



Consumer Federation of America

Comments of Consumer Federation of America to the National Association of Insurance Commissioners E-Commerce Working Group Regarding Proposed Framework of Issues and Actions for Working Group Activity—Telematics and Auto Insurance

March 26th, 2023

The Consumer Federation of America (CFA) offers the following comments to the National Association of Insurance Commissioners (NAIC) E-Commerce Working Group for the Innovation Cybersecurity and Technology (H) Committee regarding the E-Commerce framework exposed for comment on February 21, 2023 and the survey to insurers related to technology, e-commerce, and conducting business electronically in response to the pandemic.

Specifically, our comments address the final item listed in the “(5) Other” category of survey responses: the use of telematics in auto insurance, in which industry reportedly seeks “Statutory modifications expressly providing for use of this technology for underwriting and rating purposes.” While the industry’s desire for unimpeded and unregulated use of telematics is not new, it has nothing to do and should not be included in a further discussion of “exceptions to state laws or regulations [that] were implemented during the pandemic that allowed electronic commerce, electronic transactions, and electronic communications to take place when in-person methods were not possible,” which the survey sought to understand.

Starting with the most obvious point, telematics was first initiated in the 1990s and was adopted by many large insurers in the 2010s; it was not “implemented during the pandemic.” Statutory modifications expressly providing for the use of telematics for underwriting and rating cannot be slipped into a discussion of e-commerce workarounds during the pandemic that might have ongoing value under normal conditions.

CFA generally supports e-commerce in ways that help consumers obtain the insurance products they want and help them obtain the benefits for which they have contracted with insurers. However, telematics and several other items identified by the insurance industry in response to this survey are not directly related to technical improvements identified or used during the pandemic. They are instead related to broader industry interests concerning significant public policy issues. These issues, including telematics, should be addressed by the subject-matter working groups, with ample public notice and opportunity for insights and comments from consumer advocates.

Telematics devices, in the form of devices that are plugged into cars or apps that are downloaded onto phones, are already used by many auto insurers. These devices track consumers’ driving actions and other driving-related data and calculate auto insurance premiums based on that driving behavior. Examples of driving behavior measured in telematics

include the distance or miles traveled, hard braking, the time of day or night driven, acceleration, speed traveled, and cornering. A lack of transparency about the full set of data captured by insurers suggests that other aspects of driving, including location, may also be tracked by some insurers or third-party vendors.

Theoretically, telematics devices can result in more accurate auto insurance premiums, with rates being more closely matched to risk. They could also encourage safe driving behavior and movement away from the use of unfairly discriminatory socioeconomic factors. However, there are also serious concerns, including data privacy issues, a lack of transparency regarding data models and algorithms in these programs, a need to review the actuarial utility of each element of data collected, and concerns about the use of the data beyond the auto insurance underwriting and rating purposes, among others.

In their evaluation of insurer responses to the survey, the E-Commerce Working Group concluded that insurers want statutory modifications expressly allowing the use of telematics for underwriting and rating purposes. Any statutory changes allowing telematics should contain strong protections for consumers, including the following:

- Strict limits on the data collected and used by insurers in telematics programs. Regulators should only allow, after review, data demonstrably related to the risk of loss;
- Actuarial justification and causative explanation from insurers for each data point used, including an explanation of how each component is related to risk;
- A requirement that third-party vendors involved in telematics be subject to state Insurance Department oversight;
- Algorithmic transparency for legislators and consumers, with all components and inputs identified, as well as the weight given to each component and input;
- Strong privacy standards, including consumer control over their driving behavior data, a requirement that data should only be used for evaluating risk, and a prohibition of insurers' selling data for non-insurance purposes; and
- A requirement that telematics algorithms undergo a disparate impact analysis to find and correct unfair discrimination against protected classes of consumers.

CFA's 2021 white paper goes into greater detail about telematics programs and the need for adequate regulation and oversight.¹ Telematics devices and programs might offer benefits to consumers, but they also pose substantial problems. Any model laws or regulations, bulletins, or statutory changes expressly allowing telematics should include consumer protections. In any event, telematics does not belong on a list of pandemic-related adaptations and should be taken up by its subject-matter working group where it can receive appropriate public policy review.

¹ "Watch Where You're Going: What's Needed to Make Auto Insurance Telematics Work for Consumers." By Douglas Heller and Michael DeLong. Consumer Federation of America. May 26, 2021. Available at <https://consumerfed.org/wp-content/uploads/2021/05/Insurance-Auto-Telematics-White-Paper-5-26-21.pdf>.

Please contact us at mdelong@consumerfed.org with any questions.

Sincerely,

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