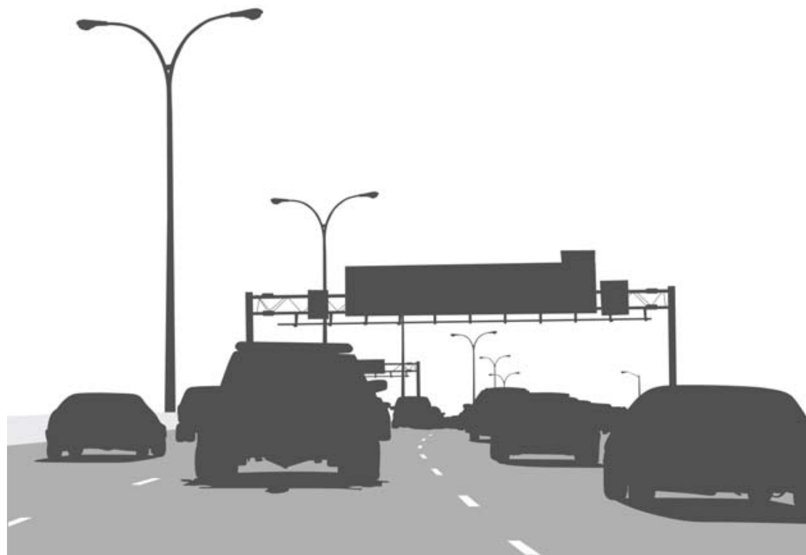
‘How You Drive’ Takes a Backseat to ‘Who You Are’

(Mis)Managed Competition in the New Massachusetts Automobile Insurance Market



Center for Insurance Research
MASSPIRG Education Fund

February 28, 2008

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Acknowledgments

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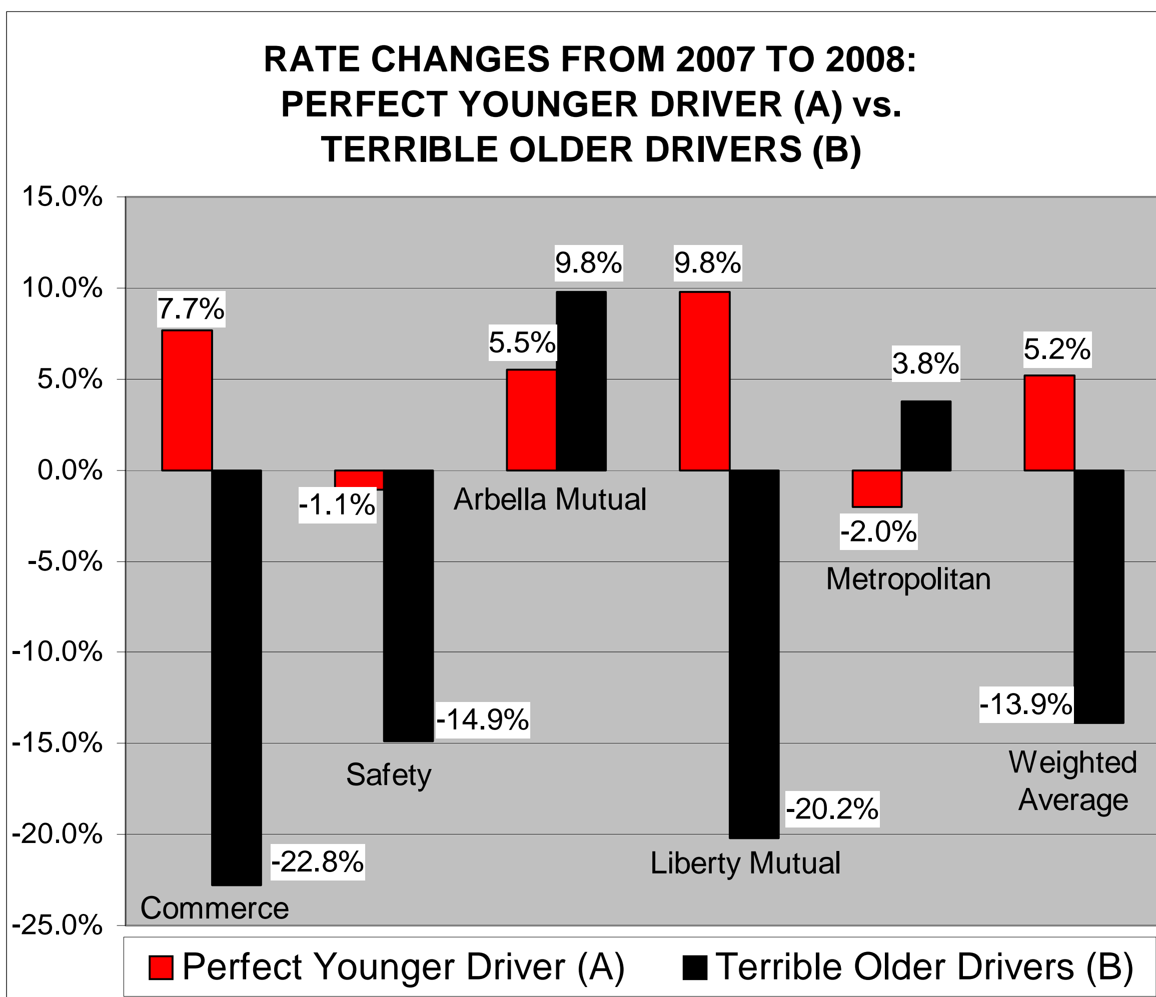
PREFACE

A 27-year-old single woman in Medford has been a licensed driver for eight years and has a spotless driving record. She rents an apartment from the 57-year-old married couple living upstairs. Each of the spouses is a terrible driver and has had a major at-fault accident every three years of his or her 38-year driving history, which means that over the past six years alone the couple caused four major accidents. But the single woman is not eligible for any of the new discounts the Commissioner of Insurance approved for the insurers under the new "managed competition" auto insurance system scheduled to start April 1, 2008. All she has going for her is her perfect driving record. The couple, on the other hand, owns two cars, has been with the same insurer for 11 years, and also has a homeowners' insurance policy with that insurer. What kind of rates would the top five writers of auto insurance in Massachusetts charge to the woman and to the couple under the new rating system?

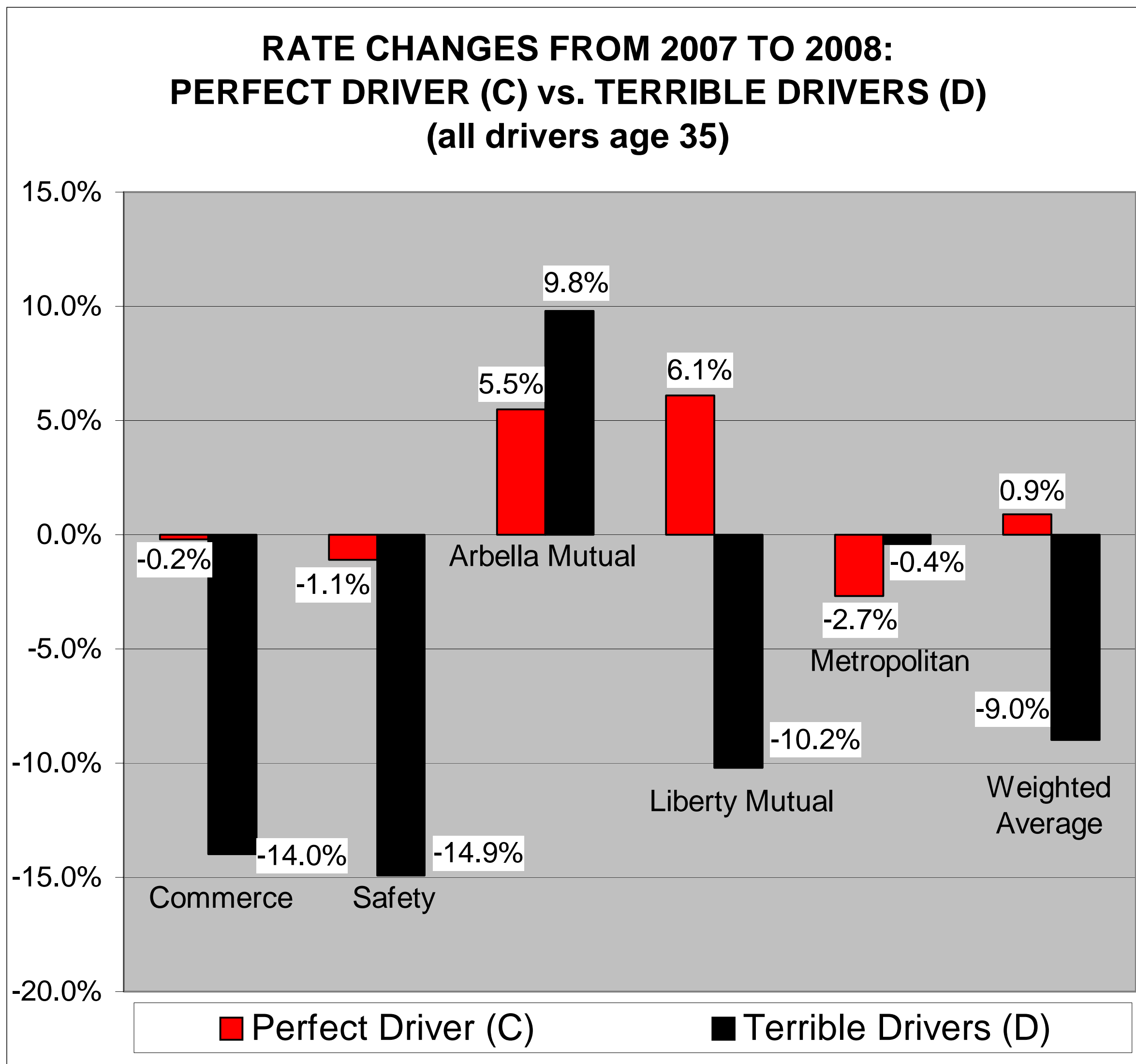
The chart below shows the rate changes for the Compulsory Package for auto insurance in Massachusetts:



