

January 17, 2023

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Cc: Members of the New York Standing Committee on Insurance and New York Senate Insurance Committee

Re: Opposition to A7614/S07129-Relates to the Use of Telematics Systems by Insurers

The Consumer Federation of America and Consumer Reports<sup>1</sup> urge the Standing Committee on Insurance to oppose the bill A7614/S07129—Relates to the Use of Telematics Systems by Insurers. This bill would not meaningfully protect consumers or ensure that telematics has adequate oversight or regulation. Instead, it would perpetuate the status quo, weaken already existing regulations and allow insurers to collect and use data, including location data, as they see fit.

Telematics, or usage-based insurance (UBI), are insurance programs that capture consumers' driving data via devices, built-in technology, and mobile phones. The programs use that data to assess consumers' driving behavior, driving patterns, and sometimes additional data, to calculate your insurance premium. The savings and surcharges vary by company as do the driving behaviors measured. Some of the driving behaviors measured include hard braking, the time of day or night when driving, distance or miles traveled, acceleration, speed, cornering (how sharply and quickly someone goes around corners) and location. Additional evidence implies that auto insurance companies collect substantially more consumer data than their highlights suggest and it is unclear for what purposes they collect this data.

CFA has presented to the Consumer Liaison Committee and the Property and Casualty Committee at the NAIC on telematics and the need for stronger consumer protections. New

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<sup>1</sup> Consumer Federation of America (CFA) is an association of over 250 consumer organizations that works to advance the consumer interest through research, advocacy, and education. We work to make insurance more affordable and accessible, conduct research on insurance markets, and combat unfair discrimination. Consumer Reports (CR) is an independent, nonprofit membership organization that works side by side with consumers to create a fairer, safer, and healthier world. Since 1936, CR has provided evidence-based product testing and ratings, rigorous research, hard-hitting investigative journalism, public education, and steadfast policy action on behalf of consumers' interests. As part of its work, CR reports on the insurance marketplace and publishes comparative ratings of insurance companies for use by consumers and advocates for fair and affordable auto and homeowners insurance.

York is one of the few states that offers any consumer protections concerning the use of telematics, in the form of guidelines from the Department of Financial Services.<sup>2</sup>

CFA has identified the following five critical pillars for consumer protection when insurers use telematics systems:

- 1) Transparency regarding all variables used in telematics programs and consumer-facing explanations of the weight given to each variable;
- 2) Actuarial support for each variable;
- 3) Strict limits on the data collected and used by auto insurers, so it will only be used for relevant insurance purposes;
- 4) Strong privacy standards for consumers and their data, and
- 5) Testing for unfair and unintentional bias

The first objective is transparency and explanations of the weight given to each variable in a telematics program. Insurers should provide their customers with a list of all variables used to calculate their premiums, in a format approved by the Department of Financial Services. The list should be presented in an easily understandable manner for consumers and include an explanation of what each variable is assessing. And the list should also disclose the relative weight given to each variable in the telematics algorithm in a way that makes it clear how much impact each variable will have on consumer premiums.

Second, there should be actuarial support for each variable in a telematics program. Specifically, insurers must provide actuarial justification and causative explanation for each data point used.

Third, there should be strict limits on the data collected and used by insurers. Insurance companies, and any third-parties managing telematics programs, must only be allowed to collect data necessary to calculate a consumer's premium in accordance with the approved telematics program. And policyholders should have the right to access, review, contest, and use any data collected as part of a telematics program. Beyond its use for insurance rating, the only other appropriate uses of the data are driving safety communications, crash response, and claims handling.

Fourth, there should be strong privacy standards for consumer data. The rules should be clear that data collected shall not be sold, loaned, rented, shared, monetized, or used in any way beyond the approved auto insurance purposes. Consumers shall have access to all data collected and information about how and where the data are stored, and how long data will be maintained by the insurer.

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<sup>2</sup> "Updated Guideline for New York UBI Programs (Plug-in Telematics Devices and Smartphone Apps)." Available at [https://aicp.net/wp-content/uploads/2020/12/NY\\_DFS\\_UBI\\_PC\\_Guidelines\\_including\\_Smartphone\\_Apps\\_25\\_April\\_2019.pdf](https://aicp.net/wp-content/uploads/2020/12/NY_DFS_UBI_PC_Guidelines_including_Smartphone_Apps_25_April_2019.pdf).

Finally, telematics programs should be tested for unfair and unintentional bias. The focus should be on assessing the outcomes of the telematics algorithm – how much is a customer charged as a result of the telematics system – and determining which, if any data elements of the program are driving protected class discrimination. This aspect of oversight should also include a requirement that insurers mitigate disparate impacts of unfair discrimination identified through testing.

*A7614 does not create any of these pillars of protection.* This bill lists a number of driving behaviors that auto insurers can collect and use, and states that the behaviors can be used for claims settlement purposes, rate filings, establishing insurance premiums, and other purposes including risk mitigation. Furthermore, the bill allows insurance companies to share the data collected through telematics with policyholders and other people if the policyholders consent. The bill would empower the insurance industry to continue to use telematics without effective oversight or consumer protections.

Most consumers do not currently participate in telematics, despite aggressive insurer efforts to promote these programs. Consumers are wary of these programs because of their concerns about data privacy and what data insurance companies are collecting, concerns about control over their data, and vulnerability to data hacks and breaches. Again, A7614 does nothing to address any of these concerns.

Consumer Federation of America and Consumer Reports believe that telematics data should only be used for insurance purposes and shared with the policyholders themselves. While telematics holds potential for both encouraging safer driving and increasing fairness in pricing, telematics needs thorough oversight and guardrails for consumers. Instead of A7614, the legislature should pass a different telematics bill, S553. Sponsored by Senator Kevin Thomas, S553 provides a framework to allow telematics to offer benefits to consumers while ensuring fair pricing and protecting consumers from unfair and unnecessary exploitation of the data collected by insurers.

We urge you to oppose A7614. Consumers need stronger and more effective regulations and laws governing telematics, which this bill does not provide.

Please contact us at [mdelong@consumerfed.org](mailto:mdelong@consumerfed.org) with any questions.

Sincerely,



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