Testimony of
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Before the
Subcommittee on Oversight and Investigations
Of the
House Committee on Financial Services

Regarding:
"The Impact of Credit-Based Insurance Scoring on the Availability and Affordability of Insurance"

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Chairman Watt, Ranking Member Miller, and members of the Subcommittee, thank you for the opportunity to testify here today on the use of credit based insurance scores in the provision of personal lines insurance. I would also like to thank you for your leadership on this important issue.

My name is Kevin McCarty, and I am the Insurance Commissioner for the State of Florida. I am also here as the chair of the Property & Casualty Committee of the National Association of Insurance Commissioners. Empirical studies, including the 2007 Federal Trade Commission (FTC) Report, indicate the use of credit-based insurance scores, while accurate predictors of claims activity, disparately impacts certain classes of people.

In my testimony, I will share the State of Florida's actions and the role of credit-based insurance scores in Florida today. I will also provide my thoughts and concerns regarding the 2007 FTC Report. Likewise, I will report on actions by other states on this issue. As appendix one shows, different states have taken different approaches to the issue.

The Use of Credit-Based Insurance Scores in Personal Insurance Lines

Proponents argue that credit-based insurance scores are predictive of an insured's future claims experience, and is a necessary tool for underwriting and/or rating. Critics argue that the use of credit-based scores is merely another example of imposed discrimination against lower income individuals and protected classes of people. That is the heart of the debate: studies do show that credit scores can be predictors of future claim activity, but the same studies also show that the use of these scores disparately impacts certain classes of people, and thus has a discriminatory effect. A *National Underwriter* survey concluded that 14% of insurance professionals believed the use of credit scoring was ethical, 10% believed it was unethical, and the vast majority – 66% - were undecided.

The use of credit scoring forces us to examine the fundamental purpose of insurance, and the acceptability of factors used to determine underwriting and rates. In its simplest form, insurance is a contract that allows an individual or company to spread risk to avoid a catastrophic loss. For illustrative purposes, I will utilize auto insurance as my example. To accurately price this risk, insurance companies have historically used such factors as vehicle type, miles driven, marital status, moving violations and car accidents, among other factors, to assess the risk fully and charge premiums fairly.

We have now entered a new information age. By using an interconnecting network of databases, a dizzying myriad of information may be obtained about an individual through health provider visits, sex offender databases, insurance claims histories, consumer purchase preferences, internet usage, DNA/gene-testing, and credit scoring. It is important to understand that although many of these tools may show mathematical correlations with insurance claims, this does not necessarily make them fair and valid criteria for insurance purposes.

Other Rating Factors Considered to Be Inappropriate

The most notable example of this is the historical use of race in the rating of life insurance products. In 2002, the NAIC concluded several multi-state examinations of companies that rated life insurance differently based on the race of the applicant during the period from the 1930s to the 1970s. Even today, according to U.S. Census Bureau data, a Caucasian born in the United States has a life expectancy of 78 years, while an African-American has the life expectancy of 73 years. Based purely on actuarial rates, this could be used to justify a higher charged rate for life insurance.

While this outcome (African-Americans pay more for life insurance) might be technically correct from a purely actuarial perspective, it is counter to equal protection for consumers and not sound public policy. This is not an isolated example. In the 1990s insurance companies began considering the use of genetic testing for predisposition of inherited diseases as a means to evaluate risk more precisely when offering health insurance. Although this certainly would have produced worthy actuarial correlations justifying higher insurance rates for unlucky individuals with a proclivity for inherited diseases, the United States Congress began to outlaw this practice in 1996 through the Health Insurance Portability and Accountability Act (HIPAA). Clearly legislators and regulators must weigh the benefits of simplistic claims prediction with sound public policy.

I must admit, the State of Florida has a checkered past of allowing the use of race-based premiums which were used prevalently in the life insurance industry during the period of the 1930s through the early 1970s. Therefore, as Insurance Commissioner, I am particularly sensitive to any rating factors that are highly correlated with race, ethnicity, religious background, or income level as are my fellow commissioners at the NAIC. A year ago, on February 9, 2007 in Tallahassee, I held a public hearing to review the use of occupation and education as underwriting or rating factors for private passenger auto insurance and its potential impact on Floridians. The hearing intended to answer the question of whether the use of occupation and/or education, either intentionally or unintentionally, is acting as a proxy for race. While the use of race as a rating factor was outlawed in Florida, we must remain vigilant of the use of any factors that appear to be highly correlated to race and income level. The findings stemming from this public hearing are detailed in a written report, *The Use of Occupation and Education as Underwriting/Rating Factors for Private Passenger Automobile Insurance*, March 2007, See Appendix 2.

The Credit Reporting System

Other problems with the use of credit scoring are inherent weaknesses in the credit reporting system. Although Congress has taken strides to improve the process, most notably through the Fair and Accurate Credit Transactions Act of 2003, a 2000 study by *Consumer Reports* magazine showed that 50% of credit reports contained errors. This is further exacerbated by identity theft, and also by the proliferation of access to credit as evidenced by the problems in the mortgage industry. Thus, even if this methodology were correct, it is possible that inaccuracies in the underlying data (credit reports) may invalidate their use. Credit reports also disproportionately negatively affect recent divorcees, recently naturalized citizens, the elderly, the disabled, those with certain religious convictions, and younger individuals who have not established credit histories.

While the use of credit reports may always be problematic, the use of this tool may become increasingly salient given our nation's current economic conditions. Historically, rising unemployment rates, rising home foreclosures, and rising inflation in the costs of goods and services have contributed to a deterioration in credit histories. A downturn in the economy could potentially magnify differences in credit scores among vulnerable populations.

It is also important to note that empirical studies show no significant difference in the magnitude of claims that are filed, but only of the frequency of the claims. This is a subtle but important distinction. The studies show only that consumers with lower credit scores file more claims, not that they have greater loss events. It is quite possible the frequency of insured loss events is the same across populations, but those with higher scores are less likely to file a claim. This may be because wealthier individuals (with higher credit scores) may not file a legitimate insurance claim for a broken window or for minor fender bender, instead electing to pay the repairs themselves so as not to impact their claims history. Conversely, those with lower credit scores may be unable to pay out-of-pocket expenses based on their limited financial resources.

The empirical studies do not focus on this distinction, which leads to another important facet of the debate that has been overlooked. None of the studies to date, including the 2007 FTC study, suggests that the claims being filed are not legitimate, and moreover, that the rates being charged, absent credit-based insurance scores, are not actuarially sound.

Finally, the methodology used to create credit scores and credit-based insurance scores is opaque to consumers, varies from company to company, and can be negatively impacted by sound financial decisions that cannot possibly be linked to automobile or homeowners insurance risks. Not using credit cards, having too few credit cards, or having an installment loan -- all may negatively impact a credit-based insurance score. Consumers' decisions to finance their purchases using a Visa card, a home equity loan, or a department store credit card could negatively impact their credit-based insurance score and their insurance premiums.

Disproportionate Impact of Credit-Based Insurance Scores

The clear problem with the use of credit scoring is the relationship of credit scores to race, ethnicity and income status. The 2007 FTC Report asked and answered its own innocuous question: is credit scoring solely a proxy for race? This "straw man" question was not deserving of this report. Certainly we can all think of African-American and Hispanic acquaintances with excellent credit scores and conversely Caucasians with poor credit scores. If the phrase "solely a proxy" is intended to mean "direct substitute" than clearly credit scoring is not a proxy for race.

A more valid question is to ask whether there is a relationship between credit scoring and race/ethnicity and income status, and whether this relationship is strong enough to prohibit its use given the American values of equal protection and nondiscrimination. The analysis summarized by the FTC Report clearly demonstrates strong correlations between credit scoring and race/ethnicity that are statistically significant.

A Texas Insurance Department's 2004 report showed that African-Americans have an average credit score 10-35% below that of Caucasians, while Hispanics had scores roughly 5-25% worse. Quantifying this to percentile scores, the FTC's Report concluded that African-Americans average credits scores are in the 23rd percentile, while Hispanics were in the 32nd percentile.

Less publicized, but equally important, is the disparate impact on other segments of society. Credit-based insurance scores, because they are based on credit scores, have a negative impact on young people and the elderly. In testimony provided during a hearing in Florida on the use of credit-based insurance scores, an industry actuary admitted that average scores in the 25 to 30 year old age group are disproportionately lower than in older age groups. Other research has demonstrated that the elderly, because they tend to use credit less often and thus have fewer or no credit relationships, frequently have lower or no credit scores. Credit-based insurance scores penalize them as well.

Another consideration is that certain religions and those with certain religious beliefs do not use credit. Thus, some individuals following their religious beliefs will have low or no credit scores and would be negatively impacted by the use of credit-based standards for rating insurance policies.

It is clear the use of credit-based insurance scores has a disparate impact on consumers of select racial, age, and religious groups. The predictive power of these scores is very likely not measuring any event risk, but rather indirectly measuring socioeconomic status. Some may disagree, but I believe this information is not necessary for proper underwriting and rating of the risks being insured.

I do not doubt that when initially adopted by the industry, there was no intent to use credit scores to impact minorities in a disparate manner or to discriminate. Yet, empirical studies indicate a negative impact on these groups, and the industry's attempt to ignore this issue shows a failure to treat its consumers fairly and equitably.

Florida Actions Regarding Credit-Based Insurance Scores

Based on the preponderance of evidence and after lengthy deliberation and hearings, the 2003 Florida Legislature enacted legislation to limit the use of credit-based scores in the provision of private automobile and personal residential insurance. The law (626.9741, F.S.) is modeled after the National Conference of Insurance Legislators (NCOIL) Model Law, but does differ in some areas to provide stronger consumer protections. Part of that law allows the Florida Financial Services Commission to adopt rules to ensure the spirit and intent of the law is met.

During the rule development process, the insurance industry has vigorously opposed the implementation with four separate legal challenges claiming: the Office did not have the authority to prevent the use of credit scoring as an underwriting/rating tool; the Office did not have the authority to define the term "unfairly discriminatory" as used in the statute; insurers did not have the necessary data to demonstrate the effect of credit scoring on the protected classes; and the definition of "disproportionate impact" was too vague.

The administrative law judge found the Office did have the authority to prevent the use of credit scores, and had the authority to define the term unfairly discriminatory. Moreover, the judge found that the insurers' lack of data was irrelevant. The judge did find that the definition of disparate impact needed to be defined more comprehensively, which the Office is correcting.

Conclusion and 2007 FTC Report

Based on the empirical evidence and the objective facts, I am of the opinion that the negative impact on classes of people based on race, age, and religion outweighs any suggested enhanced accuracy in pricing and underwriting, although the broader regulatory community has differing views.