[Source: Calculated from the approved rate filings of Commerce, Safety, Arbella Mutual, Liberty Mutual, and Metropolitan. Unless otherwise indicated, these filings are the source for all data and information relating to these insurers.]

The differential treatment of the perfect younger driver and the terrible older drivers is striking. On average, Perfect Younger Driver (A) would receive a 5.2% rate ***increase*** and Terrible Older Drivers (B) would receive a 13.9% ***decrease***, which produces an average differential treatment of about 19%. Part, but only part, of the reason for the difference is that, contrary to statute and to its own regulations, the Division of Insurance is, in effect, allowing insurers to rate drivers based on age by using "years licensed" as a rating factor.

Even removing age from the example, however, still produces results that are plainly unfair. If all three drivers in the above example were 35 years old, the following result would occur:



In this case, the differential treatment is about 10% on average, with Perfect Driver (C) receiving a 0.9% average ***increase*** and Terrible Drivers (D) receiving a 9.0% average ***decrease.***

Both examples illustrate that under the new "managed competition" auto insurance rating system, "how you drive" has become less important than "who you are." This report will investigate the reasons why the rate changes for Terrible Drivers (B) and (D) can be so much better than those for Perfect Drivers (A) and (C), and what these obviously unfair results mean for the motorists of Massachusetts.

SUMMARY OF KEY FINDINGS

1. Under the new "managed competition" rating system, "who you are" has become more important than "how you drive." Starting in April, factors relating to "who you are" – income, marital status, homeownership, education, age, race, and other factors supposedly prohibited for use by the Division of Insurance – will take center stage in the Massachusetts auto insurance market. Driving record is no longer the primary rating factor and is now a diluted factor. As a result, consumers with perfect driving records who have the least resources in our society will pay more to fund discounts to wealthy motorists, including those with terrible records. [pp. 1-32]

2. The vast majority of new discounts and rating factors proposed by insurers and approved by the Division of Insurance are substitutes (or "proxies") for factors specifically prohibited by Massachusetts law and are not based on the consumer's driving record. These include discounts for having a homeowners' insurance policy, Good Student discounts, Multi-Car discounts, Years Licensed discounts, Hybrid Vehicle discounts, and Loyalty discounts. [pp. 13-21]

3. The 7.8% overall average rate reduction announced by the Division should be revised to 7.1% because the largest writer of auto insurance in Massachusetts changed its proposed rate decrease from 8.1% to 6.1%. It is important to note that even the 7.1% figure may be inflated since it is based on each insurer's estimate of its own proposed rate change. The Attorney General was denied access to the information necessary to confirm the insurers' estimates, and consequently, the true overall average rate decrease could well be smaller than 7.1%. Overall average rates would likely have been reduced by at least 11% under a fair competitive system, as well as under our previous rating system. The 4% difference in overall rates amounts to a transfer of about $150 million from consumers to insurers. [pp. 9-10]

4. If you're not receiving a particular discount, you're paying for it. Unlike the previous rating system, the new system allows insurers to fund a discriminatory discount by charging more to those drivers not receiving the discount. [pp. 23-24]

5. While the Division of Insurance has banned the use of credit scoring as a rating factor, the Division allowed insurers a backdoor way to use credit scoring in rating. Since the Division currently permits insurers to use credit scoring in deciding to whom they offer homeowners' insurance policies, the insurers can use credit scoring to deny a motorist access to a homeowners' insurance policy, thereby denying access to an auto insurance discount for having a companion homeowners' policy. This is an apparently permissible way to get around the prohibition on the use of credit scoring in auto insurance rating. [p. 15]

6. Massachusetts consumers were promised that the new rating system would reward drivers with good records, penalize drivers with bad records, and prohibit insurers

from using socio-economic and other discriminatory factors. Had this all been true, Massachusetts would have a rating system that would be the envy of the nation. Unfortunately, none of this was true. [pp. 1-32]

7. In all parts of Massachusetts, drivers with bad driving records who score well on the "who you are" scale – homeowners, college students, married couples – can receive huge rate decreases that are funded by drivers with perfect records who score poorly on that scale. [pp. 11, 25-29]

8. In all rating territories, many drivers with clean records will fail to receive the rate reductions promised by the Commissioner to "drivers with good driving records no matter where such drivers garage their vehicles." [pp. 11, 25-29]

9. The defects in the new rating system cannot be cured simply by urging consumers to "shop around." The range of options available to many good drivers is much worse than the range available to many bad drivers. No amount of shopping around can change that. [pp. 30-31]

10. The ideal competitive rating system would have merged the best aspects of the previous system with the best aspects of a competitive market. It would have required insurers to compete based on driving record and would have produced an overall average rate reduction of at least 11%. All drivers with good records would have seen large rate decreases. By shopping around, decreases well in excess of 11% would likely have been available to these good drivers, regardless of socio-economic and other prohibited factors. [pp. 30-31]

INTRODUCTION

In recent years, critics of the rate setting system used for the past three decades in Massachusetts have relied on the following three assertions:

1. The system was different from the one used in the other 49 states;

2. The system was highly regulated, which is per se a bad thing; and

3. The system rewarded bad drivers at the expense of good drivers.

The first point was incontrovertible. Massachusetts used a rate setting system that was different from the rest of the nation.

The second point was half right. The "fix and establish" rate setting system was highly regulated. But the reason the system was so restrictive related directly to the third assertion. Massachusetts policymakers over the years had become very aware that the competitively rated auto insurance markets in the other states served the interests of insurers – not of consumers – and were notably flawed in one vital respect: ***The other rating systems unfairly penalized many drivers with good records and rewarded many drivers with bad records.*** The Massachusetts rating system was highly regulated precisely to avoid the major failings of competitive auto insurance markets – in particular, that these other markets permitted insurers to use countless rating factors having nothing to do with the consumer's driving record. These other factors dilute the importance of driving record, and to make matters worse, do so by discriminating against drivers based on their socio-economic status. And so, Massachusetts policymakers preserved a rigid rating system because that system gave more weight to driving record than any other rating system in the United States.

So what is to be made of the bizarre, erroneous third point raised by large national insurers and by some policymakers that our system rewarded bad drivers at the expense of good drivers? The key to unmasking this falsehood is to consider the source of the assertion – the insurers. Insurers were not spending millions of dollars on advertising and lobbying in order to move to a system that would be less profitable for them. Insurers went so far as to establish and heavily fund a group named "Fairness for Good Drivers," which sounds like a consumer-oriented entity, but acts only as a front for the insurance industry. Ironically, the group advocates for measures that would harm motorists with good driving records.

Recently, as it has done many times in the past year, the group defended the move to "managed competition" by reiterating the erroneous third point. James T. Harrington of the Massachusetts Insurance Federation, an insurer lobbyist who speaks on behalf of the Fairness for Good Drivers coalition, claimed in the press:

> What is true is that under the Patrick administration's system of managed competition, the rates for good drivers everywhere in the state will be

> going down, and for many the reductions will be much greater than 10 percent. But Ms. Cummings wants to preserve the old, failed system in Massachusetts that rewarded and subsidized the bad drivers — those with DUIs, multiple at-fault accidents, etc. — and penalized the good drivers with no accidents or violations. These good drivers under the old system had to pay more in order to subsidize the bad ones. (Source: January 26, 2008, op-ed by James T. Harrington, SouthCoastToday.com.)

