CR ConsumerReports®

MEMORANDUM IN SUPPORT FOR H.B.2043

An Act Relating to Information Permitted for Insurer's Decisions Concerning Motor Vehicle Liability Insurance

STATEMENT OF SUPPORT: Consumer Reports strongly supports H.B. 2043, which would prohibit insurance companies from using certain non-driving-related information as ratings factors for automobile insurance underwriting and pricing, including credit history, education level and occupational title.

The use of credit history data, educational level and occupational status to price auto insurance can unfairly raise rates for drivers with a good or excellent driving record. Consumer Reports believes that states should base pricing and underwriting decisions on driving-related factors, including driver safety record; miles driven per year; and years of experience on the road. However, many insurance companies use a range of socioeconomic factors to price and underwrite policies, including credit history, education level, and occupational status.

The use of credit history for pricing and tier placement in auto insurance has an especially arge impact on customer premiums that results in sharply higher rates for many drivers, that are not justified by these drivers' driving ability or risk. The practice of using credit score been banned in four other states – California, Hawaii, Massachusetts, and Michigan. By banning the use of credit history, and other socioeconomic factors such as education level and occupation, Oregon can prevent unfair discrimination, and improve the fairness of auto insurance pricing for millions of drivers in the state, who may otherwise be unable to obtain auto insurance coverage they can afford.

Background: Consumer Reports has raised concerns for many years about the use of credit information in auto insurance pricing. In 2006, Consumer Reports published *Caution! The secret score behind auto insurance* which alerted consumers that credit-based insurance scores had become as important in determining their annual premiums as their driving record and the neighborhood of residence.[1] The same year, the Consumer Reports' advocacy division published an in-depth white paper entitled *Score Wars: Consumers Caught in the Crossfire--The Case for Banning Credit Information in Insurance Pricing*.[2]

Though we published these reports 15 years ago, our concerns over the use of credit data in insurance underwriting have not abated and the points we made then about the negative public policy ramifications

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[1] *Caution! The Secret Score Behind Your Auto Insurance*, CONSUMER REPORTS, Aug. 2006, *available at* http://consumersunion.org/pdf/CR-Aug2006.pdf.

[2] NORMA P. GARCIA, CONSUMERS UNION, SCORE WARS: CONSUMERS CAUGHT IN THE CROSSFIRE – THE CASE FOR BANNING THE USE OF CREDIT INFORMATION IN INSURANCE (2006), *available at* http://consumersunion.org/pdf/ScoreWars.pdf.

of using credit history remain highly relevant today.

These include:

- secrecy in determining insurance scores, such that consumers cannot reasonably know what goes in them;
- serious problems with the accuracy of information contained in credit files that underlie insurance scores derived from credit information;
- the unfavorable impact on low-income and minority communities when credit scores function as proxies for race and income, and
- the insufficiency of current laws to protect against unfair results in states that allow the practice.

In September, 2015, Consumer Reports published the results of a two-year investigation into auto insurance pricing that revealed a very serious problem with auto insurance pricing in many states where credit history is allowed. We gathered more than 2 billion price quotes across 33,000+ residential U.S. ZIP codes to understand the factors that raise rates.[3]

Our investigation revealed that how one drives may have little to do with how much one pays, and may depend more heavily on socioeconomic factors, such as education, occupation, gender, marital status and credit history. At the national level, Consumer Reports found that single drivers paid a median of $190 more for merely having "good" credit, compared to consumers with the best credit. That national difference was $1,200 for consumers with "poor" credit scores. However, the differences were even sharper in Oregon, where a driver with a clean driving record, but only "good" instead of "excellent" credit history would pay $2199 more in premiums. A driver with a clean driving record and "poor" credit would pay a whopping $1,288 more – an extra $107 per month.