In addition to credit-based insurance scores, I am also concerned about other tools currently being adopted for use in underwriting and rating that share many of the same characteristics of credit-based insurance scores. I am specifically troubled by the growing use of occupational ratings and education levels, and would encourage this Subcommittee to broaden the scope of its investigation to consider these rating factors as well.

Although there have been numerous academic studies of this issue, I eagerly anticipated the FTC Report mandated by the Fair and Accurate Credit Transactions Act (FACTA) of 2003 for delivery by December 24, 2005. The 2007 FTC Report was disappointing to me and many of my colleagues, as we expected an objective independent analysis. I agree with many of the sentiments expressed by FTC Commissioner Harbour in her dissenting statement.

I am particularly concerned that the data supplied by a handful of firms may have been selected to show the best case for the use of credit-based insurance scores. Despite these best-case scenarios provided by industry, the FTC still ultimately found that using credit scores disparately impacted ethnic minorities.

I am also concerned that no premium data were used, and the narrative appeared one-sided in support of the predictive power of the scores while simultaneously downplaying the negative impacts. I was also troubled by the alleged economic advantages of using credit-based scores which are often featured as conjectures derived from industry assertions, but without any underlying analysis.

Finally, I am troubled by the process used in this report. I cannot understand why the insurance industry trade associations were privileged with advance copies of the report, while the insurance regulatory community was not. In addition, it is my understanding the regulatory actuaries involved in this project had no prior knowledge of the report's major findings or release.

State Involvement

I did agree with one section of the FTC Report especially as it pertains to Federal involvement in this issue: The state insurance regulatory community has focused on credit scoring problems, and has taken action. Forty-eight states have taken some form of legislative or regulatory action limiting the usage of credit scoring in the provision of insurance products.

Many have adopted model legislation on this issue; some states, like Florida, have adopted variations of this model. Many of these legal provisions pertain to the notification and transparency of the use of credit scoring including giving regulatory bodies access to the scoring model, notifying consumers about its use, and restricting insurance decisions based solely on this model.

Other states have gone further to restrict the use of credit history including the disallowance of credit history information as the sole basis for making underwriting or rating decisions, prohibiting the use of credit history information to cancel or nonrenew existing customers or increase their rates, or banning the use of credit history when underwriting or rating existing customers. Finally, four states have effectively banned the use of credit history information in underwriting or rating for automobile insurance.

The implication of the states' actions is clear. While I support potential action taken by this Subcommittee to limit the use of credit scoring, it is essential that federal action not preempt or diminish consumer protection efforts already enacted by state legislatures. As state regulators, it is our sincere desire that the Federal government assist, not detract, from the states' regulatory efforts to address this important issue.

While the NAIC has not yet reviewed H.R. 5633, from the perspective of the State of Florida, the proposed bill contains several favorable provisions. Most notably, this legislation would require a more in-depth and objective study by the FTC on the relationship between credit scores and race/ethnicity to determine if there is in fact a "proxy effect" that shows a demonstrable correlation between credit scores and race/ethnicity. However, the FTC should not necessarily be the definitive report. Instead, I envision that other state and federal agencies be allowed to research this issue, and add their data analysis and expertise to substantively affect this debate.

Finally, while the NAIC has not had an opportunity to review H.R. 6062, I am also in favor of this legislation, sponsored by Representative Maxine Waters, which would exempt personal lines insurance from the Fair Credit Reporting Act. This bill implicitly recognizes that the 2007 FTC Report already found that credit scores disparately impacts minorities. Thus, we should initially eliminate the use of credit scoring as a starting point. If the FTC Report and other reports show unequivocally that credit scoring does not disparately impacts ethnic minorities, this issue could be revisited.

Furthermore, by addressing this issue from the perspective of the Fair Credit Reporting Act – not insurance – this is consistent with the federal-state relationship for insurance regulation first established through the McCarran-Ferguson Act of 1945.

However, since I am also here representing the NAIC, I must note that other state commissioners have differing views on this issue. Some states do not perceive credit scoring as a concern if it is one of many rating factors. In addition, some states believe that the process itself is not intended to be discriminatory, and any disparate impact based on race or ethnicity is coincidental. Some regulators believe that a majority of policyholders actually benefit from the use of credit scoring. Finally, other states may not agree for the need to expand this issue to other areas such as rating based on occupation and education.

Thank you for holding this hearing, for inviting me here today to participate, and for your continued interest and leadership on this critically important consumer protection issue. I am pleased to answer any questions you may have.

Appendix 1

NAIC Compendium on State Laws Regarding the Use

Of Credit Reports/Scoring in Underwriting

USE OF CREDIT REPORTS/SCORING IN UNDERWRITING

2/08

The date following each state indicates the last time information for the state was reviewed/changed.

STATE	REFERENCE	LINE OF BUSINESS	SUMMARY OF PROVISIONS
AL (2/08)	Reg. 482-1-127-.01 to 482-1-127-.11	Personal lines	Make procedures used to obtain credit reports and insurance scores available to commissioner. If use credit scoring, file the scoring model with the commissioner. May not calculate score based on lack of credit history. May not use credit score as sole reason to deny coverage or refuse to renew.
AK (2/08)	§§ 21.36.460; 21.39.035	Personal lines	If use credit information in underwriting or rating, disclose that fact at the time the application is taken. Must consider in combination with other factors. May not consider absence of credit history or medical accounts. File credit scoring model with commissioner.
	Bulletin B04-11		Use departments' consumer brochures to inform the public about credit scoring.
AZ (2/08)	§ 44-1692	All lines	Consumer reporting agency may furnish credit report where the insurer intends to use it for underwriting.
	§§ 20-2102; 20-2109 to 20-2110	Property and casualty	Must provide specific reasons for adverse decision based on credit history or credit score.
	§ 20-1652	Property and casualty	Must get credit information promptly; cannot cancel or decline coverage more than 30 days after date of application based on credit report.
	§ 20-2113.01	All lines	A consumer reporting agency shall not sell data that includes information about an insurance score.
	§ 20-2110		In the event of an adverse underwriting decision, provide the specific reasons. If based on credit-related information, must decide factors that were primary cause. May not use the following credit-related factors for property or casualty premiums: absence of credit history, credit history based on collection of medical bills, total available credit, etc.
AR (2/08)	§§ 23-67-401 to 23-67-415	Personal lines property and casualty	May not include income, gender, race, religion, marital status, ZIP code, nationality, etc. as factors. May not base rates solely on credit score or consider absence of a credit history. Must recalculate credit score after 3 years. May not consider medical history codes. File scoring models with department. (NCOIL model)
	Bulletin No. 14-2004	Personal lines property and casualty	Form for report on number of policies with increase/decrease in premium due to credit scoring.

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STATE	REFERENCE	LINE OF BUSINESS	SUMMARY OF PROVISIONS
CA (2/08)	Civ. §§ 1785.10 to 1785.11	All lines	Consumer reporting agency may furnish credit report where the insurer intends to use it for underwriting. Agency must notify consumer of rights and provide copy of file, including any credit score used.
	Civ. § 1786.18	All lines	May not include specified information in an investigative report except when used in underwriting life insurance expected to amount to $250,000 or more.
	Bulletin 76-3; Civ. §§ 1785.20,;1786.40	All lines	Users of credit reports who deny insurance or increase the prices charged on the basis of information contained in the reports must disclose the information that was the basis for the adverse decision.
CO (2/08)	§ 12-14.3-103	All lines	Consumer reporting agency may furnish credit report where the insurer intends to use it for underwriting. Must notify consumers that will be using credit report for determination of eligibility for coverage or to determine premiums.
	§ 12-14.3-105.3	Life	May use credit report in underwriting life insurance expected to amount to $150,000 or more.
	§ 10-4-116	Personal lines property and casualty insurance	May not include income, gender, race, religion, marital status, ZIP code, nationality, etc. as factors. May not base rates solely on credit score or consider absence of a credit history. Must recalculate credit score after 3 years. May not consider medical history codes. File scoring models with department. (NCOIL model)
	§ 10-4-616	Personal lines property and casualty insurance	Must notify consumers that new or updated credit information will be used in insurance underwriting or rating.
	§ 10-4-110.7	Homeowners	An insurer is required to provide notice to an applicant if the insurer uses credit scoring, claims history of the property, or clams history of the applicant in determining whether to insure the applicant's property.

USE OF CREDIT REPORTS/SCORING IN UNDERWRITING

STATE	REFERENCE	LINE OF BUSINESS	SUMMARY OF PROVISIONS
CT (2/08)	Guidelines for the Examination of Financial History Measurement Programs for Personal Risk Insurance Underwriting and Rating Plans	All lines	File measurement tools with the department. May only be used for new business. May not consider lack of credit history. Demonstrate coordination with expected risk of loss. Disclosure to customer.
DE (2/08)	18-900-906 Del. Code Reg §§ 1.0 to 12.0	Personal lines	May not use credit report or score unless the company has obtained authority to do so in its rate filing. File supporting information showing it is actuarially supported and is not the sole basis for denying coverage or assigning the consumer to a premium class. May not assign a higher rate because the consumer has no credit history. May consider insufficient credit history or no available credit history in setting a premium or rate, or underwriting an insurance policy, to the extent such us is actuarially justified and consistent with the rate filing. Models filed with the commissioner shall be considered as confidential proprietary information.
DC (2/08)	No provision		
FL (2/08)	Rule 69O-125.004 § 626.9741	All lines Personal lines Auto and homeowners	An insurer shall notify an insurance applicant in writing, or in the same medium as the application, that a credit report will or may be requested as part of the application process. If the application is denied, the insurer must tell the applicant in the notice of the denial how a copy of the credit report can be obtained so the applicant can identify the items that resulted in the denial. May not include income, gender, race, religion, marital status, ZIP code, nationality, etc. as factors. May not base rates solely on credit score or consider absence of a credit history. Must recalculate credit score after 3 years. May not consider medical history codes. File scoring models with department. (NCOIL model)