A careful review of rates and rating factors approved under the new rating system, however, points to exactly the opposite conclusion. This study will show: (1) the new system dilutes the importance of driving record significantly; (2) drivers with terrible records can receive huge rate decreases; (3) many drivers with perfect driving records will not receive the rate decreases promised to them by the Commissioner of Insurance; and (4) insurers can use socio-economic and other discriminatory rating factors to penalize drivers with clean records. These excellent drivers had received large decreases under the old rating system because of its emphasis on driving record.

A. Background

On July 16, 2007, Governor Deval Patrick's Commissioner of Insurance, Nonnie Burnes, announced that the Division of Insurance would no longer "fix and establish" private passenger automobile insurance rates, as the Division had done for the past 30 years. The Commissioner announced that she was instead adopting a rating system that she termed "managed competition."

On August 28, 2007, in an open letter to the public, the Commissioner set forth four principles that guided the development of the Division's proposed regulations governing "managed competition." Those principles were:

1. A reduction in rates for drivers with good driving records no matter where such drivers garage their vehicles;
2. A low number of uninsured drivers;
3. Stability within and maintenance of a small residual market; and
4. Fairness to all drivers through the prohibition of the use of socio-economic factors.

Principle 1 echoed a promise contained in the Commissioner's letter of July 16, 2007, in which she announced that managed competition "should ensure that consumers with good driving records, irrespective of where they live, will enjoy lower rates." The Commissioner added that she expected "that good drivers, regardless of where they live, will enjoy *significant* premium reductions." (See Letter from the Commissioner of Insurance, July 16, 2007 [emphasis supplied]).

In the July 16 letter, the Commissioner also responded to the concerns of consumer advocates that insurers would use discriminatory factors unrelated to driving record to raise rates for low-income drivers. In an attempt to allay those fears, she stated: "I will view with extreme skepticism any rate proposal that is based on socio-economic considerations such as education, occupation, home ownership or credit report or score." In the final regulation issued on October 5, 2007, the Commissioner specifically prohibited the use of rates based in whole or in part on sex, marital status, race, creed, national origin, religion, age (except to produce the statutorily-required discount for persons aged 65 and older), occupation, income, education, or homeownership. (See 211 CMR 79.05[11]). Commissioner Burnes also banned the use of credit information – and therefore credit scores – for rating purposes. (See 211 CMR 79.05[13]). Though repeatedly asked by consumer groups, legislators, and even some insurers[1] to do so, however, the Commissioner refused to adopt measures to prevent insurers from circumventing these restrictions by basing rates on close substitutes (or "proxies") for the prohibited factors.

[1] Three local insurers – Commerce, Arbella Mutual, and Plymouth Rock – warned that if the industry were allowed flexibility in adopting rating factors, discriminatory practices would ensue. The Division instead followed the recommendation of large national insurers to permit such flexibility.

In late November 2007, insurers filed their rates with the Division of Insurance. The Division announced that the average rate reduction resulting from the rates filed for the 19 companies writing in Massachusetts was 7.8%. In accordance with bulletins issued by the Division on October 19, 2007, the rate filings by the insurers limited any rate increase for individual drivers to 10% for each coverage.

The rate filings for all insurers writing in Massachusetts have now been reviewed by the Division of Insurance and placed on file, which effectively means that the rates proposed by the companies have been approved for use in Massachusetts, effective April 1, 2008. The Division described the review process as "exhaustive," "thorough," "rigorous," and "painstaking." (See Division of Insurance Press Release, "Insurance Commissioner Places Managed Competition Rates on File," December 19, 2007.) The Commissioner stated that "[t]he Division intentionally set a high bar for companies to meet so that Massachusetts consumers are guaranteed the highest level of protection under managed competition."

Attorney General Martha Coakley took a different view of the industry's rate filings. The Attorney General issued a bulletin criticizing the insurers for filing two rate components that had always been disapproved as producing excessive rates in past years. The bulletin pointed out that if the filings had continued the longstanding practice of excluding those items from auto insurance rates, the overall average rate reduction would have been 11% based on those two changes alone.[2] (See Attorney General's Informational Bulletin No. 2 on the State of Managed Competition, November 21, 2007.) The Attorney General then formally contested the rates filed by five insurers. Commissioner Burnes granted hearings on these filings, as required by state law, but in every other way the Commissioner undermined and opposed the Attorney General's challenges.

First, the Commissioner denied the Attorney General's requests for discovery in preparation for the hearings. Second, when the Attorney General attempted to present expert testimony analyzing the unfairly discriminatory nature of certain discounts offered by insurers, as well as the practice of funding those discounts by raising manual rates, the Commissioner struck that testimony as not germane to the hearings. Third, the Attorney General also presented expert testimony to support her primary claim that the contested rates were excessive. While that testimony was admitted into evidence, the Commissioner decided against the Attorney General and in favor of the insurers on every issue in all five rate hearings.

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[2] Based on the same reasoning, the previous rating system would likely have produced an overall average rate decrease of at least 11%. A similar estimate can be derived by comparing the overall average rate changes historically proposed by the Automobile Insurers Bureau of Massachusetts ("AIB") with the rates set by the Commissioner of Insurance under the old system. Over the past ten years, the Commissioner's rate changes were 9.0% lower on average. Applying that difference to the AIB's proposed 2008 rate decrease of 2.5% produces an 11.5% decrease. (See MASSPIRG and Center for Insurance Press Release, "2008 Average Auto Insurance Rate – 'no urban myth,'" November 28, 2007.)

As a result of the hearings, the overall average rate reduction actually went from 7.8% to 7.1% because the largest writer of auto insurance in Massachusetts changed its proposed rate decrease from 8.1% to 6.1%.[3] It is important to note that even the 7.1% figure may be inflated since it is based on each insurer's estimate of its own proposed rate change. The Attorney General was denied access to the information necessary to confirm the insurers' estimates, and consequently, the true overall average rate decrease could well be smaller than 7.1%. Even if that number is not inflated, overall rates are at least 4% higher than they would have been under a fair competitive system, as well as under the previous system. (See discussion on page 9 above.) This 4% difference in overall rates amounts to a transfer of about $150 million from consumers to insurers.

[3] This change was not due to Commerce increasing its rates; rather, the 6.1% figure was a more accurate representation of the reduction in rates filed by Commerce originally.

B. The New 2008 Rates Violate Principle 1 (Reward All Good Drivers) and Principle 4 (Prohibit Socio-Economic Discrimination)

Final rates have now been approved for all of the insurers in the Massachusetts private passenger automobile insurance market. An examination of the rates approved for the insurers with the largest market shares demonstrates that, under the Division's new "managed competition" system, ***a motorist's driving record is now less important than it was under the old rating system***.

Up until this year, Massachusetts used a very limited set of rating factors in setting rates. An individual's driving record – which consumer advocates believe is both the fairest and the most accurate single indicator of a particular driver's risk of getting into an accident – received more weight here than in any other state.

By approving myriad new factors – most of which target "who you are" instead of "how you drive" – the Commissioner of Insurance has diluted the weight given to driving record. Moreover, it is of particular concern that most of the newly approved factors are obvious proxies for the very socio-economic factors that are supposedly prohibited by the Commissioner's "managed competition" regulation (and, in some cases, also by statute).

As a result, and in direct contradiction to the Commissioner's stated intent to promote "fairness to all drivers through the prohibition of the use of socio-economic factors," "managed competition" now rewards and penalizes drivers based on their socio-economic status and on other discriminatory factors. In all parts of Massachusetts, drivers with bad driving records who score well on the "who you are" scale – homeowners, college students, married couples – can receive huge rate decreases that are funded by drivers with perfect records who score poorly on that scale. In contrast, in all rating territories, many drivers with clean records will fail to receive the rate reductions promised to "drivers with good driving records no matter where such drivers garage their vehicles."

C. The Division of Insurance Failed to Disclose the Deviation from the Commissioner's 'Managed Competition' Principles

The Division of Insurance did not disclose to the public its deviation from the Commissioner's principles during the rate-approval process, although it had the opportunity to do so.

On November 20, 2007, for example, the Division released to the press some sample rates filed the previous day by the five insurers with the largest auto insurance market shares in Massachusetts. The Division had required all insurers to calculate rates for four sample policyholders. For each sample policyholder, the insurers had to provide two sets of rates: one set for drivers eligible for the lowest rates (i.e., the most new discounts), and one set for drivers subject to the highest rates (i.e., the fewest new discounts).

But the Division chose to disclose only the first category of rates – those for drivers eligible for the lowest rates. The Division did not reveal what would happen to those drivers ineligible for the new discounts. This resulted in a skewed picture of the rates that actual drivers would end up paying.

