)	Architects
Dentists	FIG Federal Credit Union
Educators	Firefighters
Engineers	Lawyers/Judges
Physicians/Surgeons	Registered Nurses
Scientists	Police Offices/Law Enforcement Officers
Veterinarians	Aviation Professionals
	Physical and Occupational Therapists
	Speech Audiologists and Pathologists
	Librarians
	Real Estate Agents and Brokers
	Small Business Policyholders (Owners & Officers)
	Workers' Compensation Policyholders (Owners & Officers)
	Zurich Employees/Agents