USE OF CREDIT REPORTS/SCORING IN UNDERWRITING

STATE	REFERENCE	LINE OF BUSINESS	SUMMARY OF PROVISIONS
GA (2/08)	§§ 33-24-90 to 33-24-98	Personal lines property and casualty	May not include income, gender, race, religion, marital status, ZIP code, nationality, etc. as factors. May not base rates solely on credit score or consider absence of a credit history. Must recalculate credit score after 3 years. May not consider medical history codes. File scoring models with department. (NCOIL model)
	Reg. 120-2-15-.01 to 120-2-15-.06	Private passenger auto, residential property	Insurer may cancel, nonrenew or decline a policy based on an individual's credit report. Insurer shall file this information quarterly with the commissioner. Insurer shall provide notice and the specific reason for the decision to the insured.
	Reg. 120-2-65-.01 to 120-2-65-.07	Private passenger auto	An insurer shall not use underwriting criteria or guidelines that result in the fictitious grouping of risks and results in unfair discrimination. The use of credit reports in determining an applicant's or insured's acceptability for coverage may create fictitious grouping and unfair discrimination.
HI (2/08)	§ 431:10C-207	Auto	Insurer shall not base standard or rating plan upon a person's credit bureau rating.
ID (2/08)	Bulletin 91-9	All lines	Consumer reporting agency may furnish credit report where the insurer intends to use it for underwriting.
	§ 41-1843	Property or casualty	May not charge a higher rate or cancel coverage based primarily on a credit rating or credit history.
	Ins. Reg. 18.01.19	Personal lines property and casualty	Aggregate weight given to noncredit factors must be at least as great as the aggregate weight given to credit factors. Items identified as trade secrets are not subject to public disclosure. Insurers must retain documentation for 5 years.
IL (2/08)	215 ILCS 157/1 to 157/55	Personal lines property and casualty	May not include income, gender, race, religion, marital status, ZIP code, nationality, etc. as factors. May not base rates solely on credit score or consider absence of a credit history. Must recalculate credit score after 3 years. May not consider medical history codes. File scoring models with department. (NCOIL model) A certification that the treatment is actuarially justified is required.
	215 ILCS 157/22	All lines	Shall review and consider an exception to the risk score based on extraordinary life events, such as a catastrophic illness, divorce, death of a spouse, child or parent, involuntary loss of employment for three months or more, or identity theft.

USE OF CREDIT REPORTS/SCORING IN UNDERWRITING

STATE	REFERENCE	LINE OF BUSINESS	SUMMARY OF PROVISIONS
IN (2/08)	Bulletin 111 (July 1, 2002); Bulletin 130 (May 26, 2005)	Personal lines property and casualty	Submit to insurance department information on how credit information is utilized in underwriting, including the factors from a credit report that are included in a credit score, the computer model used to determine a credit score, any underwriting guidelines related to the use of credit scores and documentation to demonstrate the correlation between credit information and expected risk of loss. May not use credit scores after 10/1/02 unless the information is filed with the department.
	§§ 27-2-21-1 to 27-2-21-23	Personal lines property and casualty	May not include income, gender, race, religion, marital status, ZIP code, nationality, etc. as factors. May not base rates solely on credit score or consider absence of a credit history. Must recalculate credit score after 3 years. May not consider medical history codes. File scoring models with department. (NCOIL model).
IA (2/08)	§ 515.103	Personal lines Property and casualty	May not include income, gender, race, religion, marital status, ZIP code, nationality, etc. as factors. May not base rates solely on credit score or consider absence of a credit history. Must recalculate credit score after 3 years. May not consider medical history codes. File scoring models with department. (NCOIL model).
KS (2/08)	§§ 40-5101 to 40-5114	Personal lines property and casualty	May not include income, gender, race, religion, marital status, ZIP code, nationality, etc. as factors. May not base rates solely on credit score or consider absence of a credit history. Must recalculate credit score after 3 years. May not consider medical history codes. File scoring models with department. (NCOIL model).
	Bulletin 2004-10 and 2005-1		Answer questions about above legislation.
	Reg. 40-1-50	Personal lines, property and casualty	Document factors considered in addition to credit score. Maintain evidence to support adverse action. Provide an explanation to an insured adversely affected.
KY (2/08)	§ 304.20-040	Auto	May not refuse to issue or renew a policy solely because of credit history, or lack of credit history of the applicant.

USE OF CREDIT REPORTS/SCORING IN UNDERWRITING

STATE	REFERENCE	LINE OF BUSINESS	SUMMARY OF PROVISIONS
LA (2/08)	§ 22:1214	Auto liability	Prohibits an insurer from terminating, refusing to renew or refusing to issue insurance because the insured has declared bankruptcy.
	§§ 22:1481 to 22:1494	Personal lines property and casualty	May not include income, gender, race, religion, marital status, ZIP code, nationality, etc. as factors. May not base rates solely on credit score or consider absence of a credit history. Must recalculate credit score after 3 years. May not consider medical history codes. File scoring models with department. (NCOIL model)
	Directive No. 181 (2004)	Personal lines property and casualty	Directive addresses issues that have arisen in above statute.
	Directive No. 196 (2006)	Personal lines	Right of an insured to be exempt from the use of adverse credit information directly or indirectly caused by Hurricane Katrina and/or Hurricane Rita. All insurers writing personal lines are advised and directed to ignore all unfavorable entries entered into an individual's credit record beginning with entries posted on August 26, 2005, and all entries posted thereafter related to Hurricane Katrina and/or Hurricane Rita.
ME (2/08)	tit. 10 § 1313-A	All lines	Consumer reporting agency may furnish credit report where the insurer intends to use it for underwriting.
	tit. 24-A § 2917	All lines	Insurer must notify policyholder of reason intend to nonrenew, such as "credit report."
	tit. 24-A § 2169-B	Personal lines auto, property and casualty	May not use an insurance score calculated using income, gender, ZIP code, religion, etc. or raise rates based solely on credit score. Provide notice to consumer.
	tit. 10 § 1315	Credit reporting agencies	Disclose procedures to consumers to correct inaccurate credit reports.
	Bulletin 329 (2004)	Personal lines	Guidance on issues that have arisen.

USE OF CREDIT REPORTS/SCORING IN UNDERWRITING

STATE	REFERENCE	LINE OF BUSINESS	SUMMARY OF PROVISIONS
MD (2/08)	Ins. § 27-501	Private auto and Homeowners	May not refuse to underwrite based solely on credit history.
	Commercial § 14-1202	All lines	Consumer reporting agency may furnish credit report where the insurer intends to use it for underwriting.
	COMAR 31.15.11.01 to 31.15.11.11	Personal lines property and casualty and private auto	Insurers that use credit reports or credit scores must provide the commissioner with underlying information so the commissioner can ensure that reports are used in accordance with the law. Must notify consumers of actual reason for an adverse action.
	Ins. § 27-501	Personal lines property and casualty	May not use credit history to rate or refuse to underwrite homeowners coverage. May not use credit history to refuse to renew an auto policy or increase its premium. May use credit history to rate a new auto policy. Advise applicant that credit history is being used. May not consider the absence of a credit history as a factor.
	Ins. § 11-317	Private auto	Must provide a policyholder statement on rating factors. If use credit scoring, explain how it may cause an increase in premiums.
	Bulletin 02-14; 02-16	Personal lines property and casualty	Address questions in implementation.
MA (2/08)	93 § 51	All lines	Consumer reporting agency may furnish credit report where the insurer intends to use it for underwriting.
	93 § 62	Personal lines	If coverage is denied or price increased because of credit report, must notify consumer of right to receive a credit report.
MI (2/08)	Bulletin 2003-01-INS	Personal lines	File formula used to compute credit score with the department. Must recalculate credit score at least yearly.
	Bulletin 2003-02-INS	Personal lines	Revises 2003-01-INS to require rescoring only at the request of the policyholder. Notify consumers of their score and the discount tier they are in.
	Reg. 500.2151 to 500.2155	Personal lines	Beginning 7/1/05, insurers may not use credit scores as a rating factor.

USE OF CREDIT REPORTS/SCORING IN UNDERWRITING

STATE	REFERENCE	LINE OF BUSINESS	SUMMARY OF PROVISIONS
MN (2/08)	§ 72A.20 subd. 36	Private passenger auto and homeowners	May not reject, cancel or nonrenew a policy solely on the basis of credit information. If will use credit information, must notify consumer. If use a credit scoring system, must have methodology on file with the commissioner.
	§ 72A.501 subd. 2	Property and casualty	Code sections limiting collection of information do not apply to credit scoring, as long as the agent informs the policyholder.
MS (2/08)	Reg. 2003-1.1 to 2003-1.13	Personal lines	Disclose to consumer that insurer may gather and consider credit information. File scoring models with department. Must inform applicant if credit score or report adversely affected him.
MO (2/08)	Reg. tit. 20 § 500-9.100	Homeowner	Insurer must inform the Dept. of Insurance that it is using credit history as an underwriting guideline.
	§ 375.918	Personal lines property and casualty	May not use credit report or credit score as the sole rating factor. Must disclose the fact that will gather credit information. Must inform applicant if credit score or report adversely affected him.
MT (2/08)	*§ 31-3-111*	All lines	Consumer reporting agency may furnish credit report where the insurer intends to use it for underwriting.
	§§ 33-18-601 TO 33-18-611	Personal lines	May not include income, gender, race, religion, marital status, ZIP code, nationality, etc. as factors. May not base rates solely on credit score or consider absence of a credit history. Most recalculate credit score after 3 years. May not consider medical history codes. File scoring models with department. (NCOIL model)
	Advisory Memorandum Dated 9/7/01	Property and casualty	Montana law requires notification to consumers when their credit history adversely affects their ability to obtain or renew insurance.

USE OF CREDIT REPORTS/SCORING IN UNDERWRITING

STATE	REFERENCE	LINE OF BUSINESS	SUMMARY OF PROVISIONS
NE (2/08)	§ 44-7516.01	Private passenger auto	Policy must be accompanied by disclosure stating if any credit-based rating was used to determine rate charged for coverage.
	§§ 44-7701 to 44-7712	Personal lines	May not include income, gender, race, religion, marital status, ZIP code, nationality, etc. as factors. May not base rates solely on credit score or consider solely the absence of a credit history. Most recalculate credit score after 3 years. May not consider medical history codes. File scoring models with department. (NCOIL model)
NV (2/08)	§§ 686A.600 to 686A.730	Personal lines	May not include income, gender, race, religion, marital status, ZIP code, nationality, etc. as factors. May not base rates solely on credit score or consider absence of a credit history. Must recalculate credit score after 3 years. May not consider medical history codes. (NCOIL model)
	NAC 686A § 3		At renewal of a policy, the consumer credit report or insurance score used on the policy with the earliest effective date may be used, provided that the credit information is not more than 36 months old.
NH (2/08)	§ 359-B:4	All lines	Consumer reporting agency may furnish credit report where the insurer intends to use it for underwriting.
	§ 359-B:5	Life	May use credit report in underwriting life insurance expected to amount to $50,000 or more.
	Reg. Ins. 3301.01 to 3310.02	Auto and homeowners	If use credit scoring, must establish written standards to prevent discrimination and submit scoring model to the insurance department for review. Update credit score at least every 3 years. Submit to commissioner information on the factors considered and the statistical validation.
NJ (2/08)	§ 56:11-31	All lines	Consumer reporting agency may furnish credit report where the insurer intends to use it for underwriting.
	Bulletin No. 04-05	Property and casualty	Insurance scoring is permitted, provided that consumer protections are maintained. Submit model to department for review; credit score may be considered as only one of factors in determining rates; provide specific information if the insurer takes an adverse action.