Perhaps even more shocking, consumers with clean driving records but with poor credit paid considerably more for their auto insurance than drivers with a drunken driving conviction but an excellent credit history. In Oregon, the top insurers reported an average rate of $2,302 for auto coverage for consumers with a clean driving record and poor credit, compared to an average rate of $1,777 for drivers with a drunken driving conviction and excellent credit.[4] Looking at it another way, this means a driver with a clean driving record – no accidents or traffic violations – but who happens to have poor credit, is being charged $525 more in premiums than the drunk driver with the DUI conviction. (See Oregon credit scor chart, next page)

We believe it is patently unfair and unwise to let convicted drunk drivers pay less for their auto insurance than an excellent driver with poor credit. When this is allowed, excellent credit can function as a socio-economic buffer against being charged the highest rates, even if one has engaged in and has been convicted of the worst driving behavior possible--drunken driving. When use of credit score is allowed, good drivers with poor credit can end up subsidizing the rates paid by convicted drunken drivers with excellent credit. In a pricing scheme that does not allow the use of credit information and places more

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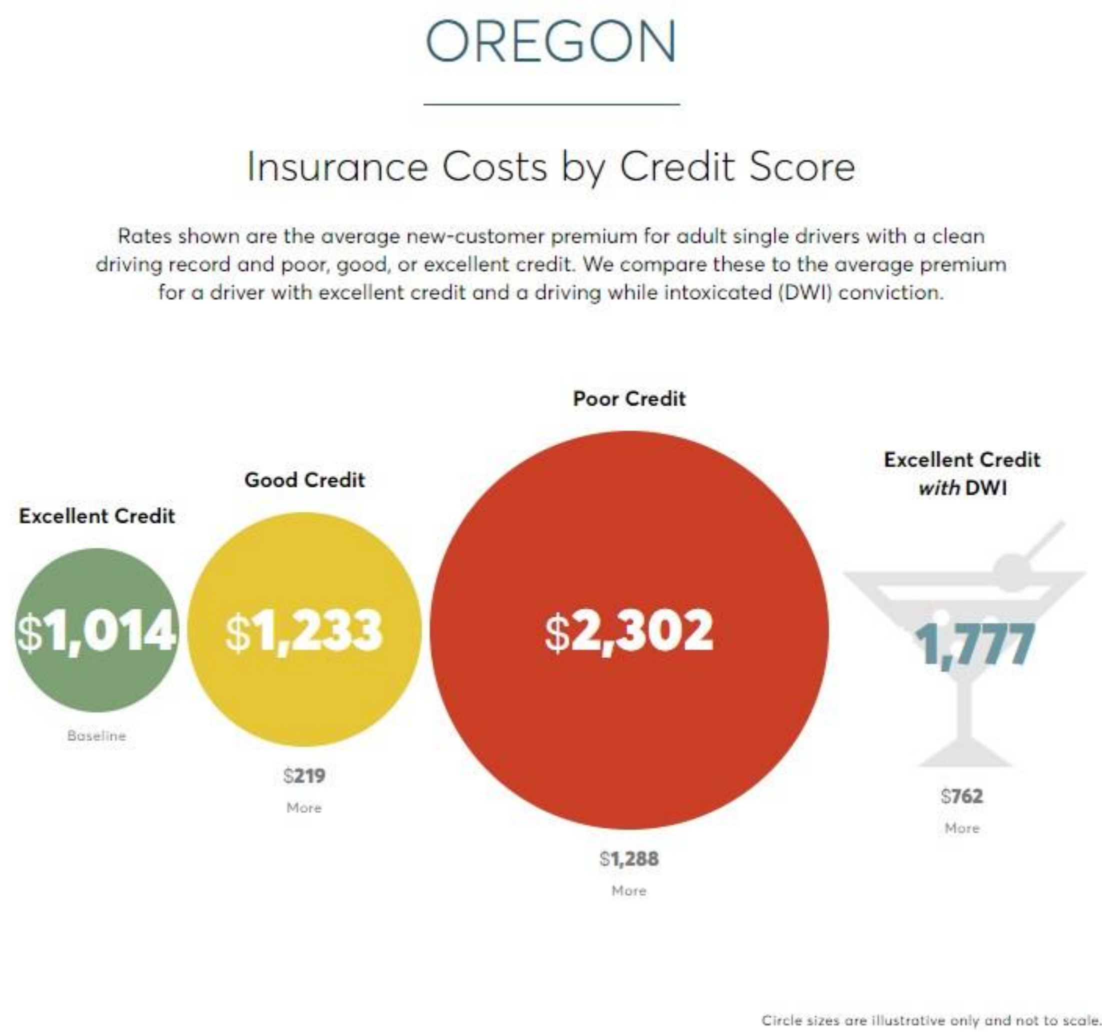
[3] *The Truth About Car Insurance*, CONSUMER REPORTS, Sept. 2015, *available at* http://www.consumerreports.org/cro/car-insurance/auto-insurance-special-report/index.htm.

