

**STATE OF MAINE  
BUREAU OF INSURANCE**

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IN RE: )  
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APPEAL OF DISAPPROVED RATE )  
FILINGS BY PROGRESSIVE )  
CASUALTY INSURANCE COMPANY, )  
PROGRESSIVE NORTHWESTERN )  
INSURANCE COMPANY, )  
PROGRESSIVE NORTHERN )  
INSURANCE COMPANY, AND UNITED )  
FINANCIAL CASUALTY COMPANY )  
)

**APPELLANTS' RESPONSES TO THE  
SUPERINTENDENT'S FIRST  
INFORMATION REQUEST TO INSURERS**

Docket No. INS-15-1001

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Progressive Casualty Insurance Company, Progressive Northwestern Insurance Company, Progressive Northern Insurance Company and United Financial Casualty Company (collectively, "Progressive") hereby responds to the Superintendent's First Information Request, dated November 6, 2015:

**Request # 1:**

As Bureau of Insurance Bulletin 334 interprets the statutory prohibition, imposed by 24-A M.R.S. §2916, from "increas[ing] the premium of any automobile insurance policy of any kind whatsoever for the sole reason that the person to whom such policy has been issued has reached a certain age," the result is that "an insured's premium may not increase if the only change is the change in the age of the insured," even if increased classification rate factors for operators above specified ages are "part of a multivariate analysis of loss expectation." Suppose, *arguendo*, that the Bulletin's interpretation of the statute is correct. If so, did Bureau staff properly disapprove the proposed rate filings as being in contravention of section 2916? If the disapproval was improper even if the Bulletin correctly interprets the statute, why? Please provide a detailed explanation.

**Response:**

Progressive respectfully disagrees with the Request's characterization of Bulletin 334 as mandating that "*an insured's premium may not increase if the only change is the change in the age of the insured, even if increased classification rate factors for operators above specified ages are 'part of a multivariate analysis of loss expectation.'*" (underline added.) Respectfully this request improperly fuses two distinct portions of the Bulletin, adds the phrase "even if", and changes the Bulletin's meaning as a result.

Bulletin 334 actually states:

*Often in the increase in rates with increasing age is part of a multivariate analysis of loss expectation. Insurers are reminded that all automobile insurance rating plans are subject to the provisions of Section 2916 and that an insured's premium may not increase solely due to the advancement in age or the movement to another age group. It is the Bureau's position that an insured's premium may not increase if the only change is the change in the age of the insured.*

These sentences, within the Bulletin, do not articulate a prohibition on use of any multivariate analysis of loss expectation which results in correlation between increased rates and increased age. Quite the opposite, the Bulletin reads the statute to prohibit arbitrary rate increases as a result of a policyholder getting older. Multivariate, actuarially justified analysis of loss expectation prevents such arbitrary and discriminatory age-based rate increases.

Keeping in mind that, as stated on the Bureau website, "Insurance Bulletins are intended solely for information purposes" and "not...to set forth legal rights, duties or privileges", Progressive believes that the actual Bulletin's interpretation of 24-A M.R.S. §2916 (as discussed above) correctly constrains application of the statute. The Bulletin simply articulates in slightly more detail the statutory prohibition on the arbitrary and discriminatory increase in rates for the sole reason that an insured has aged.

Bureau staff improperly disapproved The Rate Filing because The Rate Filing was the product of actuarially justified, multivariate analysis of loss expectations. The Rate Filing's rating factors are risk-based, not age-based, and are not contrary to §2916.

**Request #2:**

Consider the following two possible interpretations of 24-A M.R.S. §2916.

- I. An automobile insurance rating plan in Maine may never include one or more increased classification rate factors for operators above specified ages.
- II. An automobile insurance rating plan in Maine may include increased classification rate factors for operators above specified ages if and only if such factors are part of an actuarially justified multivariate analysis of loss expectation.

**Request #2(a):**

Do the Insurers agree that the rating plans at issue in this proceeding should be disapproved if Interpretation I is correct and approved if Interpretation II is correct? If not, please provide a detailed explanation.

**Response to 2(a):**

Progressive views Interpretation I of §2916 as a completely unrealistic interpretation that ignores actuarial science and the plain language of the statute. Interpretation I improperly reads §2916 to

concern classification rate factors rather than pure causation, and renders meaningless §2916's phrase "for the sole reason that". If this interpretation were correct, every filing in Maine containing any correlation whatsoever between increased rates and increased age of any insured would be suspect because §2916 applies to drivers of every age, not just elderly drivers. This interpretation also ignores the fact rates are based on data – it is impossible to suggest loss data will become static at any point in time. As is discussed further below, this interpretation results in subsidization of rates by those not in the 'specified age' band. That is clearly not the intent of §2916.