For instance, for the first sample policyholder, the "low rate" scenarios – the ones released to the press – presented rate decreases ranging from 2.9% to 21.3% for an experienced driver with six years on the road and with no accidents or traffic violations. But the "high rate" scenarios, withheld from the press, revealed that many of these experienced drivers with perfect driving records – but who were ineligible for the new discounts – would see much less favorable rate changes. The top four insurers, whose combined market share[4] is over 60%, actually displayed "high rate" scenarios producing only rate *increases* for these perfect drivers, in amounts ranging from 2% to 10%, with most in the 5-10% range.[5]

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[4] Market share data used in this report comes from Commonwealth Automobile Reinsurers Private Passenger Subscription Report, February 1, 2008.

[5] The fifth insurer had filed small rate decreases for these drivers of 4.5% or less, depending on where the driver lived.

D. How Insurers Circumvent Prohibitions against Illegal Rating under 'Managed Competition'

Insurance companies have already "gamed" the new system by creating a plethora of "discounts" that, in effect, serve to circumvent the prohibitions on unfair discrimination in rate setting contained in Massachusetts laws and regulations. For the top five Massachusetts auto insurers, representing over two-thirds of total market share, we have examined the most significant new discounts, as well as enhancements of existing discounts, and divided them into three categories.

Category I – by far the largest one – includes discriminatory discounts that circumvent statutory or regulatory prohibitions on rating. Almost all of these discounts are not based on the consumer's driving record.

Category II includes discounts that are designed to reward drivers who drive less and drivers who complete driver education programs.

Category III includes new or enhanced discounts based on driving record.

<u>**Category I – Discriminatory Discounts**</u>

The Division of Insurance's new regulations, on their face, ban a number of socio-economic and other discriminatory rating factors. In practice, however, the Division did not discourage insurers from circumventing, and in some cases even encouraged them to circumvent, these prohibitions through the use of substitutes, or proxies, for banned rating factors. Moreover, there is no indication that the Division engaged in any serious review of whether insurers were using proxies for prohibited factors. In fact, during the rate hearings, Commissioner Burnes and the other presiding officers at the Division struck all evidence offered by the Attorney General on the use of discriminatory rating factors.

The Division approved numerous proxies for prohibited rating factors. Here are the most common proxies that were approved:

<u>Discounts for having a homeowners' insurance policy</u>. Many insurers offer significant discounts to drivers who have a homeowners' insurance policy.[6] Some insurers (e.g., Liberty Mutual) require that policy to be with that insurer; some (e.g., Commerce and

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[6] The insurers generally also offer this discount if you have any "companion policy" with the insurer, such as an umbrella policy or a life insurance policy. The most common example of a companion policy is a homeowners' policy. Issues of discrimination arise with the other companion policies as well. Typically, umbrella policies are purchased by higher-income individuals with substantial assets to protect, and life insurance policies tend to be purchased by people with families. Discounts for these kinds of companion policies circumvent the prohibitions on the use of income and marital status for rating.

Arbella Mutual) will also provide the discount if the driver is insured through the FAIR Plan, which is the homeowners' insurer of last resort; and some (e.g., Arbella) will also provide the discount if the driver is insured through any homeowners' insurer that does not write auto insurance in Massachusetts.

It is obvious that having a homeowners' policy is a proxy for homeownership, which is an explicitly prohibited rating factor. The Division has defended these discounts by pointing out that drivers who purchase a homeowners' policy for tenants (called HO-4) do not own a home and are eligible for the discount.[7] But this argument ignores the reality of who actually purchases homeowners' insurance policies. In 2006, there were 131,648 tenants (HO-4) policies out of a total of 1,826,057 homeowners' policies written in Massachusetts. (See Exhibit 5C, "Report on the Current State of the Homeowners Insurance Market in Massachusetts," dated October 19, 2007.) Thus, tenants purchased only 7.2% of all homeowners' insurance policies. That result is not surprising. It is very risky not to insure an asset as valuable as a home. Moreover, most homeowners are required by their mortgage company to have a homeowners' policy. And the few tenants who do purchase a homeowners' policy generally are higher-income individuals with significant assets to protect. So, for the 7.2% of homeowners' insurance purchasers who are tenants, the homeowners' discount acts as a proxy for high income; for the remaining 92.8% of purchasers of homeowners' policies, the discount acts as a proxy for homeownership (and obviously for income as well).

In the instances in which insurers offer discounts to motorists who buy homeowners' policies *from other insurers (including the FAIR Plan)*, the motivation for offering the discounts is particularly clear. There is no pretense of attempting to gain the motorists' homeowners' insurance business or of trying to take advantage of any supposed economies of scale for serving two policies together. There is simply a desire to insure the kind of people who own homes.

The Division has also defended giving auto insurance discounts to motorists who buy auto and homeowners' policies from the same insurer by claiming that these discounts have been used in Massachusetts for years. The Division is mistaken. In the past, insurers were allowed to offer discounts *on a homeowners' insurance policy* if the homeowner also purchased an auto insurance policy from the insurer. But no discount has ever been allowed on the auto insurance policy. This is an important distinction. An insurer could charge higher rates to other homeowners who did not purchase auto insurance from the insurer, but could not charge higher rates to non-homeowning auto insurance policyholders.

Moreover, even if the Division had allowed insurers to give a discount on the auto insurance policy in the past, the "fix and establish" rate setting system would have prevented any auto insurance policyholder from being charged higher rates to fund such a

[7] At least two insurers, Liberty Mutual and Amica Mutual, received approval to provide smaller discounts to purchasers of tenant (HO-4) policies than to purchasers of other homeowners' policies. How the Division could justify allowing the same insurer to give smaller discounts to tenants than to homeowners is unclear.

discount, because rates were always approved as appropriate before any insurer-specific discounts had been offered. Under "managed competition," however, those drivers not receiving a specific discount are actually charged higher rates than if the company had chosen not to offer the discount at all. These higher rates fund the discount to others.

> *Credit scoring and homeowners' discounts*. The Division explicitly banned the use of credit scoring for auto insurance rating. But by approving the homeowners' discounts, the Division has allowed the insurers a backdoor way to use credit scoring. Since the Division currently permits insurers to use credit scoring in deciding to whom they offer homeowners' insurance policies, the insurers can use credit scoring to deny a motorist access to a homeowners' insurance policy, thereby denying access to an auto insurance discount for having a companion homeowners' policy. This is an apparently permissible way to get around the prohibition on the use of credit scoring in auto insurance rating.

<u>Good Student discounts</u>. Rating factors based on educational level are also prohibited by the Division's "managed competition" regulation. Yet the Division has approved many discounts for students with good grades in high school or in post-secondary schools. If graduation from college or graduate school is not a permissible basis for a rating factor, insurers should not be allowed to circumvent those restrictions by offering Good Student discounts. A 20-year-old who does not attend college does not receive grades and is therefore ineligible for the discounts. Similarly, a 17-year-old who drops out of high school receives no grades, good or bad.

Moreover, no one would question that students who receive good grades are much more likely to go to college or to graduate school than those who receive poor grades. The Division is essentially saying that rates based on whether you previously went to higher institutions of learning are prohibited, but rates based on whether a person is currently in – or is likely to attend – an institution of higher learning are acceptable.

Findings from a 1997 report by the US Department of Education's Office of Educational Research and Improvement, entitled "The Social Context of Education," provide additional information in support of the proposition that the Good Student discount is a proxy for education and for other prohibited factors. Some of the relevant findings are:

1. Parents' education level is strongly associated with student achievement.
2. 34% of high school graduates from low-income families went to college, compared to 83% of graduates from high-income families.
3. 31% of Hispanic children aged 5-17 spoke a language other than English at home and spoke English with difficulty.
4. Difficulty speaking English is associated with dropping out of school.

(<u>See</u> "The Social Context of Education," US Department of Education's Office of Educational Research and Improvement, 1997, pp. 3, 4, and 7.) Finding #1 shows that, in addition to being an obvious proxy for the educational status of the young driver, the

Good Student discount also acts as a proxy for the educational background of the parent drivers. Finding #2 shows that the Good Student discount acts as a proxy for income. And Findings #3 and #4 show that the Good Student discount acts as a proxy for race and national origin.

Multi-Car discounts. Under the "fix and establish" rating system, there was a Multi-Car discount of 5% for most coverages. The justification for having this discount was that it reflects expense savings from having two vehicles on one policy. The motivation for insurers to increase this discount from the 5% level is that it is a close substitute for marital status, which under both statute and regulation may not be used as a rating factor in Massachusetts. Very few single people own two vehicles, whereas married couples with and without children are much more likely to have two vehicles.[8]

The Commissioner has approved many Multi-Car discounts in excess of 5%. For example, Metropolitan's Multi-Car discount goes as high as 15% or three times the existing discount. The Division not only allowed the discount to increase, it issued Bulletin 2007-11, which stated that "[i]nsurers may modify the Multi-Car discount," making it clear that larger discounts would be approved. As a result of encouraging insurers to enhance the Multi-Car discount, the Division gave early notice of its favorable attitude toward this common proxy for marital status, causing single people to pay more than they should for auto insurance.