[4] Ibid.



Source: "The Secret Score Behind Your Rates," *Consumer Reports*, September, 2015[5]

emphasis on driving behavior, such as number of miles driven and driving record, such a result would not be possible.

As noted above, there are currently four other states which do not allow the use of credit information in auto insurance pricing decisions -- California, Hawaii, Massachusetts and Michigan. For years, the insurance companies operating in these markets have been able to price auto insurance without using a consumer's credit information, so we know it is both highly possible and feasible for them to also do this in Oregon.

Oregon should require insurance companies, when setting prices, to prioritize a person's actual driving history and other driving-related factors over any other information. The key driving-related factors that

[5] "The Secret Score Behind Your Rates," *Consumer Reports*, September, 2015, available at: available at: https://www.consumerreports.org/cro/car-insurance/credit-scores-affect-auto-insurance-rates/index.htm

should be considered include miles driven per year; years of experience behind the wheel; and driving safety record.

Insurance Credit Scores Are Secret. Proprietary Scores, Which Customers Do Not Have Access To

Credit reports were originally developed for "credit-granting purposes," for banks and lenders to make decisions about credit-based products like mortgages, loans and credit cards. But beginning in the 1990s, insurance companies began to use adopt the use of credit history for pricing and underwriting purposes. This represented a significant form of "mission creep" for credit reports, since the data collected were not originally intended or collected for this purpose. Income and race are prohibited as ratings factors, yet the use of credit history can serve as a proxy for both. We are highly concerned that the use of credit history has a disparate impact on low- and moderate-income drivers, and drivers of color. Many insurance companies have turned a deaf ear to the concerns of consumer and civil rights organizations about these issues, and show little concern for the negative impacts of these non-driving ratings factors on their customers.

To prepare insurance credit scores, insurance companies buy data from credit reporting agencies, and cherry-pick particular variables and measures to create proprietary, secret algorithms for calculating an insurance credit score that is unique to that company. The credit history used is derived from credit reports, but it is not the same as the more common FICO and consumer-reporting agency scores that consumers can obtain for a fee.

This secretive insurance industry practice means consumers are being judged on measures that are not visible and transparent, that vary from company to company. While insurance companies are required to provide adverse action notices if a decision is made to reject customers or raise their rates, customers cannot reasonably know how the insurance company is calculating the score, and the specific information they are relying on to make their pricing and underwriting determinations.

Research Confirms That Significant Errors in Credit Reports are Common and Can Harm Consumers

Consumers also have good reason to be concerned about the use of credit scores for pricing auto insurance, because the underlying credit reports used to calculate these secret, proprietary scores are riddled with errors and inaccuracies.

In 2014, Consumer Reports National Research Center conducted a nationally representative survey of 3,112 participants regarding credit report.[6] Among our findings, we learned:

- Twenty percent (20%) of respondents who checked their credit reports found errors that could negatively affect their credit scores, such as non-collectible old debt that was still listed, incorrect account information (payment history or credit limit, for example), accounts that were not theirs, and information about the wrong people.