Progressive agrees that The Rate Filing should be approved under Interpretation II, although this Interpretation is also far more constraining than the statutory text. The use of "if and only if" in Interpretation II creates a presumption—not present in the statute—that a rate filing is illegal, which can only be overcome by showing that it is the product of actuarially justified multivariate analysis of loss expectation. While such multivariate analysis will support a filing with increased classification factors, other approaches could also be acceptable as long as age is not the "sole reason". Regardless, in this case, The Rate Filing is supported by actuarially sound multivariate analysis of loss expectation, and its premiums do not increase as a result of increases in policyholder age, and therefore it should be approved under Interpretation II.

**Request #2(b):**

Is there a third interpretation that the Superintendent should consider as a possible alternative to Interpretations I and II? If so, please describe it and explain, with examples, why it is different from Interpretations I and II.

**Response to 2(b):**

24-A M.R.S. §2916 is plainly and explicitly limited in scope to prohibiting Filings where an increase in age, by itself, causes an increase in rates. The statute is not intended to frustrate rate filings, or to create a presumption which a carrier needs to overcome; it creates a narrowly drawn exception, and its role in the process should be limited. A Filing complies with §2916, even if it includes a correlation between increase in age and increase in rates, so long as an increase in age does not, by itself, cause an increase in rates.

More specifically, §2916 cannot be read to outlaw any linkage between rates and expected losses, nor can it be read to mandate rates which would be illegal under 24-A M.R.S. §2382 ("[r]ates may not be excessive, inadequate, or unfairly discriminatory"). Rates must be permitted to increase with expected losses because if they were not, the result would necessarily be privileging one class of drivers over another; in this case setting artificially high rates for younger drivers so as to subsidize artificially low rates for older insureds. Such a regime would be clearly illegal under 24-A M.R.S. §2382.

Under this interpretation, The Rate Filing complies with §2916 because it does not arbitrarily or discriminatorily increase rates for policyholders who reach a certain age. Any rate increases are the result of a multivariate analysis of loss expectation. This interpretation of §2916 is also

consistent with the Bureau's past approval of Filings which contain correlations between increased rates and increased age.

**Request #3.**

If, *arguendo*, Bureau staff improperly disapproved the proposed rate filings when they determined that the rating factors for drivers over the age of 65 appearing in Exhibit 1C violated section 2916, what reason(s) demonstrated in the rate filings, other than age, formed for the basis for the increases in premiums for drivers over the age of 65? Please provide a detailed explanation.

**Response:**

Age is not a reason for increased rates in the The Rate Filing. The only reason for increased rates is the increase in expected losses.

The Rate Filing either includes or "incorporate[s] by reference" both the "material that has been approved by the superintendent at the times rates [were] filed" and "supporting information...used in support of or in conjunction with a rate." 24-A M.R.S. § 2304-A (permitting the information to be incorporated by reference to include "[t]he experience or judgment of the insurer" and "[t]he insurer's interpretation of any statistical data up on which it relies"). Progressive did not file all of the statistical data supporting The Rate Filing because this is neither required by law, *id.*, nor typical of filings in Maine, and would make any particular Filing unreasonably voluminous. To include all underlying data would increase The Rate Filing by thousands of pages. Instead, The Rate Filing incorporates by reference data from a number of previously filed rate revisions (Exhibits 1B, 1D, 2A-D) and, as is commonplace in Maine, incorporates by inference large amounts of underlying data into its proposed rating factors. The rating factors themselves reflect solely the loss profile for a particular class of insured.

The Rate Filing includes certain rate increases which correlate to increased driver age, including, for example, rates for single males, married males, single females, and married females who turn 65; married females who turn 35 and 40; single females who turn 62; married males who turn 63; and single males who turn 64.<sup>1</sup> Looking only at policyholders who turn 65 (since that is the age chosen by this particular Request), the change in rating factors is different from 64 to 65 between married females, single females, married males, and single males:

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<sup>1</sup> It is important to note that §2916 is not limited to elderly drivers. If interpreted so broadly as to prevent any correlation between increased age and increased rates, the statute will prevent desirable and commonplace policy features across the entire age spectrum of policyholders. For example, under the Bureau's interpretation, good student discounts (a commonplace, and desirable, feature of auto insurance products) would be illegal under §2916 if they are only valid until a policyholder reaches a certain age, which is a limitation in most policies.