USE OF CREDIT REPORTS/SCORING IN UNDERWRITING

STATE	REFERENCE	LINE OF BUSINESS	SUMMARY OF PROVISIONS
NM (2/08)	Bulletin 2002-001	All lines	All insurers that use credit scoring in underwriting or rate making must submit all portions of the programs that include the use of credit scoring to the Insurance Division.
	§ 59A-17A-1 to 59A-17A-9	Personal lines	May not include income, gender, race, religion, marital status, ZIP code, nationality, etc. as factors. May not base rates solely on credit score or consider absence of a credit history. Must recalculate credit score after 3 years. May not consider medical history codes. File scoring models with department. (NCOIL model)
	Reg. 13.8.6.1 to 13.8.6.9	Personal lines	Standards for the notification required in statute.
NY (2/08)	General Business § 380-i	All lines	Requires users of consumer reports to advise the consumer of adverse action taken in reliance on the report.
	OGC Opinion No. 96-1	Homeowners	Must give specific reasons for cancellation.
	Ins. Law §§ 2801 to 2809	Personal lines Property and casualty	May not include income, gender, race, religion, marital status, ZIP code, nationality, etc. as factors. May not base rates solely on credit score or consider absence of a credit history. Must recalculate credit score after 3 years. May not consider medical history codes. File scoring models with department. (NCOIL model)
	Reg. tit. 11 §§ 221.0 to 221.10 (Reg. 182)	Personal lines	May not take an adverse action based on a list of situations and events. Filings of scoring models must include listed information.

USE OF CREDIT REPORTS/SCORING IN UNDERWRITING

STATE	REFERENCE	LINE OF BUSINESS	SUMMARY OF PROVISIONS
NC (2/08)	§ 58-36-90 Bulletin 03-B-3	Private passenger auto	*May not use credit reports as sole rating factor. Must notify consumer if will be used. File scoring models with insurance department.* *Requirements for insurers who have trade secret pages in their credit scoring models*
ND (2/08)	§§ 26.1-25.1-01 to 26.1-25.1-11	Personal lines	*May not include income, gender, race, religion, marital status, ZIP code, nationality, etc. as factors. May not base rates solely on credit score. May not consider absence of a credit history unless insurer treats the consumer as otherwise approved by the Insurance Commissioner if insurer presents information that such absence relates to the risk for insurer, if consumer is treated as through the credit information is neutral, or if credit information is excluded as a factor. Must recalculate credit score after 3 years. May not consider medical history codes. File scoring models with department. (NCOIL model)*
OH (2/08)	Bulletin 2002-2	Property and casualty	Insurers must establish that credit history and credit scores are valid risk characteristics. May not use for discriminatory purposes.
OK (2/08)	Guidelines adopted by Oklahoma State Board for Property and casualty Rates 6/15/2000 Bulletin No. PC 2001-07 *tit. 36 §§ 950 to 959*	Property and casualty Personal lines	Insurers that use credit history or credit scores must provide the board with underlying information to show they are using the information in accordance with OK law. Notify the insured of any adverse action taken as a result of the credit history or credit score. Revised credit scoring guidelines. May not include income, gender, race, religion, marital status, ZIP code, nationality, etc. as factors. May not base rates solely on credit score or consider absence of a credit history. Must recalculate credit score after 3 years. May not consider medical history codes. File scoring models with department. (NCOIL model)

USE OF CREDIT REPORTS/SCORING IN UNDERWRITING

STATE	REFERENCE	LINE OF BUSINESS	SUMMARY OF PROVISIONS
OR (2/08)	§ 746.635	All lines	Insurer, agent or insurance support organization may not prepare or request an investigative consumer report about a person involving an insurance transaction unless the insurer or agent informs the person that he may request to be interviewed in connection with the preparation of the report and that the person may request a copy of the report.
	Reg. §§ 836-080-0425 to 836-080-0440	Personal lines property and casualty	Prior to use, must notify consumer that credit history will be used. Must notify consumers during the application process that consumer may request information about the use of credit histories or insurance scores. Notice may be either in writing or in the same medium as the medium in which the application is made. The statement must address the following items: (a) Why the insurer uses credit history or insurance scores, (b) How the insurer uses credit histories or insurance scores, (c) What kinds of credit information are used by the insurer, (d) Whether a consumer's lack of credit history will affect the insurer's consideration of an application, (e) Where the consumer may go with questions. An insurer that uses credit history or insurance score in connection with a renewal shall notify consumer of that use when renewal offer is made. Notice shall address the items above. In addition, insurer shall inform consumer that consumer has a right annually to request the insurer use current credit information in the renewal process and that insurer will update the credit information used upon receiving such a request.
	§§ 746.600 to 746.686	Personal lines	*If adverse underwriting decision, provide consumer with specific reasons. If based on credit score, include specifics of no more than 4 reasons for score. Provide information on how to dispute. May use credit history only in combination with other factors to decline coverage. May not consider absence of history, number of inquiries, total available credit, etc. Consumer may request yearly re-rating. File scoring models with dept. Prohibits an insurer from rerating the policy or consumer when the consumer's marital status changes because of death or divorce. Allows an insurer to consider the last five years of claim history when rating a policy, however a insurer can use a longer claim history for the purpose of providing a discount. Allows insurer to consider the second or any subsequent claims in the last 5 years to determine whether to issue or renew a policy.*

USE OF CREDIT REPORTS/SCORING IN UNDERWRITING

STATE	REFERENCE	LINE OF BUSINESS	SUMMARY OF PROVISIONS
PA (2/08)	Department Policy 40 P.S. § 1184; 40 P.S. § 1224; 75 Pa.C.S.A. § 1793; Tit. 31 Ch. 67.33	Personal Lines	The use of credit-based insurance scores is limited to new business underwriting eligibility and underwriting tier placement with the following requirements: 1) underwriting tier placement must be based upon mutually exclusive underwriting criteria that are kept on file at the company; and (2) underwriting tier placement must not be used at renewal, except where that use will result in placement into a lower rated tier. *Note: Companies using credit information as part of their new business pricing or tier criteria are expected to comply with the disclosure and adverse notice provisions of the federal Fair Credit Reporting Act.*
RI (2/08)	§ 6-13.1-21	All lines	May not request a credit report without first notifying the insurance applicant. If deny coverage or charge more, must notify consumers that is due to credit report.
	§§ 27-6-53; 27-9-56; R27-25-011; R26-16-007	Homeowners and personal auto	May use credit scoring for rating and underwriting only if the insurer demonstrates the predictive nature of the score to the insurance department. If requested by customer, must do new credit score every 2 years and lower rates if score is better. May not use revised score to raise rates except as noted. Rates may only be changed at time of renewal. List of factors that may not be considered. Reporting agency may not sell data or lists that include information about credit report.
	Bulletin 2002-16	Homeowners and personal auto	May not decline insurance for a new consumer based solely on the credit score. If use in rating, must demonstrate the statistically predictive nature of the score in the rate filing.
SC (2/08)	§ 38-73-740	Auto	Credit report used as basis for rate classification must be kept on file by the insurer for 3 years, and be available to the applicant.
	§ 38-73-425	Property and casualty	An insurer may use absence of credit as a criterion for underwriting if the insurer presents information satisfactory to the director.
	Bulletin 2002-04	Private passenger auto	May not refuse to insure, cancel or non-renew based solely on credit history or credit score. A filing including credit scoring must include justification. Disclose to consumer that insurer may gather and consider credit information.
	Bulletin 2004-09	Property and casualty	If insurers use lack of a credit score as an underwriting criteria, must provide the department with support.
	Bulletin 2004-12	Property and casualty	Must get approval from department before using lack of a credit score as a criterion for underwriting.

USE OF CREDIT REPORTS/SCORING IN UNDERWRITING

STATE	REFERENCE	LINE OF BUSINESS	SUMMARY OF PROVISIONS
SD (2/08)	Bulletin 2002-3	Personal lines property and casualty	May not use credit information as the sole rating factor.
TN (2/08)	Department Policy	All lines	Justification for use of credit scoring must be provided in the filing. Credit scoring cannot be the sole basis for determining rates.
	§§ 56-5-401 to 56-5-407	Personal lines property and casualty	May not include ZIP code as a factor. May not base rates solely on credit score or consider absence of a credit history. Must recalculate credit score after 3 years. May not consider medical history codes. File scoring models with department. (NCOIL model)
	Bulletin Dated 12/13/04	Personal lines	Sets procedures for filing of credit scoring models.
TX (2/08)	Business and Commerce § 20.02	All lines	Consumer reporting agency may furnish credit report where the insurer intends to use it for underwriting.
	Business and Commerce § 20.05	Life	May use credit report in underwriting life insurance expected to have a value of $150,000 or more.
	Reg. 28 TAC §§ 5.9340 to 5.9342	Personal lines	Filing requirements for credit scoring models.
	Reg. 28 TAC §§ 5.9940 to 5.9941	Personal lines	Disclosure statement for consumers on how score is calculated, right to appeal, requirement for actuarial justification. Rate differences due solely to use of credit scoring must be supported by actuarial analysis
	Ins. §§ 559.002 to 559.151	Personal lines	Insurer may not use credit scoring that is computed using factors that constitute unfair discrimination. Shall not refuse to renew an insurance policy solely based on credit information. If credit information is used in underwriting or rating, disclose that fact at the time the application is taken. May not consider medical history codes. File scoring models with department.