- Two-thirds of credit report consumers who found one or more errors tried to correct them. Approximately 58% of those who tried to resolve a credit report error ran into challenges (e.g.

[6] *How Your Credit Card Can Help You—Or Hurt You*, CONSUMER REPORTS, Nov. 2014, *available at* http://www.consumerreports.org/cro/magazine/2015/01/how-your-credit-report-can-help-you-or-hurt-you/index.htm

- were ignored, confused, rejected, or lied to) with credit reporting agencies or data furnishers in their pursuit to resolve credit report errors.

In 2012, the Federal Trade Commission (FTC) investigation yielded similar findings and estimated that almost 20 percent of consumers had at least one credit report that contained errors.[7] Over five percent had errors significant enough to place them in an inferior credit category for FICO's car loan specialty score, making it more likely they would pay more for a loan.[8] Further, many Americans are spending valuable time working, sometimes fruitlessly, to correct the errors in their credit files. In 2011, consumers contacted the big three CRAs about eight million times with their accuracy concerns.[9] Consumers have also taken their concerns to the CFPB. In 2013, the agency collected about 24,200 complaints about credit reporting issues, and 73 percent of those complaints cited "incorrect information" in relation to credit reports.[10]

The credit standing of consumers can be unfairly damaged by mistakes made by multiple other parties in the financial system. It is therefore highly questionable for auto insurance companies to then use this information for pricing, underwriting and tier placement purposes. Priority concerns include the dubious accuracy of credit histories and scores; the lag time and lack of follow-up by creditors in removing non-existent debts from collections; and the fact that consumers may have experienced legitimate, life-threatening emergencies and illnesses that impair their earning capacity and economic status, due to no fault of their own.

When consumers have negative information reported on their credit report – sometimes unfairly so, as we have just seen -- their options for credit are usually restricted. It becomes harder to "shop around," and they will have fewer choices, and credit will be priced higher for credit cards, loans, mortgages and other financial products.

When credit scores are used for insurance purposes, this impact is multiplied in ways that it hard for consumers to perceive and see. Consumers will have fewer choices for auto insurance coverage, and these will be more highly priced. When financial hard times strike, such as the current recession, credit becomes scarce, and auto premiums will tend to cost more, even if the situation resulted from a general contraction of the economy, a plant closure, a regional economic downturn, or other factors that are completely beyond a consumer's control.

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[7] FED. TRADE COMM'N, REPORT TO CONGRESS UNDER SECTION 319 OF THE FAIR AND ACCURATE CREDIT TRANSACTIONS ACT OF 2003 2 (2012) [hereinafter 2012 ACCURACY REPORT], *available at* https://www.ftc.gov/sites/default/files/documents/reports/section-319-fair-and-accurate-credit-transactions-act-2003-fifth-interim-federal-trade-commission/130211factareport.pdf

[8] *Id*. at 47. Based on the FTC's estimate that the credit reporting industry has files on 200 million consumers, it can be concluded that about 10 million consumers would be put into the more expensive credit category due to credit reporting errors. See *supra* text accompanying note 7.

[9] CONSUMER FINANCIAL PROTECTION BUREAU, KEY DIMENSIONS AND PROCESSES IN THE U.S. CREDIT REPORTING SYSTEM 7 (2012), *available at* http://files.consumerfinance.gov/f/201212_cfpb_creditreporting-white-paper.pdf (discussing historical rise of three largest CRAs), at 27.

[10] CONSUMER FIN. PROTECTION BUREAU, CONSUMER RESPONSE ANNUAL REPORT: JANUARY 1- DECEMBER 31, 2013 19 (2014), *available at* http://files.consumerfinance.gov/f/201403_cfpb_consumer-response-annual-report-complaints.pdf. The CFPB began collecting complaints about credit reporting issues in October 2012. Consumer Fin. Protection Bureau, Credit Reporting Complaint Snapshot 2 (2014), *available at* http://files.consumerfinance.gov/f/201402_cfpb_snapshot_credit-reporting-complaints.pdf.