Years Licensed discounts. Age-based rating factors are prohibited by statute and by the Division's "managed competition" regulation. The Division undercut these prohibitions, however, by creating a filing form that contained an obvious proxy for age. The form listed "Years Licensed Prior to Policy Effective Date" and 85 separate blanks for each of 0 through 84 years since the driver was licensed. This suggested that a different rating factor could be used for each blank, meaning that an insurer could charge a different rate for 0 years of driving experience, 1 year of driving experience, 2 years of driving experience, …[all the way up to] 84 years of driving experience. The number of years of driving experience is an obvious proxy for age, and so insurers were being told essentially that, notwithstanding the illegality of age rating, they could charge a 40-year-old driver more than a 50-year-old driver with an identical driving record over the past six years. Commerce and Liberty Mutual, in particular, adopted dozens of rating factors in order to approximate age rating closely.

Some insurers, such as Amica Mutual, charge higher rates to drivers with too many years of licensure (60 for Amica Mutual), suggesting the unlikely proposition that – even if age were not a factor – too many years of experience makes a motorist drive worse. Of course, the real reason Amica Mutual charges these higher rates is that it believes that drivers over 75 years old have physical limitations brought on by age. Whether there is merit in that reasoning is irrelevant. Age rating is illegal in Massachusetts and should not be permitted absent a change in the law.

[8] Certainly there are some single people who own two vehicles and some married couples who own only one car. In those cases, the Multi-Car discount clearly acts as a proxy for income.

It should be noted that the "fix and establish" rating system allowed insurers to charge higher rates to drivers with fewer than six years experience. This was based on evidence that in the first several years of being licensed, a driver is still learning how to drive. The notion that "Years Licensed" up to 84 years would be relevant – as anything other than a proxy for age – is without any support in the insurer filings. In fact, Amica Mutual makes this very clear in its filing, which was approved on December 19, 2007, by the Division. Amica Mutual's filing states:

> Please note that Amica does not presently have years licensed data for all our insureds; therefore, age plus[9] sixteen was used as a proxy for estimating the loss potential associated with the years of driving experience rating factor. We believe this substitute statistic will correlate highly with years of driving experience.

(See Amica Mutual filing, Explanatory Memorandum, "Years Driving Experience" section [emphasis supplied].) Moreover, the July 16, 2007, decision announcing the move to "managed competition" points out that the Division's own actuary used "driver age as a proxy for number of years licensed." (See Opinion, Findings, and Decision on the Operation of Competition in Private Passenger Motor Vehicle Insurance in 2008, p. 23.)

An important distinction should be highlighted. Insurers are not, for instance, looking at more years of a driver's record and charging lower rates to a driver with a 10-year clean record than to a driver with a six-year clean record. Generally, under the new "managed competition" system, the driving record for only the most recent six years is considered, as it was under the previous rating system. For insurers offering a Years Licensed discount, the consumer's driving record in the "years licensed" prior to six years ago is irrelevant to the determination of the discount. Thus, Terrible Older Drivers (B) mentioned in the Preface receive a huge discount for 32 extra years licensed (38 minus 6), without regard to their atrocious driving records during those 32 years.

Hybrid Vehicle discounts. Safety, Premier, and other insurers received approval to offer a 10% discount to drivers of hybrid vehicles. Of course, insurers are not offering Hybrid Vehicle discounts to protect the environment. They believe the drivers of hybrids have other characteristics insurers find desirable. For example, hybrid vehicles are more expensive than average. They cost more to manufacture and tend to be newer vehicles. Thus, as a general rule, people with higher incomes purchase hybrids.

In a January 5, 2006 press release, Premier's parent company, Travelers, announced the introduction of hybrid discounts and stated: "According to company data, hybrid owners insured with Travelers are typically married, age 41-60 with both genders represented

[9] Presumably, Amica meant to use the word "minus" instead of "plus."

equally." Thus, while appearing to be environmentally friendly, the hybrid discount is actually a well-disguised proxy for marital status, age, and income.

The fairer means of rewarding environmentally friendly driving behavior is to provide discounts to motorists who drive less. Currently, Massachusetts drivers receive discounts of 5% or 10% for driving fewer than 7,500 miles or 5,000 miles, respectively. In a few instances, insurers enhanced these discounts under "managed competition"; most kept the discounts at their existing levels.

The most sophisticated proposal to use annual mileage as a rating factor is the Pay-As-You-Drive program, which many environmental groups support. The program offers a variable pricing schedule, which charges a driver based on the number of miles driven. In its purest form, Pay-As-You-Drive would charge auto insurance by the mile. To date, no insurer has adopted Pay-As-You-Drive insurance in Massachusetts.

Loyalty discounts. Another common discount approved by the Division is the Loyalty discount, which lowers rates for drivers who have been with their insurer for many years. On the surface, Loyalty discounts appear to be innocuous and to make sense from the insurers' perspective. Insurers want to keep their current customers and are offering discounts to accomplish that goal.

But there are other reasons for offering these discounts. In locations where they prefer to avoid offering insurance, insurers are assigned agents called Exclusive Representative Producers (ERPs), which help provide insurance to underserved areas. Currently, each ERP is assigned to one insurer. The drivers in these typically urban and racially diverse areas tend to have lower incomes on average. In the last several years, there have been numerous reassignments of insurers to ERPs in these areas, meaning that many drivers have been involuntarily switched to new insurers.[10] Therefore, a smaller percentage of urban drivers – especially low-income and minority urban drivers – will have access to Loyalty discounts.

Next year, Loyalty discounts will present an additional cause for concern. Drivers rejected by insurers will be placed in the Massachusetts Automobile Insurance Plan (MAIP) and randomly assigned to an insurer. As a result of a statute known as the Lane-Bolling amendment, each insurer is supposed to charge the same premiums to its assigned drivers that it charges to its non-assigned drivers with identical rating characteristics. The Loyalty discount circumvents this requirement by enabling insurers to provide a discount to its non-assigned drivers but not to its assigned drivers. That's because, in general, assigned drivers would be new business for the insurer and would not qualify for a Loyalty discount.

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[10] In its decision in Docket C2006-1, the Division observed that in the preceding five-year period, half a million ERP customers (out of the state's four million drivers) had been transferred from one servicing carrier to another. And that decision, issued two years ago, authorized a new transfer of up to 200,000 ERP customers. The new transfer has since occurred.

The Loyalty discount, like all of the other discounts discussed above, is not based on driving record. The combined effect of these discounts makes driving record much less important than it used to be in Massachusetts.[11]

Table 1 on the next page shows the most significant Category I discounts approved for the top five insurers and the prohibitions on rating that the discounts circumvent. Table 2 shows Category II discounts, which are new or enhanced discounts designed to reward drivers who drive less or to reward drivers who complete driver education programs. And Table 3 shows Category III discounts, which are new or enhanced discounts based on driving record.

[11] One possible response the insurance industry might offer to justify their discounts is that there are data showing that the group of drivers who are ineligible for these discounts have higher losses. Even if this were true, this response is wholly inadequate for several reasons. First, it does not change the fact that allowing these discounts diminishes the importance of driving record. Second, in its new "managed competition" regulation, the Division prohibited the use of several rating factors because they "violate public policy." The Division did not state that these factors "violate public policy, unless there are data showing higher losses associated with these factors." The factors were simply banned for use in Massachusetts. Loss data are irrelevant to the legality of these factors, as well as to the legality of proxies for these factors. And third, there are sound mathematical reasons to ignore loss data showing, hypothetically, that low-income drivers, as a group, have higher losses. To rely on such data would be tantamount to rating by stereotype. Such data would not demonstrate that the typical low-income driver is riskier than the typical high-income driver. Perhaps the unknown reason that losses were higher for the low-income group was that 2% of low-income drivers made fraudulent claims, which are very costly to the insurance system, and only 1% of high-income drivers made such claims. Should the law-abiding 98% of low-income drivers in this hypothetical be penalized and be forced to pay more than their true risk of loss? Without a good understanding of why a rating factor produces a correlation to losses, it is unfair from the consumer's perspective to allow insurers to use such a factor to charge higher rates, especially when that factor is a socio-economic one.