USE OF CREDIT REPORTS/SCORING IN UNDERWRITING

STATE	REFERENCE	LINE OF BUSINESS	SUMMARY OF PROVISIONS
UT (2/08)	§ 31A-22-1307	Homeowners liability	Insurer that uses credit reports in underwriting must comply with federal Consumer Credit Reporting Act.
	§ 31A-22-320	Auto	May only use credit information to reduce rates or in conjunction with other factors.
	Reg. R590-219-1 to R590-219-8	Private passenger auto	Inform consumer of factors used in adverse underwriting decision. May not use credit information to cancel or nonrenew coverage that has been in place 60 days or more or as the primary reason to refuse to issue a new policy.
VT (2/08)	No provision		
VI (2/08)	No provision.		
VA (82/08)	§§ 38.2-2114; 38.2-2212	Auto, fire	Insurers shall not refuse to renew an insurance policy solely based on credit information contained in a consumer report, bearing on an individual's creditworthiness, credit standing or credit capacity. If credit information is used in part, it shall be based on a consumer report procured within 120 days from effective date of nonrenewal.
	Administrative Letter 2002-6	All lines	Any insurer intending to use credit score must file the model prior to their use.
	§§ 38.2-2126; 38.2-2234	Homeowners, renters, auto	May not include income, gender, race, religion, marital status, ZIP code, nationality, etc. as factors. May not base rates solely on credit score or consider absence of a credit history. Must recalculate credit score after 3 years. May not consider medical history codes. (NCOIL model)

USE OF CREDIT REPORTS/SCORING IN UNDERWRITING

2/08

STATE	REFERENCE	LINE OF BUSINESS	SUMMARY OF PROVISIONS
WA (2/08)	§ 19.182.020	All lines	Consumer reporting agency may furnish credit report where the insurer intends to use it for underwriting.
	§ 19.182.040	Life	May use credit report in underwriting life insurance expected to amount to $50,000 or more.
	§ 48.18.545	Personal lines	Credit history may not be used to cancel or non-renew insurance. May only be used to deny coverage if combined with other substantive underwriting factors.
	§ 48.19.035	Personal lines	Credit history shall not be used to determine insurance rates unless the credit scoring models are filed with the commissioner. May not use certain attributes of credit history in credit scoring model.
	Reg. 284-24A-001 to 284-24A-065	Personal lines	Regulation describes standards that apply to insurers that use credit history.
WV (2/08)	§ 91-8-3	Auto	Dept. of Motor Vehicles may furnish credit information from its files where an insurer intends to use it for underwriting.
	Informational Letter No. 142A (August 2003)	Personal lines	Guidelines for filings containing credit scoring. Data may not be used in unfairly discriminatory manner. May not be sole basis for deciding whether to write coverage. If used for rating, must recheck scores of policyholders after 3 years.
	§ 33-6B-3	Auto	May not decline a policy based solely on adverse credit report.
	§ 33-17A-6	Property	May not decline a policy based solely on adverse credit report.
WI (2/08)	Bulletin dated 6/16/97	Personal auto and homeowners	Can use credit reports but not as the sole reason to refuse, cancel or nonrenew a policy.
WY (2/08)	§ 26-2-134	Personal lines, auto, homeowners	Authority to adopt regulation to provide that credit history may not be sole factor and to require disclosures. Protect consumers against unfair discrimination.

This chart does not constitute a formal legal opinion by the NAIC staff on the provisions of state law and should not be relied upon as such. Every effort has been made to provide correct and accurate summaries to assist the reader in targeting useful information. For further details, the statutes and regulations cited should be consulted. The NAIC attempts to provide current information; however, readers should consult state law for additional adoptions.

Appendix 2

The Use of Occupation and Education as Underwriting/Rating Factors for Private Passenger Automobile Insurance

March 2007

REPORT OF COMMISSIONER, KEVIN M. MCCARTY

FLORIDA OFFICE OF INSURANCE REGULATION

THE USE OF OCCUPATION AND EDUCATION AS UNDERWRITING/RATING FACTORS FOR PRIVATE PASSENGER AUTOMOBILE INSURANCE

March 2007

Executive summary

The Office of Insurance Regulation ("Office") held a public hearing on February 9, 2007 in Tallahassee to review the use of occupation and education as underwriting or rating factors for private passenger auto insurance and its potential impact on Floridians.

In Florida, as well as nationally, the insurance industry has had a checkered past in its use of race and other proxy factors that intentionally or unintentionally negatively impact minorities and low-income individuals. While the use of race as a rating factor was outlawed in Florida, the two factors mentioned above, occupation and education, have emerged in the rating and underwriting of auto insurance and appear to be highly correlated to race and income-level.

Under some rating plans, consumers with more professional occupations (doctors, lawyers, architects), and advanced college degrees are being offered preferred driver rates. Conversely, individuals with blue-collar jobs, and a high school education or less are paying higher premiums for similar risk factors, as exhibited by several online quotes for auto insurance requested by the Office from one of the major auto insurance writers in Florida. With all other factors remaining equal, except for changes to the online applicant's education and occupation, the results were startling. One online quote comparison demonstrated a significant difference in the quoted auto insurance rate when the two factors are adjusted, accounting in that instance in a 300% higher rate for the less educated and less skilled applicant.

Testimony at the public hearing on February 9, 2007, and documents received and reviewed prior, during and after the hearing reveal:

- ***There is a demonstrable correlation between occupation, education and income-level and ethnicity, which was not disputed by the insurance industry.***

- ***Insurance industry representatives all claim ignorance of the relationship between occupation, education and income-level and race despite the existence of publicly available U.S. Census Bureau Data***

- ***Insurers do not collect data from consumers on race or income-level, and refuse to study the impact of underwriting practices on minority and low-income consumers.***

- ***The insurance industry does not believe that corporate responsibility extends to ensuring its practices do not disparately impact minority or low-income Floridians; but instead maintains that it is the Florida Legislature's responsibility to define public policy on this matter in the insurance marketplace.***

- ***It appears that wealthier individuals are more likely to pay small claims out-of-pocket, and avoid making insurance claims, giving some occupations better loss ratios despite higher accident rates.***

- ***As measured by one company's use of occupation and education the magnitude of the premium difference can be very significant.***

- ***Companies that do not use occupation and education as rating factors may potentially be at a competitive disadvantage because they may lose the wide range of business offered by higher income policyholders. Foregoing whatever predictive value these factors may have might also put these companies at a disadvantage. Thus, from an economic point of view, this practice is likely to proliferate regardless of its negative effects on policyholders struggling to overcome disadvantages.***

- ***While the prohibition of the use of these factors, much like in the prohibition of the use of race, could lead to some economic inefficiencies in insurance markets, it may be beneficial to the overall economy and citizenry to prohibit use of these factors as a matter of public policy***

- ***At least one major auto insurer that currently uses education and occupation as part of its underwriting, asserts it would absolutely not use these factors if it were determined the factors had a disparate impact on protected classes.***

- ***A national insurance organization whose members write 56 percent of the private passenger auto insurance market in Florida stated that a public policy concern can override the use of these factors even if there is an actuarial basis for it.***

The transcript of the public hearing held on February 9, 2007, consisting of two volumes, is attached to this Report as **Exhibits 1 and 2**.

Background on the Use of Education & Occupation as Rating Factors

One of Florida's greatest strengths is its rich culture and ethnically diverse population. Regrettably, Florida has another history: one of slavery, Jim Crow laws, as well as discrimination that led to the modern civil rights era. This willful discrimination was pervasive and permeated the institutions of education, government, and commerce --- even the insurance industry. While Florida leaders have since prohibited the use of factors such as race in determining employment and housing decisions, some vestiges of discrimination remain.

In 2000, the National Association of Insurance Commissioners ("NAIC") initiated a Race-Based Premium Working Group to examine the use of race-based premiums for life insurance. The Office was an active participant in this endeavor, which included a questionnaire to all life insurance companies nationwide about past practices. This ultimately resulted in several multi-state market conduct examinations, and multi-million dollar settlements to correct past wrongdoing.

The review period varied based on the company, but usually encompassed 1900-1970, although many policies were still "on the books." The findings were disturbing. Historically several life insurance companies bifurcated rate tables for "Caucasian" and "not-Caucasian," charging higher rates for non-Caucasians. Company documents offered a very interesting defense for this policy: they claimed this was not discriminatory, but merely reflected the statistical differences between life expectancies for Caucasians versus non-Caucasians. Although there may have been some validity to this statement, the insurance industry does not exist in a moral, ethical, or historical vacuum. Despite this "actuarial justification," legislatures around the country banned the use of race regardless of the statistical reasoning.

In reaction to these changes, some companies adjusted their underwriting standards in an unexpected manner: they began to use other factors that served as proxies for race and income status. The two most notable factors included education and occupation.

According to one multi-state examination report concluded by Maryland[1], after the race question was deleted from the application in the 1960s, several companies "appeared to use occupation as a substitute for race." ***Occupations subject to substandard rating included maids, bootblacks, busboys, car wash workers, garbage or ash collectors and janitors.*** The multi-state reported noted, "Non-Caucasian workers were disproportionately represented in the [these] disadvantaged occupations."

The report further compared rating books before and after race was removed from the application and noted:

1) The rating books removed race from the rating methodology, and
2) Occupational Rating Classification replaced the use of race, and
3) No other changes were made.

Both the company and regulators agreed the company engaged in "socio-economic underwriting." All four states involved in the examination, Maryland, Florida, Pennsylvania and Virginia believed there was enough evidence to conclude that the use of occupation in this instance violated all four states' statutes regarding non-discriminatory practices.

In a similar examination conducted by the State of Ohio a rating book for Cooperative Life Insurance Company[2] (CLIC), not only was there ***a substandard rating for occupations like butlers, barbers, valets, cooks, elevator operators and waiters --- but the rating book warned against, "low-grade industrial or illiterate types."***

The Use of Occupation and Education as Rating Factors Continues

The presumption that the use of occupation and education as rating factors ended with the conclusion of the aforementioned life insurance industry multi-state examinations is erroneous.

[1] The State of Florida, Pennsylvania, and Virginia also joined this examination. Monumental Multi-State Exam Report # 789-00 (Maryland).
[2] Actuarial Report – Race Based Pricing Activities with Respect to the Life Insurance Business of Nationwide Life Insurance Company, July 6, 2004 – State of Ohio.

The venue, however, has changed --- to the underwriting and rating of private passenger auto policies.

On March 20, 2006, the Consumer Federation of America ("CFA") issued a press release warning that the nation's fourth largest auto insurer, GEICO, was using occupation and educational attainment to rate auto insurance policies, and that Liberty Mutual Insurance and Allstate Insurance were beginning to use these rating factors as well. J. Robert Hunter, Director of Insurance for CFA, and the former Insurance Commissioner for the State of Texas, challenged state insurance regulators to ban the use of education and occupation for rating policies as these factors are highly correlated with race and income level.

In response, The Property Casualty Insurers Association of America (PCI), a trade association that represents 1,000 member companies that write roughly 40% of the nation's property & casualty business issued its own press release on March 21, 2006. The PCI defended GEICO's use of education and occupation as "valid factors for insurers to use in the marketplace."

As early as 2004, the Office began taking active measures to have auto insurers remove the occupation and education variables from the insurers' underwriting/rating plans used in Florida. In 2004, as a condition of "approving" a filing, those auto insurers using either occupation or education, or both factors, in their underwriting plans were advised to cease doing so within 1 year.