This additional financial burden of higher auto insurance premiums unfairly hurts consumers who may have a perfect or very good driving record, who must rely on their cars to get to work to earn wages and pay their bills. We suspect many consumers would be deeply concerned to learn that auto insurance companies are using credit information to make pricing decisions, because of the poor quality of some of the underlying data, and this "piling on" effect, that in particular penalizes low and moderate-income households.

In April 2017, Consumer Reports and *ProPublica* published additional research that showed that insurance companies unfairly increase car insurance prices for people who live in predominantly minority neighborhoods, showing that drivers of color in those neighborhoods paid 30% more than people living in zip codes with comparable risk. The analysis focused on 4 states that publicly release auto insurance claims information by zip code (California, Illinois, Missouri and Texas).[11]

Use of Educational Level and Occupational Status for Auto Insurance Pricing

In addition to credit history, auto insurers use other non-driving rating factors that can have a big impact on rates even for drivers with clean records and deserve greater scrutiny. These factors include considering education level, occupation, and homeowner vs. renter status, which like credit-based ratings, are closely tied to socio-economic status.[12]

In the current socio-economic environment in the United States, education level and occupation continue to be closely tied to race and income, factors which otherwise cannot legally be considered by insurance companies in calculating insurance premiums.

According to the National Center for Education Statistics, among 25 to 29 year olds, Blacks and Hispanic people are less likely than Whites or Asians to have completed a high school diploma, earn a college degree and significantly less likely to have earned an advanced degree.[13] In 2014, Blacks were approximately half as likely to hold bachelors' degrees as Whites, and Hispanics were approximately one-third as likely to hold bachelors' degrees as Whites. As for Masters degrees or higher, the gaps grow even larger with 9.0 percent of Whites holding such degrees, followed by 3.9 percent of Blacks and only 2.9 percent of Hispanics.

When education level is considered in insurance pricing decisions, those with the least education will pay more. The Bureau of Labor Statistics reports that educational attainment is closely related to one's earning. Individuals with advanced degrees earn more than those with only bachelor degrees, some college but no degree, no college, high school diploma only, or no high school diploma.[14]

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[11] Angwin, J., Larson, J., Kirchner, J., and Mattu, S., "Car Insurance Companies Charge Higher Rates in Some Minority Neighborhoods," Consumer Reports and ProPublica, April 2017, available at: http://www.consumerreports.org/consumer-protection/car-insurance-companies-charge-higher-rates-in-some-minority-neighborhoods/

[12] These factors are not meant to be an exclusive list of rating factors that may be deserving of the Oregon Legislature's and Insurance Commissioner's attention.

[13] Nat'l Ctr. For Educ. Statistics, Digest of Education Statistics, https://nces.ed.gov/programs/digest/d14/tables/dt14_104.20.asp.

[14] U.S. Dep't of Labor, Bureau of Labor Statistics, TED: The Economics Daily, Median weekly earnings by educational attainment in 2014 (2015), http://www.bls.gov/opub/ted/2015/median-weekly-earnings-by-education-gender-race-and-ethnicity-in-2014.htm.

According to the Bureau of Labor Statistics data from 2010, compared to Whites and Asians, a significantly smaller percentage of Blacks and Hispanics are employed in the highest paying occupations classified as the "management, professional or related fields," which are occupations that translate into lower auto insurance rates when occupation is considered in pricing.[15]

The number of people who are affected by pricing based on occupational title is very large. According to the Bureau of Labor Statistics, some 1.7 million Oregon residents work in occupational categories with an annual salary of $40,000 or less. These workers are likely to be required to pay higher rates for auto insurance, by virtue of not holding a managerial or professional job title.