<b>BI factor from Exhibit IC United Financial Casualty Company</b>	Age 64	Age 65	Difference
Single Female	1.19	1.29	8%
Married Female	.89	1.05	18%
Single Male	1.24	1.45	17%
Married Male	1.05	1.26	20%

The degree of the rate factor increase is different across the different classes of policyholder turning 65. If The Rate Filing increased rates for “the sole reason that” each policyholder turned 65, independent of any multivariate analysis of loss expectation, then the change in rate factors should be the same across the board. But The Rate Filing is the result of complex, actuarially justified, multivariate analysis of loss expectation employing large amounts of underlying countrywide data. This is apparent on the face of The Rate Filing because no actuary could, in good faith and compliance with industry standards, create an actuarially justified rate for any particular policyholder armed only with that policy holder’s age, marital status, and gender. Nor would any actuary attempt to do so in light of actuarial standards requiring the use of risk characteristics which are demonstrably related, by underlying data, to expected outcomes. Many other factors are necessarily underlying and incorporated into the Rate Filing, as is standard practice in the industry.

**Request #4:**

Consider a female, single, 64 year-old policyholder who buys bodily injury, property damage, and uninsured/underinsured coverages from one of the Insurers. Her coverage levels and actuarial characteristics make her subject to the base rates under Exhibit 1A (applying Rate Plan 1 if she obtains coverage from one of the three Progressive companies), with no multipliers other than the applicable rating factors from Exhibit 1C. She then renews the identical coverage the following year, at age 65, with no changes to any rating characteristics except age. What are her issue and renewal premiums under Progressive Product 201502 ME PCIC PNWIC PNIC and under United Financial Product 201502 ME UFCC?

**Response:**

Company	PREMIUM AT ISSUE: AGE 64	PREMIUM AT RENEWAL: AGE 65
Progressive	\$242	\$257
United Financial	\$335	\$351

**Request # 5.**

If the premium for the policyholder described in Question 4 increased at policy renewal, for what reason(s) demonstrated in the rate filings, other than reaching age 65, did her premium increase? Please provide a detailed explanation.

**Response:**

The policyholder's rate increases commensurate with the change in expected costs. Age is not a reason at all for the increased rates for this policyholder. As outlined in response to Request 3, the increased premiums are caused solely by the policyholder's increased loss profile, as determined by an actuarially justified analysis employing the volumes of data underlying and incorporated into The Rate Filing.

**Request #6.**

A hypothetical rating plan uses only two rating factors, age and violation status. The rates for one policy with a typical package of coverages are shown below. As the Insurers interpret the statute, would the rates for this policy comply with 24-A M.R.S. §2916? Explain your answer. If this table does not provide sufficient information, describe the additional information you would need in order to determine whether the rates for this policy do or do not comply with this particular statute. If these rates would violate 24-A M.R.S. §2916 as the Insurers interpret the statute, identify the plan characteristics that cause these hypothetical rates to violate the statute while the rating plans at issue in this proceeding do not violate the statute.

<b>DRIVER AGE</b>	<b>PREMIUM: NO VIOLATIONS PAST 5 YEARS</b>	<b>PREMIUM: ONE OR MORE VIOLATIONS PAST 5 YEARS</b>
16-18	\$800	\$801
19-24	\$500	\$501
25-64	\$300	\$301
65-69	\$375	\$376
70-74	\$450	\$451
75 – up	\$600	\$601

**Response:**

If this hypothetical rating plan did not employ a multivariate analysis of expected losses to create rates, but instead increases rates for the sole reason that a policyholder turned 65, then it would not comply with §2916. However, if this hypothetical rating plan is analyzed by actuaries employing professional standards of practice and is in compliance with 24-A M.R.S. §2303 (requiring due consideration for past and prospective loss experience in the making of rates) it should also incorporate both the information contained in prior approved filings and underlying data needed to determine loss history for particular policyholders. If the Bureau wanted to determine if this rating plan complied with §2916, it should review prior filings and other information incorporated by reference and, if needed, ask the insurer for more information to understand the loss profile inherent to this filing. *See* 24-A M.R.S. §2304-A(4) (“the superintendent may require the insurer to furnish the information upon which it supports the filing.”) From this information, the Bureau should be able to determine if rates increase for “the sole reason that” age increases, or if rate increases are driven by, or include other reasons such as, an increase in expected losses which happen to correlate to increased age.

Dated at Augusta, Maine this 25 day of NOVEMBER.



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