TABLE 1
Category I – Discriminatory Discounts

Insurer	Type of Discount	Size of Discount	Circumvents What Prohibition on Rating	Based on Driving Record?
Commerce	Years Licensed	Up to 20%, varies by coverage	Age	No
Commerce	Homeowners' Policy with Commerce or with FAIR Plan	5%	Credit Scoring, Homeownership, Income	No
Commerce	Number of Drivers and Vehicles	Up to 5%	Marital Status, Income	No
Safety	Other Insurance Policy with Safety	10%	Credit Scoring, Homeownership, Income	No
Safety	Good Student	10%	Education, Income, Race, National Origin	No
Safety	Hybrid Vehicle	10%	Marital Status, Age, Income	No
Safety	Loyalty	Up to 8%	Race, Lane-Bolling Amendment, Income, Urban Subsidies	No
Safety	Multi-Car	Enhanced by 5%	Marital Status, Income	No
Arbella Mutual	Homeowners' Policy with Arbella, FAIR Plan, or any non-auto insurer	5%	Credit Scoring, Homeownership, Income	See Note below
Liberty Mutual	Years Licensed	Up to 20%	Age	No
Liberty Mutual	Liberty Preferred	Up to 15%	Credit scoring, Homeownership, Income, Race, Marital Status	No
Liberty Mutual	Good Student	10%	Education, Income, Race, National Origin	No
Metropolitan	Multi-Car	Enhanced by up to 10%	Marital Status, Income	See Note below
Metropolitan	Good Student	10%	Education, Income, Race, National Origin	No
Metropolitan	Automatic Payment	5%	Income, Occupation	No

NOTE: Arbella Mutual's homeowners' policy (or other companion policy) discount considers driving record to a very limited degree. The discount applies to all but one group of Arbella's customers. One of the many criteria for placement in that non-preferred group is based on the number of losses (including non-at-fault losses) paid in the past on a driver's auto policy.

In addition to the discount listed above for Arbella Mutual, the insurer uses complex rating categories that take into consideration the number of vehicles, the age of the policy, whether the collision coverage is purchased, and the number of losses on the policy. This raises the same issues that arise with Multi-Car and Loyalty discounts, as well as the issue that the consideration of the purchase of the collision coverage circumvents the prohibition on the use of income for rating. Arbella Mutual also imposes a 10% surcharge on many drivers with over 50 years of driving experience, which circumvents the legally required 25% discount for drivers aged 65 years or older.

Metropolitan's Multi-Car discount is available to all eligible drivers, but the size of the discount takes driving record into consideration.

TABLE 2
Category II – Low Mileage and Driver Training Discounts

Insurer	Type of Discount	Size of Discount	Based on Driving Less?	Based on Driver Training?
Safety	Away at School	10%	Yes	No
Liberty Mutual	Public Transit	Enhanced by 5%	Yes	No
Liberty Mutual	Driver Training	Enhanced by 4.5% or 5%	No	Yes
Liberty Mutual	Annual Mileage	Enhanced by up to 5%	Yes	No

Discounts based on driving less or on driver training generally fit well into a driving-based competitive rating system. One exception to that is the "away at school" discount offered by Safety and other insurers. While it is true that a student who is "away at school" would be expected to drive less than one living at home, there is a dual purpose to the discount. In general, only college students and preparatory school students would be eligible for this discount, making it a rating proxy for the educational level of the student. Furthermore, as noted above in the discussion of "good student" discounts, going to college reflects on both the income level and the educational level of the policyholder parents. And, certainly, going to preparatory school reflects on the income

and educational level of the parents. Thus, the "away at school" discount acts as a proxy for the educational level of the student, the educational level of the parents, and the income level of the parents. The Division should analyze this discount to determine whether the discriminatory nature of the discount outweighs its value as an indicator of driving less. At a minimum, careful scrutiny of the size of the discount is warranted to ensure that it is not based on savings attributable to a prohibited proxy factor. To date, there is no evidence that the Division engaged in the kind of analysis that would justify the approval of this discount.

TABLE 3
Category III – Discounts Based on Driving Record

Insurer	Type of Discount	Size of Discount	Based on Driving Record?
Safety	Excellent Driver and Excellent Driver Plus	Enhanced by 8%	Yes
Metropolitan	Excellent Driver Plus	Enhanced by 7%	Yes

In addition to the two enhanced discounts listed in Table 3, Arbella Mutual's category formula is based in part on driving record. The formula takes into consideration the number of losses, regardless of fault of the driver. (A single non-at-fault accident is not counted against the policyholder.) Non-at-fault accidents unfairly penalize good drivers for the behavior of the bad drivers who cause accidents. The use of non-at-fault accidents in the formula is especially unfair to urban drivers, who, because there are more accidents in urban areas, are more likely to be struck by another vehicle.

The Safety and Metropolitan enhanced discounts are exactly the kind of discounts that the Division should be promoting. The best way to accomplish that would be to ban the use of the Category I discounts, which are not based on driving record, driving less, or driver training. Insurers would then be forced to compete on "how you drive" rather than "who you are." While the Division of Insurance's "managed competition" regulation purported to ban the use of discriminatory rating factors, the application of the regulation by the Division has produced the opposite result. The approval of so many Category I discounts has enabled insurers to circumvent the regulation and has undermined driving-based competition.[12]

[12] Even Metropolitan and (especially) Safety have offered enough Category I discounts to overwhelm the positive impact of their enhanced safe-driver discounts.

E. Who Is Paying for All of These Discounts?

The typical practice of insurers is to fund a specific discount to drivers by charging more to those drivers not receiving the discount.[13] "Managed competition" follows this practice. In lay terms this means: ***If you're not receiving a particular discount, you're paying for it.***

Here's how it works for most insurers under "managed competition." The base rates – that is, the rates for a driver who receives no discounts (or surcharges) – were increased for most coverages, sometimes by as much as 10%. Anyone not receiving a *new* discount or surcharge would get a rate increase equal to the amount of the base rate increase.

An example illustrates this well. Commerce raised its base rates for Class 10 (Experienced Driver Class) by 8.1% for the Property Damage Liability (PDL) coverage for all territories. Any experienced driver not eligible for one of Commerce's new discounts would see a rate increase for the PDL coverage of 8.1%. To receive Commerce's average rate decrease of 6.4% for PDL, a driver would need to obtain enough discounts to bring the 8.1% increase down to a 6.4% decrease. (A combination of a 10% discount and a 4% discount would produce that result.)

Here is the problem for many of the best drivers insured by Commerce: All of Commerce's new discounts are in Category I and are not based on driving record. Commerce customers who have perfect driving records but who fare poorly on the "who you are" criteria underlying Commerce's discounts will receive PDL rate increases as high as 8.1%. This could apply, for example, to a 27-year-old who rents an apartment and has a perfect driving record.

The numbers also work out badly for many perfect drivers who are customers of other insurers. Table 4 presents the above example based on the approved rates for the top five insurers.

TABLE 4
Experienced Driver PDL Base Rate Increases for the Top Five Insurers

Insurer	PDL Base Rate Increase	Average PDL Rate Change	Difference
Commerce	8.1%	-6.4%	14.5%
Safety	8.4%	-7.2%	15.6%
Arbella Mutual	10.0%	0.9%	9.1%
Liberty Mutual	9.8%	-7.0%	16.8%
Metropolitan	7.6%	-1.3%	8.9%
Weighted Average	**8.6%**	**-5.1%**	**13.7%**

[13] One noteworthy exception to this practice was the manner in which insurers funded safe-driver and group discounts under the "fix and establish" rating system. The Commissioner set overall rates and discounts; individual insurers had to use their own profits from rates already determined to be fair to fund any additional discounts they wished to offer.

A perfect driving record is not enough to bridge the 13.7% gap between the 8.6% PDL weighted average base rate increase and the 5.1% weighted average PDL rate decrease the insurers expect their customers to receive. In fact, for customers of Commerce and Liberty, a perfect driving record doesn't reduce their respective PDL base rate increases of 8.1% and 9.8% at all! Even customers of Safety, which gives the largest enhanced discount for a clean record, cannot receive a PDL decrease larger than about 2% without obtaining one of Safety's discounts that is based on something other than driving record.

F. Rate Increases for Many Drivers with Perfect Records and Huge Breaks for Many Drivers with Bad Records

Based on the above analysis, drivers who fare poorly on the "who you are" criteria underlying the Category I discounts will also fare poorly under the new "managed competition" rating system – even if they have excellent driving records. Conversely, drivers with bad records who accumulate large Category I discounts can obtain huge rate decreases. The following example uses approved rates from the top five companies, which insure over two-thirds of the Massachusetts market, to illustrate these inequities:

Perfect Younger Driver (A): Experienced Driver Class, 27-year-old single driver insuring one car, 8 years of driving experience, perfectly clean record, is new business for the insurer, and has no homeowners' insurance policy.