When the Florida Office of Insurance Regulation investigated the use of education and occupation as ratings factors in 2007, the state found that there was a "*demonstrable correlation between occupation, education, and income-level and ethnicity*." The Florida OIR also found that the auto insurance companies had not investigated the potential negative effects or disparate impacts on low-income and minority drivers, and whether the use of these factors violated drivers' civil rights. The report also noted there was a long history of race being used as a ratings factor for the life insurance industry, which led to multi-state investigations and corrective actions by the NAIC and state insurance commissioners. The use of occupational categories for life and auto insurance developed shortly after using race became unacceptable and illegal, beginning in the 1960s.[16]

Thus, unless prohibited by a state, when insurance companies regularly base premiums on education level and/or occupation, those with lower levels of education and less lucrative occupations can pay much more for auto insurance due to their socio-economic standing, despite having a completely clean driving record. This raises a serious concern about the potential disparate impact of permitting the use of these factors, and the hidden and unquantified burdens it places on low- and moderate-income households and drivers of color.

In 2014, research carried out by the New York Public Interest Research Group (NYPIRG) found that New York drivers with less education or lower occupational status may pay significantly higher premiums, as much as 20% more in some cases.[17] In response to the concerns raised by NYPIRG, and New Yorkers for Responsible Lending, the New York Department of Financial Services launched an investigation into the potential disparate impact of using education and occupation for auto insurance pricing,

After three years of investigation and analysis, in 2017, the New York Department of Financial Services issued and finalized a regulation to ban the use of education and occupation for pricing and tier placement in New York State, unless companies could demonstrate that the use of these factors is not

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[15] U.S. Dep't of Labor, Bureau of Labor Statistics, TED: The Economics Daily, Earnings and employment by occupation, race, ethnicity, sex, 2010 (2011), http://www.bls.gov/opub/ted/2011/ted_20110914.htm.

[16] McCarty, Commissioner Kevin M., "The Use of Education and Occupation as Underwriting/Ratings Factors for Private Passenger Automobile Insurance," Florida Office of Insurance Regulation, March 2007, available at: http://www.floir.com/siteDocuments/OCCRateRpt.pdf

[17] "Top NY Auto Insurers Charge Higher Rates to HS Grads and Blue Collar Workers," New York Public Interest Research Group, News Release, April 3, 2014. See also: THE WESTERN N.Y. LAW CTR., MAJOR AUTO INSURERS CHARGE HIGHER RATES TO HIGH SCHOOL GRADUATES AND LOW INCOME WORKERS 1-2 (2015), *available at* http://wnylc.com/wp-content/uploads/2015/09/July-2015-Western-New-York-Law-Center-Auto-Insurance-Report.pdf.

unfairly discriminatory.[18] This announcement made New York the third state after California (1988) and Massachusetts (2007) to ban use of education and occupation for auto insurance pricing.[19] In addition, the NY DFS announced that major insurers such as Liberty Mutual, Allstate and Progressive had reached agreements with the agency to come into compliance with the regulation, and take steps to eliminate any continuing impact of their prior use of education level attained and/or occupational status in initial tier placement.[20]

The New York DFS noted that many New York drivers were being charged higher rates in New York based on their education and occupation, without adequate actuarial justification. According to the December 13, 2017 NY DFS news release:

> "The use of education and occupation in determining insurance rates can penalize drivers without college degrees or who work in low-wage jobs or industries. The result is that drivers with higher education and income pay less for auto insurance with no evidence that they are better drivers.
>
> DFS conducted a multi-year investigation, which revealed that some, but not all, insurers in New York use an individual's education level and/or educational status in establishing initial tier placement without a clear demonstration of the required relationship between these factors and driving ability. As a result, classes of insureds have been placed in less favorably rated tiers, which may lead to higher premiums, without sufficient actuarial support that an individual's education level and/or occupational status related to his or her driving ability or habits in such a way that the insurer would have a different risk of loss."[21]

In its investigation, the NY DFS found that insurance companies failed to prove that their use of these factors was not unfairly discriminatory. The DFS regulation states that "*insurers failed to provide...any convincing evidence to support the necessary relationship for the use of an insured's level of education attained, whether alone or in combination with occupational status*."[22] The 2017 New York investigation raises concerns that some insurers continue to use education and occupation as ratings factors for pricing in other states, without adequate public scrutiny or justification.

