February 25, 2021

Dear Mr. Chair and Committee Members:

I write in support of House Bill 2043. My name is Peter Kochenburger and I am a professor at the University of Connecticut School of Law, where I teach insurance law and regulation courses and help direct our Insurance Law Center. I specialize in insurance regulation and consumer protection.[1] I am also a consumer representative at the National Association of Insurance Commissioners. I would like to make three points.

First, Commissioner Stolfi stated that fairness motivates this legislation. I agree and in my teaching and writing in this area I outline the two aspects of fairness in insurance underwriting. The first is what is often called actuarial fairness, meaning that the risk classification that is proposed must correlate, as described, with the risk being insured. This is the first requirement and often, unfortunately, where the industry ends their advocacy. The second element is equally and sometimes more important, which is that not only should the classification be actuarially justified, it also cannot violate other important public policy goals, as determined under state or federal laws. If we step back, this point becomes pretty clear. Financial institutions for example cannot underwrite on the basis of race or ethnicity even if there is a demonstrated clear correlation between one's "race" and the risk being insured. Another example is when risk pooling is preferable to more highly individualized risk pooling. The best example I can think of is the Affordable Care Act's prohibition of utilizing health status or preexisting conditions in underwriting applicable health insurance. Clearly these underwriting characteristics are highly relevant to the cost of health insurance, but there are other important public policy goals that that override their use. One common theme here is not allowing specific risk factors to penalize individuals based on characteristics that are immutable or very difficult to alter.

Second, restricting the use of underwriting factors ,particularly the ones specified in HB 2043, will not destabilize the insurance market, nor is it likely to increase the overall cost of auto insurance for Oregonians. The cost of the risk pool – actuarially estimated losses, insurer expenses and profit – will not increase or decrease based on whether these risk classifications are used; rather they simply shift who wins and losses (who pays more or less for insurance if a risk factor is allowed). So, not allowing insurers to underwrite on the factors prohibited in HB 2043 likely means some policyholders wind up paying more than they otherwise would, but others will pay less.

Third, the question becomes what limitations are acceptable within this pool and what criteria is allowable to select these winners or losers? Should policyholders pay more or less depending on their education, occupation, marital status, employment status, and other factors HB 2403

[1] I note my UConn affiliation for identification purposes; of course I am not writing as a spokesperson for the University.

would prohibit? I believe no, for two reasons. First, while these factors likely correlate with driving risk, what can consumers do about them? One of the major public benefits of insurance – and there are many - is not only its role in protecting policyholders from loss, but also in reducing the likelihood of a loss occurring, and its severity if it does. A major reason we do not speed is that if caught our insurance premiums will go way up for years; we have smoke detectors in our homes in part because they lower our premiums. In these examples, and many others, we reduce our risks by taking actions that benefit ourselves, our insurers (who will not pay as many claims), and society as a whole, since resources spent rebuilding after a loss could be used for better purposes if that loss had not occurred at all. With the marginal exception of credit scores, none of factors that would be prohibited provide any indication to the policyholder on what they can realistically do to lower their risk and thus their premiums. These factors may allow some insurers to slice and dice risks more finely, but they do not benefit the state's overall auto insurance market.

Second, - and here is where the industry testimony I observed, really falters - HB 2043 does not end risk-based pricing, nor come close to it. Rather, it shifts underwriting factors away from those whose causation is not understood and the classifications difficult if not impossible to alter (for purposes of getting better insurance rates), to different and likely more accurate risk-based underwriting tools – not only driving and accident history, but increasingly information on how someone actually drives. Telematics, often called usage-based insurance, does not use proxies to estimate the likelihood of a future accident (such as previous accidents), but rather measures how an individual is actually driving while they are insureds. This is risk-based pricing that is both potentially more accurate than many of the classifications that would be prohibited, and one that depends far less on socio-economic status, wealth, and gender.

For these reasons I encourage passage of HB 2043. Thank you for providing this opportunity to testify on this legislation.

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