In response to these measures taken by the Office, AIG, in a letter dated May 5, 2004, expressed that AIG "is amiable to remove this factor [occupation] from our scoring models contingent on the following conditions: The [Office] promulgate a Regulation that requires all personal automobile writers to stop using the occupation factors at the same time, or, all carriers using this factor have agreed to remove the factor within the same time frame."

While Florida law specifically outlaws the use of race for rating insurance policies, there is no specific statutory prohibition against using potential proxy factors that are highly correlated to race, such as educational attainment and occupation that would create a disparate impact on racial minorities and low income Floridians.

Section 627.917, Florida Statutes, states that the Financial Services Commission can establish a uniform statewide risk classification reporting system for auto policies provided it does not discriminate based upon race, creed, color or national origin. Pursuant to this private passenger auto risk classification reporting system statute: "The classification system may include any difference among risks that can be demonstrated to have a probable effect upon losses or expenses …"

The insurers that have begun to use occupation and/or education as rating factors claim these factors are predictive of losses, and thus are not prohibited by Florida Statute, regardless of the potential impact. The auto rating statute states that rates are not unfairly discriminatory with respect to a group even though they are lower (and, by implication, higher) than rates for nonmembers of the group. Rates are only unfairly discriminatory if they clearly fail to reflect equitably the difference in expected losses and expenses or if they are not actuarially measurable and credible and sufficiently related to actual or expected loss and expense experience of the group to assure that nonmembers of the group are not unfairly discriminated against. It is this definition that governs the Office's determination of whether a rate is unfairly discriminatory.

The Public hearing on the use of occupation and education as rating factors for private passenger auto insurance

The Florida Insurance Commissioner, through a Notice of Hearing to the industry, as well as subpoenas directed to auto insurers currently using occupation and education as rating factors, compelled testimony from the industry, consumer advocacy groups, and from the public to explore this issue, and the rationalization underlying the use of these factors. Members from four insurance groups testified including GEICO, Liberty Mutual, the AIG Insurance Group, and New Jersey CURE Auto Insurance. In addition, members from insurance trade organizations including the Property and Casualty Insurance Association of America (PCI), the

Consumer Federation of America, the National Association of Mutual Insurance Companies (NAMIC), the Insurance Information Institute (III), the Florida Insurance Council, the Florida Justice Association, and Florida's Consumer Advocate also testified.

The issue is simple: allowing the use of occupation and education as rating factors appear to disproportionately favor non-minorities and higher-income individuals while negatively impacting minorities and low-income individuals by charging these groups, albeit somewhat indirectly, higher auto-insurance rates relative to others with similar risk characteristics.

Following the Office's attempts in 2004 to have automobile insurance carriers in the state remove the two factors, the Office began monitoring this trend, and has recently been very specific in not "approving" the rate filings that use the two factors at issue, but instead, warning companies that although the Office is concerned about the impact of these practices, it does not have statutory authority to deny these practices. While the Office has not "approved" these plans, it had no other recourse under current statutes and rules but to allow them to come into effect due to the deemer provisions of the law.

This issue also has gained national attention following the Consumer Federation of America's letter to all insurance commissioners explaining its research regarding GEICO's practices. In 2006, Commissioner McCarty commissioned an internal study of the correlation between education/occupation and ethnicity and income, which found strong correlations, ultimately concluding that logically any plan that utilized these factors would negatively impact minorities and low-income individuals.

Prior to the public hearing, the Office identified eight main investigatory questions to understand these issues:

1. Is there a correlation between occupation/education and race and/or income status?
2. Is the insurance industry aware of such correlation between occupation/education and race or income?
3. Does the insurance industry believe its corporate responsibility extends to ensuring its policies do not negatively impact people due to race or income-level?
4. Has the insurance industry researched the impact of its practices on Floridians as it relates to minority or low-income individuals?

5. Is there a correlation between occupation/education and loss ratios and or accident statistics?
6. If it is demonstrated the use of occupation and education negatively impact protected classes, what is the magnitude of this impact?
7. If the Florida Legislature does not change the laws, and this practice is allowed to proliferate, what will be the potential impact on the auto insurance industry?
8. If these factors were not allowed for underwriting factors, would the auto insurance industry still be competitive?

The Current use of occupation and education as rating factors

Even before the eight investigatory questions are explained, it is important to understand how the industry is currently using occupation and education. Although a few industry representatives stated broadly, "they have been using these factors for years," the current incarnation of the usage of these factors is a relatively new phenomenon, and is utilized in different forms by three auto insurers in Florida that collectively write approximately 17.1% of the auto insurance market in Florida, insuring over 1.9 million vehicles.

The testimony elicited the forms of current use, and revealed several critical facts. It is important to understand that these factors can be used in two different phases: (1) Underwriting --- which is to determine whether to insure the individual; and (2) Rating – which is to determine the actual premium paid by the customer. During this investigation, the Office learned about another practice, which is a blending of underwriting and rating, the practice of "tiering"

GEICO utilized "tiering" most directly, and this report will use this company's experience as an example. Currently GEICO has four companies that operate in the State of Florida: Government Employees Insurance Company (which is the origin of the name "GEICO" but does not technically incorporate that acronym), GEICO General, GEICO Indemnity, and GEICO Casualty. During the underwriting phase, a customer will apply for coverage on-line or via a telephone operator, and believes they are applying for coverage from "GEICO." Based on the underwriting criteria (including occupation and education), customers are placed into different companies. The preferred-risk customers are placed into Government Employees

Insurance Company or GEICO General (with the lowest rates), the intermediate-risk customers are placed into GEICO Indemnity, while the sub-standard risk customers are placed into GEICO Casualty. Based on GEICO's placement statistics, it appears that customers gaining the preferred status (and lowest premiums) are far more common:

GEICO Coverage in Florida, 2006

Company	# of Insured Vehicles	Avg. Annual Premium
GEICO /GEICO General	990,262	$938.70
GEICO Indemnity	174,823	$1,183.70
GEICO Casualty	110,613	$1,474,90

It also appears that GEICO is not equally receptive to all segments of the population (favoring those with higher education and better occupational status). During the testimony, the Office learned that customers are usually not informed they were rejected for the preferred company (Government Employees Insurance Company or GEICO General), and placed into another company.[3]

Liberty Mutual has two companies writing auto insurance in Florida, Liberty Mutual Insurance Co. (the preferred company with lower rates), and Liberty Insurance Co. (sub-standard risks and higher rates). In the initial determination, occupation, employment status, and education are determinants for being offered coverage from Liberty Mutual Ins. Co. In response to direct questioning during the public hearing, Christopher Cunniff, VP of Personal Marketing, stated, "Yes, it is possible that some small segment of customers, the use of that variable [education and occupation] does push their slotting decision from one company to another."[4] However, once in the insurance companies, education and occupation are not used as rating factors by the

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[3] GEICO is currently defending itself against a lawsuit filed in 2006 in federal court by several African-Americans who were either former or current GEICO policyholders, alleging that the use of education and occupation factors are discriminatory or have a discriminatory impact, Patricia Amos, et al. v. GEICO, U.S. District Court for the District of Minnesota, Case # 06-cv-1281. Transcript of public hearing, Volume 1, page 81, lines 2 – 14; Vol. 1, page 88, lines 8 – 13. GEICO states the allegations are "absolutely baseless".

[4] Transcript of public hearing, Volume 1, page 97, lines 14 – 17.

Liberty Mutual Companies. This contrasts with GEICO, where further tiering decisions are made within each company.

One potential problem of this "slotting" technique is that individuals may be "parked" in the substandard risk company. Even if a person achieves a higher level of education, or changes to a more preferred occupation, they can only switch companies after three years, "if they are clean," remarked VP Cunniff.[5]

The American International Group, Inc. ("AIG") Companies use occupation, but do not use education in their underwriting and premium practices. While AIG does have three auto insurers writing in Florida, AIG does not use the same type of "tiering" techniques used by GEICO and Liberty Mutual, but places customers based on their distribution channels. However, within their underwriting tiers (which ultimately affects rating and premiums), occupation is used as a determining factor.

The Office is vested with the responsibility to ensure rates are not "excessive, inadequate, or unfairly discriminatory,"[6] and it appears that these underwriting and rating factors will *prima facie* result in higher premiums for those who can least afford it: lower-income, and less educated individuals.

I. Is there a correlation between these factors and race and/or income status?

Although racial differences between education and occupation have narrowed since the "Jim Crow" period examined during the race-based life insurance premiums initiative --- a wide gap still exists.

The U.S. Census Bureau conducted a comprehensive study of race/ethnicity and occupation in for its *Selected Occupational Groups by Race and Hispanic Origin for the United States, 2000*.

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[5] Vol. 1, page 97, lines 23 – 25.
[6] Section 627.0651, Florida Statutes.

The table below, based on U.S. Census Bureau Data, shows disparities among the types of jobs by different races & ethnicities:

Category	Management, Professional, & Related Occupations
Caucasian & Asian*	**37%**
Black/African American	**25%**
Hispanic or Latino**	**18%**
American Indians, Native Alaskans, Hawaiians, & Pacific Islanders	**24%**

** Non-Hispanic*
*** Any Race*

Although this is national data, we can still observe dramatic differences: Caucasians and Asians are twice as likely as Hispanics to have management or professional jobs.

The chart below, based on data from he U.S. Census Bureau, shows educational attainment also has large disparities across ethnic and racial groups in Florida:

Bachelor's Degree or Higher
Florida, 2005

Category	Percent with Degrees
Caucasian & Asian*	**29%**
Black/African American*	**13%**
Hispanic or Latino**	**21%**

** Non-Hispanic*
*** Any Race*

Source: U.S. Census Bureau: Educational Attainment of the Population 18 Years and Over, by Age, Sex, Race Alone, and Hispanic Origin, for the 25 Largest States: 2005

Unlike the occupational data, this is Florida specific data, and also shows large disparities: Caucasian and Asian non-Hispanics are more than twice as likely to have a college degree as Blacks/African Americans.

For both occupation and education, as a group, Caucasians and Asians are more likely to have professional and managerial jobs, as well as college degrees. Not only would utilizing these factors negatively impact minorities (as a group), but also using a combination of these factors may magnify the "inequality effect."

II. Is the insurance industry aware of such correlation between occupation/education and race or income?

Although one may think it is "common knowledge," that there are inequalities in America that contribute to minorities being less likely to obtain college degrees, or have higher incomes, shockingly the representatives of the insurance industry claim to be oblivious of such a relationship. In fact, at times the public hearing was reminiscent of hearings involving the tobacco industry where tobacco lobbyists claimed there were no studies proving tobacco use caused cancer.

