Consumer Federation of America

November 6, 2020

Andrew Stolfi, Director
Department of Consumer and Business Services
350 Winter Street NE, 2nd Floor
Salem, OR 97301

Re: CFA Comments on LC 561

Dear Director Stolfi:

The Consumer Federation of America (CFA) writes in support of LC 561, which would promote safe driving and fair auto insurance premiums by ensuring that drivers' rates are primarily based on factors related to their driving and prohibiting the use of non-driving, socioeconomic characteristics in determining consumers' eligibility, rates, and premiums. LC 561 will make auto insurance more affordable and equitable, and it will combat systemic racism that plagues the auto insurance market. In this letter, in addition to providing some thoughts about the problems that this legislation will address, we also offer some suggested changes that we believe will further strengthen the proposal.

LC 561 has two key elements on which we are focused, both contained in Section 2 of the bill. The first element requires that driving related factors play the central role in premium setting for Oregon policyholders, and the second protects policyholders from rates based on a series of non-driving factors.

The first element, in subsection (2) of this section, mandates that an auto insurer can only consider the following information when determining insurance rates:

a) An applicant's history of safe driving,
b) The number of miles they drive,
c) Their driving experience,
d) Information that is directly related to or supplements the above information, and
e) Any other information that the Oregon Director of the Department of Consumer and Business Services expressly permits them to consider by rule.

This section makes clear that Oregonians' premiums should be based on factors related to their driving, which will strengthen the benefits and incentives for safe driving. We offer the following recommendations to this section:

- Subsection (c) should make clear that rates must be tied to an insured's "years of" driving experience, so there is no confusion about what *experience* insurers must consider;

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- The legislation should clarify that the factors listed in subsection (a) through (c) must have the most impact on a consumer's premium in order from (a) to (c), such that a driver's safe driving history has the most impact on premiums, miles driven the second most, and years of driving the third most;
- Subsection (d) should be clarified to require that insurers demonstrate to the Director that any additional information used by insurers to determine a policyholder's safety record, mileage, or years of experience is relevant and not unfairly discriminatory; and
- Subsection (e) should be clarified to ensure that the *combined impact* of any factors allowed by rule pursuant to this subsection is less than the individual impact of the years of driving experience (and, pursuant to the second bullet point above, also less impact than driving safety and less than miles driven).

While the first key provision in Section 2 focuses on establishing what can be used in setting drivers' premiums, the second element, in subsection (3), makes clear what auto insurers are not allowed to use when determining eligibility and pricing for Oregon drivers. This section will reform auto insurance to stop the pricing of customers based on non-driving factors that reflect their socio-economic status rather than their safety behind the wheel, as well as other factors that should not be used in pricing. Specifically, the bill bans an auto insurer from considering the following information when determining insurance rates:

a) A consumer's credit history,
b) A consumer's sex or gender,
c) Their marital status,
d) Previous accidents in which the consumer was not at fault,
e) Their education,
f) Their occupation,
g) A consumer's employment status,
h) Their residential status,
i) Information about other members of their household who are not licensed to drive, and
j) The consumer's criminal history, unless the insurer asked for the information as part of the initial application.

Below, we offer some additional suggestions for this section, but first we share some of the reasons that CFA supports this change.

Many of these characteristics identified in this subsection are proxies for income and race or ethnicity. Removing them from the pricing and underwriting practices of insurance companies will go a long way to alleviating the disparate impact of the current algorithms used by insurers that leave lower-income Oregonians and people of color in the state paying significantly higher than average premiums even when they maintain pristine driving records.

In Oregon, auto insurance companies charge significantly more to drivers with a clean driving record if their credit score is only "fair" rather than "excellent." That penalty for safe drivers is magnified even more if they happen to have a "poor" credit score. Similarly, penalties accrue for safe drivers who are unemployed or have blue collar jobs rather than white collar jobs as well as for those with a high school diploma rather than a college degree or who rent rather than own their home. Additionally, unmarried, divorced, and widowed Oregonians are often charged higher auto insurance premiums even when they have good driving records. And after reviewing premium quotes for 35 year old drivers in Oregon, CFA has found that women are charged about 9% more for the same coverage than men.

It is simply unfair that auto insurance companies price people based on factors that neither reflect their driving risk nor could be improved by any risk mitigating behaviors. It is also important to acknowledge that these factors used by some insurers create a disparate impact in the auto insurance market that harms low-income residents and drivers of color.

State law should not allow insurance companies to charge safe drivers higher auto insurance because they are female or widowed or unemployed.

Data show, for example, that on average,

- Unmarried people have lower incomes than married people;
- Blue collar and hourly workers and the unemployed have lower incomes than white collar and salaried workers;
- Those who have lower levels of education have lower incomes; and
- Renters have lower incomes than homeowners.

The factors also rely on and perpetuate systemic racism against African-Americans and Latinx consumers, because they disproportionately impact people of color. Both groups are disproportionately represented in the higher premium categories. Census data and data collected by the Federal Reserve show that African-American and Latinx consumers are:

- More likely to be unemployed (and face higher premiums)
- More likely to be renters instead of homeowners (and face higher premiums),
- More likely to be single instead of married (and face higher premiums),
- More likely to work in blue collar jobs (and face higher premiums),
- Less likely to have a college degree (and therefore more likely to face higher premiums, and,
- More likely to have lower credit scores (and face higher premiums).

While insurers claim that these factors are race neutral, in practice they harm people of color far more than white Americans.

While we are strongly supportive of the legislation, we urge you to add a few other factors to the list of proscribed factors. Specifically, the bill should:

- Prohibit insurers from considering the absence of prior insurance coverage, the company with which they had prior coverage, or the amount of coverage they purchased previously; and
- In light of evidence that some insurers may use a non-risk related pricing strategy called "price optimization," which penalizes drivers based on their shopping habits, this bill should prohibit the use of price optimization and other pricing or underwriting practices using measures of consumer elasticity of demand.

These rating and underwriting practices that are currently in use by many auto insurers in Oregon, result in considerably higher premiums for Oregonians least able to afford coverage. According to national research CFA has conducted, in states where insurers can use these types of rating factors, the impact is clear: "The cumulative impact of these non-driving rating factors pushes rates up by 59 percent, or $681, each year for drivers with perfect driving records but non-driving characteristics that suggest a lower economic status in society."

Because Oregon mandates that drivers purchase auto insurance, the state government has a special responsibility to ensure that insurance is available and fairly priced. LC 561 would end the use of these unfair and harmful factors, incentivize safer driving, help make auto insurance more affordable for all consumers, and reduce systemic racism and discrimination in the auto insurance market. We urge legislators, other elected officials, and advocates to support LC 561. Please reach out to us at douglasheller@ymail.com if you have any questions.

Sincerely,

Michael DeLong

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Insurance Expert
Consumer Federation of America

Michael DeLong
Insurance Advocate
Consumer Federation of America