The Use of Socioeconomic Factors Such as Credit History, Education and Occupation Negatively Impacts Economic Opportunity for Low- and Moderate-Income Drivers

In considering this issue, we would also urge you to consider the following additional points.

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[18] New York State Department of Financial Services, "NY DFS Announces Final Regulation and Agreements with Two Major Insurers to Protect New York Drivers from Unfairly Discriminatory Auto Insurance Rates" news release, 12/13/17, available at: http://www.dfs.ny.gov/about/press/pr1712131.htm

[19] The state of Michigan banned the use of education, occupation, credit score and other socioeconomic ratings factors in 2020, taking effect on July 1, 2020.

[20] Ibid.

[21] Ibid.

[22] New York Department of Financial Services, Second Amendment to 11 NYCRR 154 (Insurance Regulation 150), Private Passenger Motor Vehicle Insurance Multi-Tier Programs, 154.6(a)(2) available at: http://www.dfs.ny.gov/insurance/r_finala/2017/rf150a2txt.pdf

- ***Like every other state except for New Hampshire, Oregon legally requires all drivers to maintain car insurance***. Most Oregon drivers rely on cars for their livelihoods, to get to school and to medical appointments, and for many other vital purposes. Auto insurance companies' persistent use of drivers' credit histories and other socioeconomic data to price car insurance imposes an unfair burden that disproportionately affects Oregon residents of color and lower-income people, who may also lack access to reliable public transportation.

- ***Access to affordable transportation, especially a car, is a critical foundation for individuals and families to earn income and build savings and wealth***, according to researchers and social policy experts. The relationship between affordable transportation and social mobility actually appears to be stronger than many other factors in a neighborhood, including crime, elementary school test scores, and the percentage of two-parent families, according to Harvard economist Nathaniel Hendren.[23] Similarly, the Rudin Center for Transportation Policy at New York University has found that having access to a vehicle is often a critical link for workers to increase income and employment opportunity.[24] If auto insurance is unfairly priced because of the use of credit history as a ratings factor, residents of low-income neighborhoods will confront continued economic isolation from good job opportunities in urban, suburban and rural areas, where many better jobs may simply be unreachable by alternative means.

<u>Conclusion</u>

Consumer Reports, strongly urges you to support H.B. 2043, to improve fairness in auto insurance pricing for Oregon drivers. Banning the use of credit history, education and occupation is clearly warranted by the lack of actuarial justification and transparent information supporting their use; and their clear, ongoing disparate impact on low-income, moderate-income and minority drivers. By voting to approve this bill, legislators can restore fairness to the marketplace, and ensure that consumers are not unfairly judged by factors that have nothing to do with their ability to drive safely, and to avoid violations and accidents. Four other states – California, Hawaii, Massachusetts, and Michigan – have already successfully banned the use of credit history. Similarly, four states have banned the use of education and occupation for auto insurance pricing (California, Michigan, Massachusetts and New York). Basing auto insurance pricing primarily on driving-related factors such as miles driven, years of experience and driver safety record is much fairer and sends the right market signals to customers to drive safely. We urge you to please cosponsor H.B.2043 and to vote YES on this important public interest legislation.

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[23] Bouchard, Mikalya. "Transportation Emerges As Crucial to Escaping Poverty," The New York Times, The Upshot, May 7, 2015, available at: https://www.nytimes.com/2015/05/07/upshot/transportation-emerges-as-crucial-to-escaping-poverty.html

[24] Kaufman, S., Moss, M., Hernandez, J. and Tyndall, J.., "Mobility, Economic Opportunity and New York City Neighborhoods," Rudin Center for Transportation, New York University Wagner Center,, updated November 2015, available at: https://wagner.nyu.edu/files/faculty/publications/JobAccessNov2015.pdf