Asked pointedly by Commissioner McCarty whether the use of occupation and education would disparately impact protected classes of minorities, Hank Nayden, VP and General Counsel for the GEICO group answered, "…to our knowledge, there is no credible data and no credible study reflecting that."[7] Later in the testimony, Commissioner McCarty asked the same witness if he has looked at the U.S. Census Bureau data on this relationship between occupation and race, Mr. Nayden conceded, "I have not."[8]

The Commissioner again emphasized this question with representatives testifying on behalf of Liberty Mutual. Asking whether the company had looked at U.S. Census Bureau data regarding the relationship between occupation, education, and race and/or income, Christopher Cunniff, VP of Liberty Mutual's Personal Marketing admitted, "I have not, and I'm not aware of anyone at Liberty who has."[9]

Similarly, during the questioning of AIG company representatives, when asked by Deputy Commissioner Belinda Miller about studies showing relationships between occupation and income or race, Mr. Fedak VP of AIG Direct's Southeast Region, answered, "I'm not aware of any studies, other than analyzing our own book of business."[10] Further questioning revealed

[7] Vol. 1, page 38, lines 7 - 10.
[8] Vol. 1, page 50, line 24.
[9] Vol. 1, page 101, lines 23 – 24.
[10] Vol. 2, pages 160 – 11, lines 25 and 1.

that since AIG does not collect data regarding ethnicity or income, no such relationship studies could be performed based on their book of business.

The industry's denial of knowing about the statistical correlations between education, occupation and race and/or income strained credulity, Steve Parton, General Counsel for the Office asked rhetorically whether this was "willful blindness" by the industry. However, it should be noted that CFO Eric Poe of New Jersey CURE Auto Insurance Company committed to not using this factors stated:

> ***"…for an entire industry that is predicated on how smart we are, we would be probably the dumbest industry in the world not to know that those statistical correlations exist."***[11]

III. Does the insurance industry believe its corporate responsibility extends to ensuring its policies do not negatively impact people due to race or income-level?

Based on the testimony presented February 9, 2007, the simple answer appears to be "no."

During his testimony at the public hearing, Alex Hageli of the Property & Casualty Insurance Association of America (PCI) stressed that as long as the outcomes are actuarially based, the insurance company should be allowed to use it. Moreover, when asked about disparities in outcomes and whether that should be allowed he stated, "I believe that's a question the Legislature needs to address."[12]

When asked to contemplate hypothetical variables like eye color, cell phone usage, the number of plasma TVs in the household or birth order, Mr. Hageli answered plaintively, "If there's an actuarial basis for it, it should be used unless there is some overriding public policy concern"[13]

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[11] Vol. 1, page 33, lines 14 – 17.
[12] Vol. 2, page 128, lines 15 –18.
[13] Vol. 2, page 135, lines 17 – 21.

Later when asked pointedly about the use of race in rating life insurance (as it was conceded African-American's have lower life expectancies than Caucasians), Mr. Hageli implied it could be used, "Except for the fact that it's prohibited by law."[14]

Other industry representatives did not go this far. Commissioner McCarty asked GEICO representatives, "If, in fact, it were determined, hypothetically, that it [using occupation and education as rating factors] had a disparate impact on protected classes, would GEICO continue to use it?"[15] Mr. Nayden of GEICO responded, "absolutely not."[16] However, after presented with U.S. Census data showing disparities, Mr. Nayden seemed unconvinced of the relationship: "And to our knowledge, there is no credible data and no credible study reflecting that [disparate impact]."[17]

When Commissioner McCarty asked the same question of Liberty Mutual's representatives: "If education and occupation criteria used in underwriting or rating were shown to have a disparate impact on protected classes of people …would your company continue to use it?"[18] Mr. Cunniff of Liberty Mutual waffled: "Well that's a hypothetical question which I can't answer, and certainly we wouldn't comment in advance on business plans with our company."[19]

While they too did not specifically state it is the companies' responsibility to understand these relationships, the AIG companies were less vociferous in defense of this practice. Mr. John Fedak, VP of AIG Direct's Southeast Region summarized their companies' position: "…if the OIR requires insurance carriers to remove occupation from the rating process, our tiering model will be revised and will become less accurate in predicting losses."[20]

In summary, the industry does not seem to believe that it is within their corporate responsibility to ensure that rating and underwriting practices do not negatively impact society, as long as the

[14] Vol. 2, page 141, lines 13 – 14.
[15] Vol. 1, page 37, lines 20 – 23.
[16] Vol. 1, page 37, line 24.
[17] Vol. 1, page 38, lines 7 – 8.
[18] Vol. 1, page 101, lines 3 – 8.
[19] Vol. 1, page 101, lines 9 – 12.
[20] Vol. 2, page 155, lines 1 – 4.

practices have actuarial justification. Instead, it is the perception of the industry that this is a public policy question, and it is the responsibility of the Florida Legislature and regulators --- not the insurance industry to ensure these practices do not negatively impact society.

IV. Has the insurance industry researched the impact of its practices on Floridians as it relates to minority or low-income individuals?

The insurance industry professes ignorance as to the relationship between occupation, education and income-status or race, and believes it is the Florida Legislature's responsibility, not that of the industry, to determine what factors are inappropriate. Given these facts, it should not be surprising the industry has not researched this question. It has not.

Yet what is surprising is the industry has established a mechanism that makes it impossible for any auditor to research this specific information by intentionally never collecting any relevant data. While the industry portrays this as the moral high road because policyholders may be offended by being asked information about income or race, it uses the resulting ignorance to claim that anything it may do cannot possibly be discriminatory because it does not even have race or income information. The argument confuses intent with results but sounds appealing at first.

The State of Florida application for employment asks the ethnicity and age of the applicant on a voluntary basis for information purposes (to ensure non-discrimination), while mortgage companies and credit card companies routinely request income information. Insurers make hyperbolic statements such as, "No study has shown our policies have a disparate impact". Such statements are true by tautology --- no study can be conducted without the information of the race and income level of the applicant.

This opinion was most passionately advocated by Mr. Nayden of GEICO who stated, "There is no study that finds that the use of education or occupation as a risk selection characteristic has an adverse impact on minorities or low income individuals."[21] Yet, when asked whether GEICO could collect and/or analyze this data to determine potentially negative impacts, Mr. Nayden responded emphatically, "We have no interest in collecting or analyzing any data on race."[22] This comment was echoed by Mr. Cunniff of Liberty Mutual: "Liberty does not ask or measure or track either income or race, so we have no internal studies …"[23] We may observe that no external studies are possible either, given that the entities in control of the information desire to remain blissfully ignorant.

To demonstrate the nexus between occupation groups and income level, Eric Poe of the CURE New Jersey Auto Insurance showed that GEICO's rating manual offered the worst (highest premium) category for military personnel in Pay Grade E-4 or lower, which equates to someone earning less than $24,000 a year.[24] Based on GEICO's 2004 rating manual filed with the Office of Insurance Regulation – this is correct.

In response Mr. Nayden remarked the Office has "an old underwriting guideline," but the newer guidelines do not use military pay grades.[25] However, upon further questioning by Susan Dawson, Assistant General Counsel with the Office, Mr. Nayden admitted GEICO currently uses military rank, which is highly correlated to income level within the military.[26]

The industry's position is that using education and/or occupation is "blind" based on race or income. Yet, without collecting any data on this issue, the impact itself must remain invisible. Some of the occupations in GEICO's preferred auto group include doctors, lawyers, and engineers while those in the lowest rating categories include blue and gray-collar workers, service and long-haulers, it is difficult to fathom how their policies could not produce a negative impact on disadvantaged groups.

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[21] Vol. 1, page 46, lines 5- 8.
[22] Vol. 1, page 38, lines 20 – 22.
[23] Vol. 1, page 113, lines 17 – 21.
[24] Vol. 1, page 22, lines 9 – 23.
[25] Vol. 1, pages 41 - 42.
[26] Vol. 1, page, 42, lines 22 – 25, and page 43.

While the Office agreed that collecting information about race and income could be perceived as offensive, minorities and low-income individuals may be equally offended to learn much larger proportions of them are paying higher rates than the majority racial group and higher income white-collar professionals, and are being rejected by the preferred companies within an insurance group without their knowledge.

V. Is there a correlation between occupation/education and loss ratios and or accident statistics?

Underlying the industry's entire argument is a statistical correlation between occupation, education and auto loss ratios. Representatives from AIG were even more specific, in that by using multivariate regression analysis, there is an *independent* relationship between occupation and auto loss ratios, which can be demonstrated when other factors are held constant. Regrettably, these data cannot be reviewed in this report as some of this involves proprietary information.

During the public hearing, Attorney Susan Dawson elicited testimony from representatives from GEICO regarding a 2003 study completed by Quality Planning Corporation, a division of Insurance Services Office, Inc. (ISO). This study showed that several white-collar careers had higher risk for an accident:

2004 Quality Planning Corporation Study
Accidents Per 1,000 Per Year

Rank	Occupation	Accidents per 1,000
# 1	Student	152
# 2	Medical Doctor	109
# 3	Attorney	106
# 4	Architect	105
# 5	Real Estate Broker	102
# 6	Enlisted Military	99
# 7	Social Worker	98
# 8	Manual Laborer	96
# 9	Analyst	95
# 10	Engineer	94

Many of these occupations including medical doctor, attorney, architect, and engineer appear in GEICO's most preferred rating class.

When asked to explain this apparent discrepancy, Mr. Hageli of PCI speculated that certain jobs may require travel at unusual hours, or be subject to greater distractions (including cell phone usage) causing a greater risk of accident.[27] When pressed for an example, he gave a real estate broker. Yet, Mr. Hageli's explanation seemed unconvincing, as high cell phone usage by attorneys, doctors, and real estate brokers should make their premiums higher --- not lower.

A better explanation was presented by Eric Poe of New Jersey CURE Auto Insurance who stated, "Studies have shown up to 50 percent of eligible claims are not even reported to insurance companies because of the fear that their rates will go up. Unfortunately, lower income individuals do not have the ability to make that choice."[28] For evidence, Mr. Poe cited a report by the 1998 Joint Economic Committee from the U.S. Congress.

Paul Lavrey, actuary for GEICO, agreed stating that "our experience would be based on what we know about, which is the losses that are reported." Moreover, "I'm sure some claims aren't

[27] Vol. 2, page 126, lines 21 – 25.
[28] Vol. 1, page 14, lines 7 – 9.

reported and we don't know about them so we wouldn't have that."[29] Regarding the number of claims that are not reported Mr. Nayden added, "We're not aware of a study, but we would certainly like to review it, if you have one."[30] Mr. Cunniff, of Liberty Mutual, did try to offer a better defense of this stating that many auto claims are third party claims that would be difficult to nonreport, moreover, there are some legal requirements that require multi-car accidents to be reported.[31]

Yet the end result is the same, assuming both the industry studies showing preferred white-collar jobs like doctors, lawyers and architects, have lower loss ratios, yet according to Quality Planning's study have greater amounts of car accidents, it does appear there is some "self-insurance." Basically, wealthier consumers are paying lower-amount claims out-of-pocket rather than filing claims.

