

AN ACT TO PROVIDE FOR FURTHER CONSUMER PROTECTION IN AUTO INSURANCE

The bill establishes a competitive rating system for private passenger automobile insurance that is based on an individual's driving record and on the main other factors used to set rates in the Commonwealth today. It also prevents insurers from rejecting motorists for reasons other than driving record. Unlike the competitive system that the Commissioner of Insurance is in the process of implementing effective April 1, 2008, the system established by this bill would be based primarily on driving record and would not allow drivers to be charged more or be rejected for coverage based on factors that are proxies for income, race, occupation, and education. Thus, the bill would preserve existing consumer protections, but also would allow insurers substantial leeway to compete based on driving record and other non-discriminatory rating factors that have been used in Massachusetts for decades.

Section-by-Section Summary

Section 1:

This section prohibits auto insurers from rejecting a motorist for any reason other than driving record.

In contrast, the Commissioner's plan would not prevent insurers from rejecting drivers based on countless proxies for the limited list of factors prohibited under her plan. (The Commissioner's regulations prohibit the use of: sex, race, marital status, creed, national origin, religion, occupation, income, education, homeownership, age, and principal place of garaging of the vehicle. The regulations also prohibit the use of information obtained from a consumer credit report, although the Commissioner has indicated she plans to revisit this issue in a year.)

Since the new regulations specify only the *prohibited* factors, as opposed to the *allowed* factors, creative companies would be able to use an endless list of proxies for the prohibited factors. Some examples of possible proxies for factors that are banned include: net worth, having other insurance (especially an umbrella or homeowners' policy), prior coverage amounts, value of the car to be insured, number of cars owned, student loans, number of bank accounts, ownership of stocks and bonds, boat ownership, frequent flyer miles, MFA membership, BSO membership, country club membership, contributions to charity, and whether consumers pay insurance through an installment plan. The likelihood of this to happen is significant given there is no requirement for insurers to disclose publicly the factors used in their underwriting guidelines.

This section would enable all drivers with good records to have access to the lowest rates offered by the competitive market, which is not the case under the Commissioner's plan.

Section 2:

This section prevents insurers from using group discounts to circumvent restrictions on the use of discriminatory rating factors.

The bill addresses two very different reasons an insurer might want to offer a discount to a group. First, the insurer could base a discount on cost savings expected to be produced by the group. Significant administrative expense savings can be achieved because of the economies of scale associated with insuring one large group of drivers. Moreover, groups can reduce claims by educating members about ways to avoid accidents, prevent vehicle thefts, improve the safety of vehicles, and combat insurance fraud. The bill allows for discounts for groups that reduce their underlying insurance costs.

A second reason an insurer might want to offer a discount to a group is that the members of the group fit the profile of drivers who are expected to have lower claims, regardless of any efforts by the group to reduce claims. Usually, this profile amounts to nothing more than a proxy for a discriminatory factor that is prohibited for use in rating. For example, existing discounts for the American College of Surgeons and for the Massachusetts Society of Certified Public Accountants are obvious proxies for occupation, and discounts for the Executive Women's Golf Association and the Quincy Yacht Club are thinly veiled proxies for income. Unfortunately, the Division of Insurance routinely approves these types of discounts today, but at least insurers currently are not allowed to pay for these discounts by charging higher rates to drivers not receiving the discounts. Under the Commissioner's new regulations, drivers not part of the groups receiving these discounts would pay more and would essentially be the funding source for the discounts.

This section requires group discounts to be based only on cost savings produced by the group. The bill encourages group discounts of the first variety discussed above and limits the adverse impact of group discounts of the second variety. Without this section, insurers would easily be able to get around the bill's rating provisions, which are designed to emphasize driving record and to preclude the use of proxies for prohibited rating factors.

Section 3:

This section requires insurers to use driving record as the primary factor in setting an individual's premiums.

Instead of listing the factors insurers *may not* use under competition, the section sets forth the rating factors that insurers *may* use. The intent is to preserve all of the factors that have been used for many years in Massachusetts, to prevent the use of new factors that would dilute the impact of driving record, and to preclude the use of proxies for factors such as income, race, occupation, and education. In addition, the factors that are expressly permitted would receive approximately the same weight as they do today, meaning that drivers with good records would all have access to the lowest rates offered

by the competitive market and that only drivers with bad records could be denied the benefits of competition.

The permissible rating factors and discounts, all of which are used today, would be driving record (including at-fault accidents, moving traffic violations, annual miles driven, and number of years of driving experience), territory, type of vehicle driven, the multi-car discount, driver education programs, mass transit discounts, group discounts, the discount for drivers age 65 or older, anti-theft-device discounts, and passive-restraint discounts.

This section also prohibits insurers from using multiple subsidiary companies as a way to circumvent anti-discrimination rating rules. This closes a significant loophole contained in the Commissioner's plan.

Section 4:

This section provides the Attorney General with notice of any rate filings made by insurers and sets forth the rights of the Attorney General in any auto insurance rate proceeding in which she believes it is appropriate to intervene on behalf of consumers.

The section makes it clear that the Attorney General is entitled to adequate notice of rate filings and to a full and fair hearing on any filing she believes is unlawful.