Terrible Older Drivers (B): Experienced Driver Class, 57-year-old married couple insuring two cars, each driver has 38 years of driving experience, each has had a major at-fault accident *every three years* of his or her driving history (which means that over the past six years alone the couple caused four major accidents), insured with the same company for the last 11 years, and the couple also has a homeowners' insurance policy with the company.

Both policies are rated for the Compulsory Package[14] (Parts 1-5) for Territory 12 (Medford, Quincy, Salem, Saugus, Somerville, and Stoughton). Rates for other territories would be different, but the rate changes would be the same, with minor differences due to rounding. The rate changes are the key indicators of how drivers will fare under the new "managed competition" as compared to the "fix and establish" system used in 2007.

First, let's look at the "fix and establish" system that is now being replaced by "managed competition": For 2007, under the "fix and establish" pricing system, Perfect Driver (A) would pay $440 for the one vehicle and Terrible Drivers (B) would pay $1042 *per vehicle* ($2,084 overall). Terrible Drivers (B)'s rates are more than double (137% higher than) Perfect Driver (A)'s rates, reflecting the terrible driving records of the two drivers insured for Terrible Drivers (B).

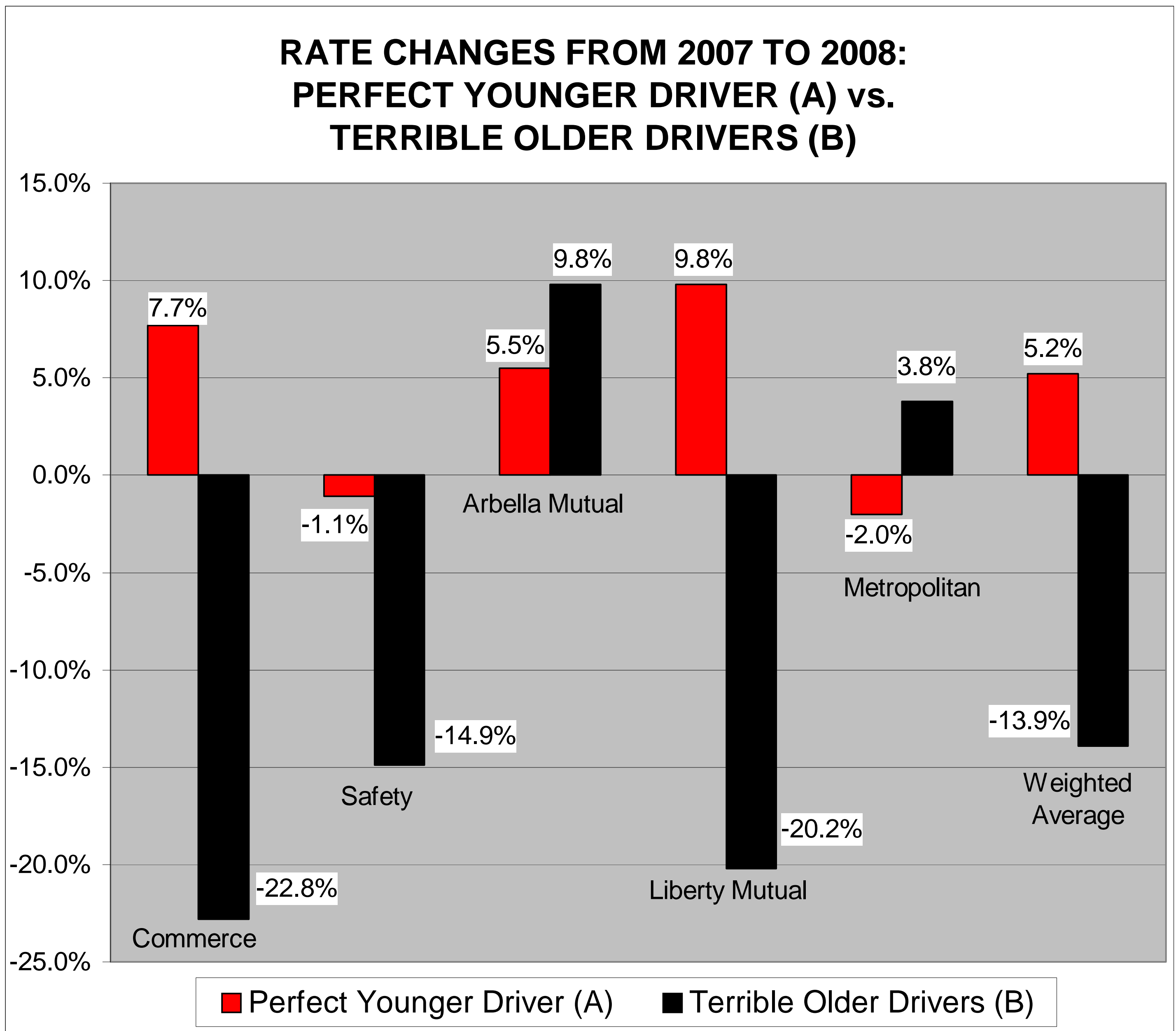
Now, consider the results under the new "managed competition" system:

[14] The sample rates are provided for the Compulsory coverages since everyone purchases at least those coverages. Moreover, the Compulsory Package is more representative of the amount of coverage low-income drivers tend to purchase and therefore is particularly relevant to the analysis of discrimination under "managed competition." In any case, the same general inequities shown for the Compulsory Package also apply to the Standard Package, which includes non-Compulsory coverages.

TABLE 5
Example 1: Rate Changes for the Top Five Insurers – Compulsory Package

Insurer	Perfect Younger Driver (A)	Terrible Older Drivers (B)	Difference
Commerce	7.7%	-22.8%	30.5%
Safety	-1.1%	-14.9%	13.8%
Arbella Mutual	5.5%	9.8%	-4.3%
Liberty Mutual	9.8%	-20.2%	30.0%
Metropolitan	-2.0%	3.8%	-5.8%
Weighted Average	**5.2%**	**-13.9%**	**19.1%**

CHART FOR TABLE 5



As can be seen, under the new approach, Perfect Driver (A), with the perfect driving record, pays 5.2% ***more*** on average than in 2007, while Terrible Drivers (B), with two horrible drivers, pay 13.9% ***less*** on average than in 2007.[15] This is the direct result of the

[15] Of course, Terrible Driver (B) still pays much more per vehicle than Perfect Driver (A), but Terrible Drivers B now pay 94% more per vehicle than Perfect Driver (A) instead of 137% more.

de-emphasis of driving record and the approval of the Category I discounts under "managed competition."

Age discrimination is one of the significant factors in the above example. Still, removing the age differential from the example produces a rate change that is about 10% lower on average for the terrible drivers than for the perfect driver:

Perfect Driver (C) (age 35): Experienced Driver Class, single driver insuring one car, 16 years of driving experience, perfectly clean record, is new business for the insurer, and has no homeowners' insurance policy.

Terrible Drivers (D) (each age 35): Experienced Driver Class, married couple insuring two cars, each driver has 16 years of driving experience, each has had a major at-fault accident *every three years* of his or her driving history (which means that over the past six years alone the couple caused four major accidents), insured with the same company for the last 11 years, and the couple also has a homeowners' insurance policy with the company.