VI. If it is demonstrated that the use of occupation and education negatively impact protected classes, what is the magnitude of this impact?

Another factor is the amount of the effect. Even assuming occupation and education are accurate predictors of auto loss ratios, and that industry data has roughly similar experience in this regard, it does seem odd that the variations among insurers are of such a significant magnitude, especially given its actuarial basis.

AIG Company representatives (which use only occupation, not education) assert the differences are not significant: "There's a potential in certain extreme circumstances for a person's tier that they're assigned to move by two tiers based on the occupation variables, and that would result in approximately a 30 percent rate difference."[32] When asked specifically whether it could be higher, Mr. Fedak stated, "That would be a maximum."[33]

[29] Vol. 1, page 77, lines, 16 – 22.
[30] Vol. 1, page 78, lines 8 – 12.
[31] Vol. 1, page 109, lines 11 – 20.
[32] Vol. 2, page 168, Mr. Bowman's testimony.
[33] Vol. 2, page 168, line 6.

While the Liberty Mutual testimony focused on other areas, the GEICO testimony elucidated several interesting numbers regarding differences in occupation, education, and its affect on premiums. One of the reasons GEICO is easy to analyze is that it has an interactive rate estimator on its website which can be used to see the effect of specific occupations and education levels while holding other demographic information constant. The Office of Insurance Regulation presented three comparisons:

	High School/ Blue-Collar	**Advanced Degree/ Professional**	**% Difference**
Comparison 1[34]	$4,225.36	$1,403.59	201%
Comparison 2[35]	$884.84	$714.04	24%
Comparison 3[36]	$1,027.29	$1,280.79	25%

Eric Poe of New Jersey CURE Auto Insurance stated the differences varied by as much as 50-70%, although in some cases the difference could be as much as 200% as in Commissioner McCarty's example.[37]

While GEICO representatives seem to imply these were isolated incidents, interestingly a reporter from the St. Petersburg Times conducted his own research on his vehicle, comparing the rates for "Bob" --- a 50 year-old janitor with no high school education, and "Joe" a Ph.D. computer executive attempting to insure the same 2002 Toyota Camry in the Tampa area.[38] His results: Bob the janitor would be pay premiums 66% higher for the exact same vehicle.

[34] Example included a single male, age 23, living in Hialeah, with a 2000 Chevrolet Malibu LS, 4 door sedan, Drives up to 15,000 miles a year, one speeding ticket, no accidents within 3 years. BI limits $15,000/$30,000; PD $10,000; PIP $10,000 with $250 deductible; UM: $15,000/$30,000; non-stacked, Comprehensive $500 deductible, Collision $500 deductible. Six-month policy.

[35] Example included a single male, age 25, living in Jacksonville, with a 2005 Honda Accord, 4-door sedan, Drives up to 15,000 miles a year, one speeding ticket, no accidents within 5 years. BI limits $25,000/$50,000; PD $25,000; PIP $10,000 with $0 deductible; UM: $25,000/$50,000; non-stacked, Comprehensive $500 deductible, Collision $500 deductible. Six-month policy.

[36] Example included a single male, age 24, living in West Palm Beach, with a 2002 Buick Park Avenue, 4-door sedan, Drives up to 15,000 miles a year, one speeding ticket, no accidents within 3 years. BI limits $15,000/$30,000; PD $10,000; PIP $10,000 with $250 deductible; UM: $15,000/$30,000; non-stacked, Comprehensive $500 deductible, Collision $500 deductible. Six-month policy.

[37] Vol. 1, page 12, lines 7 – 11.

[38] "GEICO Gives Different Rates for Drivers Depending on their Jobs," St. Petersburg Times, Robert Trigaux, February 12, 2007.

While GEICO claims their models incorporate up to 27 factors, it does appear that some factors are given greater weight than others --- and that education and occupation factors may be more important than miles driven, marital status or age in calculating an insurance premium.

VII. If the Florida Legislature does not change the laws, and this practice is allowed to proliferate, what will be the potential impact on the auto insurance industry?

The problem is simple: if occupation and education are truly predictors of loss, the companies that do not adopt these practices are at a competitive disadvantage vis-à-vis insurance companies that do adopt this practice.

The most pervasive use of this practice is currently that of GEICO, which is the third largest private passenger auto writer in Florida, and the fourth largest writer in the United States.[39] In a statement to the Commissioner and the panel, Mr. Cunniff of Liberty Mutual observed, "I would say that as a general rule we are aware of what competitors are doing."[40]

In their defense, Mr. Nayden of GEICO used as evidence GEICO's double-digit growth and that "the company's growth across all occupations and educational levels give the lie to any notion that certain individuals are being harmed by our underwriting practices."[41] The fact that nearly 1 million policyholders are in GEICO's preferred company, while less than 300,000 have policies with the substandard companies casts serious doubt on this assumption --- while all companies may be growing, GEICO companies appealing to those with higher occupation and more professional occupations seem to have achieved greater market penetration.

In his testimony, Eric Poe stated about CURE New Jersey Auto, "…we [the insurance community & state government] have to make moves to ban the use of this or we are going to be compelled to adopt this rating practice."[42] The Consumer Federation of America voiced its agreement, "…GEICO's continued use of the education and occupation criteria will lead to negative competition in the insurance marketplace and that it will encourage GEICO's

[39] Vol. 1, page 35, lines 15 – 17.
[40] Vol. 1, page 119, lines 23 – 25.
[41] Vol. 1, page 48, lines 9 – 15.
[42] Vol. 1, page 10, lines 7 – 18.

competitors to follow suit, because those competitors will see that GEICO is taking away their more affluent clients."[43]

Based on the testimony provided, it would appear that auto insurer's use of these factors is poised to increase. These factors, could lead proliferate within the auto insurance industry, in much the same way that the use of race as an underwriting factor became pervasive throughout the life insurance industry between 1900 to 1970.

VIII. If these factors were not allowed for underwriting factors, would the auto insurance industry still be competitive?

Other than having predictive value, the main argument for the inclusion of education and occupation as rating factors is the concept of competition. Perhaps best articulated by Dr. Robert Hartwig of the Insurance Information Institute, "…a system of rates that accurately reflects risk and costs is fair and it is equitable. States that restrict actuarially valid underwriting criteria implicitly subsidized drivers with relatively poor records at the expense of the state's better drivers."[44]

Even more dramatically, representatives from PCI stated this will lead to overall price increases: "When you have less competition, you have less market forces forcing prices down," Mr. Hageli continued, "If you begin, as regulators, to tell them what they can and cannot do, they're going to be more conservative. I mean that to me seems to be pretty commonsensical."[45] NAMIC also agreed, "… limitations and restrictions on underwriting freedom stifle innovation and thereby hamper competition, ultimately harming consumers and society in general."[46]

These arguments do have some merit. However, this can be applied to all types of regulation --- as regulation, whether it be standardizing forms that people can understand, prohibiting use

[43] Vol 2, page 149, lines 7 – 12.
[44] Vol. 2, page 193.
[45] Vol. 2, page 131, lines 14 – 20.
[46] Vol. 2, page 185, lines 4 – 14.

of specific language in advertising, or creating solvency requirements to ensure against bankruptcy --- all regulation implicitly limits freedom of insurance companies in exchange for a perceived societal benefit.

The one statement that remained unanswered was posed by the Insurance Commissioner Kevin McCarty during the testimony of PCI: "Certainly the life insurance business is as robust today as it's ever been and we don't allow race-based rates."[47] Moreover, in the same vein, disallowing the use of a factor by all companies (in this instance race) creates a level playing-field for all insurance companies to compete based on factors that are allowed. Based on information received as part of the Office's investigation of this matter, companies that use the factors view the college-educated population as a more profitable group. Companies that do not use occupation and education as rating factors may potentially be at a competitive disadvantage because they may lose the wide range of business offered by higher income policyholders.

[47] Vol. 2, page 131, lines 8 – 13.

Florida's Office of Consumer Advocate also agrees, "I believe that if a particular rating variable has an extraordinary disparate impact on a particular prohibited class or group of prohibited classes, that that variable in effect is a proxy for prohibited classes and should be prohibited."[48] Thus, even though some inefficiencies in the auto insurance market may be created by disallowing the use of factors such as race, income level, or factors that may be intentional or unintentional proxies for race and income levels such as credit scores, occupation and education --- the prohibition of such use may be in the public interest, despite modest insurance sector inefficiencies. The relationship between race and income is illustrated by data from the U.S. Census' "Income, Earnings, and Poverty From the 2004 American Community Survey," issued August 2005:

Median Incomes by Race

Race and Hispanic Origin	Men	Women
Caucasian alone	$42,707	$32,034
Caucasian alone, not Hispanic	$45,573	$32,678
African-American alone	$32,686	$28,581
American Indian	$32,113	$25,752
Asian alone	$46,888	$36,137
Hawaiian and Pacific Islander	$32,403	$27,989
Other Race	$26,679	$23,565
Two or More Races	$37,025	$30,729
Hispanic Any Race	$26,749	$24,030

Median Incomes by Education

Education	Men	Women
Less than High School	$21,760	$13,280
High School Graduate	$31,183	$19,821
Some College or Associates Degree	$37,883	$25,235
Bachelor's Degree	$52,242	$35,195
Graduate or Professional Degree	$68,239	$46.004

[48] Vol. 2, page 217, lines 16 – 21.

Median Incomes by Occupation

Occupational Fields	Men	Women
Management	$65,393	$48,118
Business and Financial Operations	$57,922	$42,256
Computers and Math	$66,130	$56,585
Architecture	$64,496	$51,581
Health Care Practitioner	$69,124	$45,380
Health Care Support	$25,774	$22,658
Farming, Fishing	$22,124	$17,098
Construction	$33,064	$29,289
Transportation	$31,840	$22,434
Personal Care and Service	$27,258	$19,789
Educational	$47,963	$36,891
Office and Admin Support	$35,216	$29,006

One of Florida's greatest strengths is its rich culture and ethnically diverse population, and it would be unfortunate if the insurance industry, through its practices, either intentionally or unintentionally, engaged in discriminatory practices based on a person's ethnicity or income status. Similar to credit scoring, it is possible that clear legislation with rule making authority will be needed to restrict the use of education and occupation as underwriting and rating factors.