

August 1, 2007

**BY HAND**

Governor Deval Patrick  
Commonwealth of Massachusetts  
State House, Room 360  
Boston MA 02133

Re: Banning the Use of Socioeconomic Factors by Auto Insurance Companies in Private Passenger Automobile Insurance

Dear Governor,

As representatives of consumer, civil rights and low-income advocacy organizations, we are very concerned about the Commissioner of Insurance's July 16 decisions, which appear to allow the use of socioeconomic factors for underwriting purposes in auto insurance. Attached is a letter we sent today to the Commissioner on this topic.

For more than thirty years, Massachusetts law has prohibited an insurer from relying on socioeconomic factors to deny coverage to a motorist. In fact, the only two reasons an insurer has been permitted to deny coverage were nonpayment of premium and failure to have a valid driver's license. The Commissioner's decisions set us back to a time when discriminatory insurance practices were tolerated.

We would appreciate your consideration of our concerns.

Sincerely,

Carmen Balber, **Foundation for Taxpayer and Consumer Rights**  
Birny Birnbaum, **Center for Economic Justice**  
Nadine Cohen, **Lawyers' Committee for Civil Rights under Law  
of the Boston Bar Association**  
Deirdre Cummings, **MASSPIRG**  
Stephen D'Amato, **Center for Insurance Research**  
Robert Hunter, **Consumer Federation of America**  
Allan Rodgers, **Massachusetts Law Reform Institute**  
Paul Schlaver, **Massachusetts Consumers' Coalition**  
Paul Schrader, **Consumer Assistance Council, Cape Cod**  
Chi Chi Wu, **National Consumer Law Center (on behalf of its low-income clients)**

August 1, 2007

**BY HAND**

The Honorable Nonnie S. Burnes  
Commissioner of Insurance  
Massachusetts Division of Insurance  
One South Station  
Boston, MA 02110

Re: Banning the Use of Socioeconomic Factors by Auto Insurance Companies in Private Passenger Automobile Insurance

Dear Commissioner Burnes:

As representatives of consumer, civil rights and low-income advocacy organizations, we were pleased to see you state that, as you introduce “managed competition” to auto insurance, you “*will view with extreme skepticism any rate proposal that is based on socio-economic considerations such as education, occupation, home ownership or credit report or score.*” We are very concerned, however, that your decisions of July 16 appear to allow the use of socioeconomic factors for underwriting purposes – that is, as a basis for not selling any policy to a consumer.

Insurance companies are continuously looking for new rating and underwriting factors. They allege that these factors correlate with losses. Some of the rating and underwriting factors currently in use today in other jurisdictions include: credit scores, occupation, level of education, grades in school, prior liability limits, amount of coverage purchased, whether the car was new or used when purchased, home ownership, and marital status, to name just a few of the ones regulators even know about. These factors correlate with race and income, and consequently, the use of these factors by insurers harms minority and low-income drivers.

Moreover, there is no showing by the industry as to why these factors might correlate with losses. Is it because these factors are proxies for race and income? Is it because a correlation exists for some subset of drivers, but not for all drivers? Without a good understanding of why a rating factor produces a correlation, it is unfair from the consumer’s perspective to allow insurers to use such a factor to charge higher rates.

While we share your concerns about the use socioeconomic factors for rating purposes, we believe it is equally unfair to allow insurers to use socioeconomic factors for underwriting purposes. It is crucial that the protections afforded consumers in the rating process be extended to underwriting. If a factor is unfair to consumers in setting rates, then it is certainly unfair to consumers if it is used to deny them insurance altogether. (In addition, insurers in other states have blurred the line between underwriting and rating by moving factors traditionally used for rating into so-called “tier placement.” Massachusetts currently prohibits this practice and should continue to do so.)

It is our understanding that many insurers argue that the state does not have the authority to regulate underwriting factors, other than those specifically mentioned in Section 22E of G.L. c. 175. The insurers are mistaken. As the Supreme Judicial Court indicated last

year in Commerce v. Commissioner of Insurance, 447 Mass. 478, 486 (2006), Section 113H of G.L. c. 175 allows the Commissioner to ban the use of all underwriting factors by requiring insurers to “take all comers.” In addition, your July 16 decision in C2004-02 clearly prevents insurers from using any underwriting factors to non-renew “Clean in 3” drivers. The legal authority to so restrict renewals would also allow the Commissioner to ban the use of socioeconomic factors for underwriting both new business and renewals.

It is vital that government, through regulation, ensures that auto insurance rating and underwriting practices are fair to each consumer and that these practices do not discriminate on the basis of race or income. Consumers, agents, insurers, and regulators need to know what factors will be used in setting premiums and, even more important, a driver’s eligibility to purchase insurance in the voluntary market.

Under “managed competition,” it would be in the best interest of consumers for the Division of Insurance to identify specifically and expressly which factors insurers could use for rating and for underwriting, as opposed to identifying which factors could not be so used. Otherwise, insurance companies will merely use other non-prohibited factors that correlate with, or act as a “proxy” for, the factors that are prohibited.

For decades, Massachusetts has used driving record as the primary rating factor for auto insurance. By limiting the number of other rating factors, as well as the weight given to them, we have given more weight to driving record than has any other state. (California recently adopted a similar approach.) Banning the use of all socioeconomic and other non-driving-related factors for rating and underwriting will help to maintain the system’s well-placed emphasis on driving record.

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Carmen Balber, **Foundation for Taxpayer and Consumer Rights**

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cc: Governor Deval Patrick, Commonwealth of Massachusetts

Daniel Crane, Director, Massachusetts Office of Consumer Affairs and Business  
Regulation

Secretary Daniel O’Connell, Executive Office of Housing and Economic Development