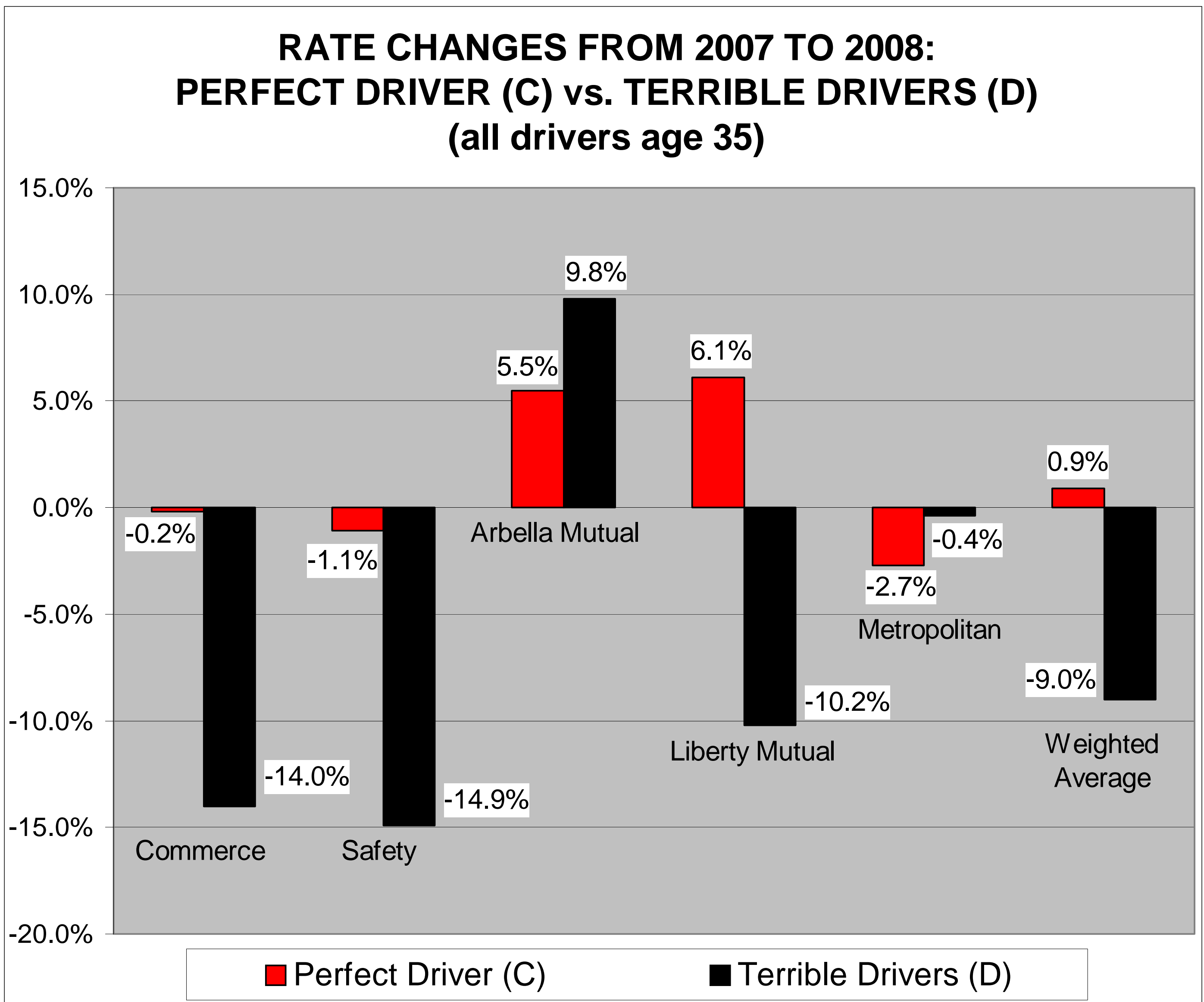
Both policies are rated for the Compulsory Package (Parts 1-5) for Territory 12 (Medford, Quincy, Salem, Saugus, Somerville, and Stoughton). Again, rates for other territories would be different, but the rate changes would be the same, with minor differences due to rounding. The rate changes are the key indicators of how drivers will fare under the new "managed competition" as compared to the "fix and establish" system used in 2007.

As in the previous example, for 2007, under the long-standing "fix and establish" system, Perfect Driver (C) would pay $440 for the one vehicle and Terrible Drivers (D) would pay $1042 *per vehicle* ($2,084 overall). Terrible Drivers (D)'s rates are more than double (137% higher than) Perfect Driver (C)'s rates, reflecting the terrible driving records of the two drivers insured under Terrible Drivers (D).

TABLE 6
Example 2: Rate Changes for the Top Five Insurers – Compulsory Package

Insurer	Perfect Driver (C) (age 35)	Terrible Drivers (D) (each age 35)	Difference
Commerce	-0.2%	-14.0%	13.8%
Safety	-1.1%	-14.9%	13.8%
Arbella Mutual	5.5%	9.8%	-4.3%
Liberty Mutual	6.1%	-10.2%	16.3%
Metropolitan	-2.7%	-0.4%	-2.3%
Weighted Average	**0.9%**	**-9.0%**	**9.9%**

CHART FOR TABLE 6



Again, under the new rating system, Perfect Driver (C) pays ***more*** (0.9% on average) than he or she paid in 2007, and Terrible Drivers (D), with two very dangerous drivers, pay ***less*** (9.0% on average) than in 2007.[16] As was the case for the previous example, this is the direct result of the de-emphasis of driving record and the approval of the Category I discounts under "managed competition."

[16] Again, Terrible Drivers (D) still pay considerably more per vehicle than Perfect Driver (C), but Terrible Drivers (D) now pay 114% more than Perfect Driver (C) instead of the 137% more that would have been paid under the prior system.

G. Shopping Around Is Not the Answer – Fair Competition Is

Some might suggest that the above examples show the importance of shopping around for the lowest rate. That is plainly not the case. The perfect drivers, (A) and (C), in the examples, have a much worse range of options than the terrible drivers, (B) and (D). No amount of shopping around can change that.

Moreover, there are limitations on the ability of consumers to shop around. Shopping takes time, and requires consumers to look beyond their current agent, who usually represents only a few insurers. Many consumers do not want to change agents, whom they generally trust much more than their insurers, in order to save five or ten percent on their rates. Also, many consumers currently have group discounts with their existing insurer and would lose them if they moved to a new insurer. For instance, Commerce would increase Perfect Driver (A)'s rates by 7.7%. But Perfect Driver (A) might have had a 5% AAA group discount with Commerce in 2007.[17] If Perfect Driver (A) shifts from Commerce to Metropolitan, Perfect Driver (A)'s rates would not drop by 2.0% as shown in Table 5. Instead, Perfect Driver (A)'s rates would increase in 2008 by 3.1% as a result of the losing the AAA discount. A 3.1% increase might be the best deal Perfect Driver (A) can get, but it might not warrant switching agents.

Most important, a consumer with Perfect Driver (A)'s excellent driving record should not have to shop around to receive a significant rate decrease. Under our "fix and establish" rating system, Perfect Driver (A), as well as Perfect Driver (C), received rate decreases for the Compulsory Coverages of 9.9% and 11.8% in 2006 and 2007, respectively.[18] A competitive system based on driving record – rather than the socio-economic factors emphasized by Commissioner Burnes's approach – would have produced a similar decrease for 2008. To achieve this result, the Commissioner needed to limit competition to driving record and to prevent the insurers from padding their rate filings with proposals that had been routinely rejected by previous Commissioners of Insurance. Instead, the Division approved numerous proxies for prohibited rating factors and simply accepted the insurers' 7.1% overall average rate reduction, as well as their unsupported assertions relating to the true size of that reduction.

The ideal competitive rating system would have merged the best aspects of the previous system with the best aspects of a competitive market. It would have required insurers to compete based on driving record and would have produced an overall average rate reduction of at least 11%. All drivers with good records, including drivers like Perfect Drivers (A) and (C), would have seen large rate decreases. By shopping around,

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[17] About 700,000 (over half) of Commerce's customers – and 17% of the total Massachusetts auto insurance market of four million drivers – currently receive the AAA discount.

[18] The statewide overall average rate change for 2006 was –8.7% and for 2007 was –11.7%.

decreases well in excess of 11% would likely have been available to these good drivers, regardless of socio-economic and other prohibited factors.

Unfortunately, despite popular sounding rhetoric of the insurers and the Commissioner of Insurance to the contrary, the supposedly prohibited factors are the focal point of "managed competition." Consequently, driving record is much less important a rating factor than in the past. Many drivers with perfect records will not receive rate decreases in excess of 11%, magnitudes that they deserve as a reward for "how they drive." Many of these drivers will not receive any decrease at all, or even rate increases. In contrast, many drivers with bad records will receive huge rate decreases based on "who they are." And insurers will be the big winners in this newly deregulated market.

CONCLUSION

In moving to a new rating system for its auto insurance market, Massachusetts had a unique opportunity to preserve the advantages of the previous rating system – especially its emphasis on driving record and its prohibition on the use of socio-economic and other discriminatory factors – and to improve that system by fostering more competitive pricing. Massachusetts consumers were told by the Division of Insurance and the large national insurers that the new rating system would reward drivers with good records, penalize drivers with bad records, and prohibit insurers from using socio-economic and other discriminatory factors. Had this all been true, Massachusetts would have a rating system that would be the envy of the nation.

Unfortunately, none of this was true. The Division of Insurance and the insurers created a system that benefits the insurance companies at the expense of some of the best, most careful drivers in the Commonwealth. Instead of structuring rating factors aimed at a consumer's driving record, insurers are now competing with one another to develop the most creative proxies for prohibited rating factors. The Division has already summarily approved countless numbers of these proxies, and driving record has gone from being the primary rating factor in Massachusetts to a diluted one. Factors relating to "who you are" – income, marital status, homeownership, education, age, race, and other factors supposedly prohibited for use by the Division – are the very foundation of the new "managed competition" system. As a result, starting in April consumers with perfect driving records who have the least resources in our society will pay more to fund discounts to wealthy motorists, including those with terrible records. Sadly, this much-touted insurance overhaul violates the principles of fairness that the Patrick Administration was entrusted to uphold.