



GENERAL ASSEMBLY OF THE STATE OF NEW JERSEY

Report

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on

Allegedly Discriminatory Practices

in Connection With the Writing of

Automobile Liability Insurance.

Pursuant to

Assembly Resolution Number 2, 1964

February 8, 1965

**New Jersey State Library**

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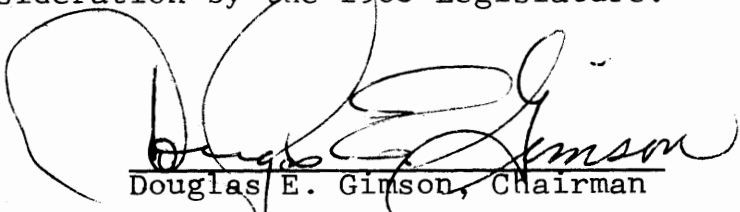
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LETTER OF TRANSMITTAL

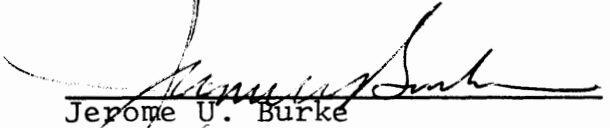
To the Honorable Members of the General Assembly of the  
State of New Jersey

Mesdames and Sirs:

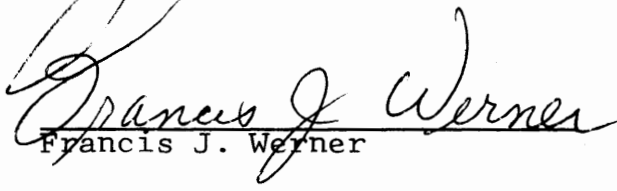
In compliance with Assembly Resolution Number 2 of 1964 "creating a special committee of the General Assembly to study and investigate certain allegedly discriminatory practices in connection with the writing of automobile liability insurance", the Committee herewith respectfully submits its report of findings and recommendations for consideration by the 1965 Legislature.



Douglas E. Gimson, Chairman



Jerome U. Burke



Francis J. Werner

February, 1965

ASSEMBLY RESOLUTION NO. 2

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S T A T E      O F      N E W      J E R S E Y

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Introduced February 10, 1964

Adopted May 11, 1964

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AN ASSEMBLY RESOLUTION creating a special committee of the General Assembly to study and investigate certain allegedly discriminatory practices in connection with the writing of automobile liability insurance.

WHEREAS, There exist widespread complaints alleging discriminatory and unfair practices by insurance companies in connection with the initial issuance and renewal of policies of automobile liability insurance; and

WHEREAS, Such complaints include alleged discrimination on the basis of age and race, and use of quota systems for certain applicants; and

WHEREAS, There are complaints that companies refuse to renew policies for persons involved in accidents, regardless of the person's responsibility for the accident; now, therefore,

BE IT RESOLVED by the General Assembly of the State of New Jersey:

1. There is hereby created a special committee of the General Assembly to consist of 3 members, to be appointed from the

membership of the General Assembly by the Speaker thereof, no more than 2 of whom shall be of the same political party; the Speaker shall designate one of the members as chairman of the special committee.

2. The special committee shall study and investigate allegedly discriminatory practices by insurance companies in the issuance and renewal of policies of automobile liability insurance.

3. The Commissioner of Banking and Insurance and the Director of the Division of Motor Vehicles are requested to co-operate with the special committee in its studies.

4. The special committee shall be entitled to call to its assistance and avail itself of the services of such employees of any State department, board, bureau, commission or agency as it may require and as may be available to it for said purpose, and to employ such stenographic and clerical assistants and incur such traveling and other miscellaneous expenses as it may deem necessary, in order to perform its duties, and as may be within the limits of funds appropriated or otherwise made available to it for said purposes.

5. The special committee shall have all the powers provided by the provisions of chapter 13 of Title 52 of the Revised Statutes.

SUMMARY OF FINDINGS AND RECOMMENDATIONS

Recommendation Number 1

The Committee recommends enactment of legislation to amend the "Law Against Discrimination" to prohibit discrimination on the basis of race, creed, color, national origin, ancestry or solely age in the issuance and renewal of automobile liability insurance.

It is the Committee's conclusion that, on the basis of the evidence and testimony available to it, insurance companies in New Jersey are not currently practicing discrimination based solely on race, color, creed, national origin or ancestry in the issuance and renewal of automobile liability insurance. However, in order to formalize, clarify and insure future conformance with the fundamental belief in racial equality and its application to the insurance field, we recommend enactment of this statute.

The Committee finds that discrimination based solely on advanced age is being practiced to some degree in the issuance and renewal of automobile liability insurance. Since age alone is not a valid basis for determining the existence of increased risk, the Committee recommends inclusion of the prohibition against discrimination solely on the basis of age in its proposed amendment to the "Law Against Discrimination".

Recommendation Number 2

The Committee recommends that the insurance industry voluntarily undertake to set up reasonable criteria and a practical

program for determining the existence of physical impairment affecting driving ability for insureds of advanced age.

As previously stated, advanced age alone is not a valid criterion for determining the existence of increased risk. However, the existence of various conditions usually associated with advanced years, such as impaired hearing, and eyesight, slower reflexes and the possible existence of serious physical conditions, are valid criteria to be taken into consideration in determining continued insurability. The existence of such conditions vary with the individual regardless of age and therefore continued insurability should be determined on the facts in each individual case.

#### Recommendation Number 3

The Committee recommends the enactment of legislation to regulate "motor clubs".

#### Recommendation Number 4

The Committee recommends that the Committee be reconstituted with enlarged membership and broader scope.

The Committee found that there may be discrimination practiced in relation to other types of insurance. In addition, the Committee found that certain practices, other than discrimination, in the insurance field, may warrant further study and investigation and possible regulation.

BACKGROUND OF THE PROBLEM

In 1963, there were more than 2,672,932 registered motor vehicles in New Jersey, 95.55% of which were insured. Since enactment of New Jersey's Security Responsibility Law, uninsured motorists must pay substantially higher fees for registration of motor vehicles than insured motorists. In addition, under New Jersey law, the uninsured motorist involved in an accident has additional duties not imposed on the insured motorist.

In view of the additional burdens imposed by law on the uninsured driver, it has become imperative that duly licensed operators of motor vehicles be provided with an orderly channel through which they can obtain automobile liability insurance without undue harassment, delay, unjustified discrimination or excessive cost.

During recent years, the insurance industry has experienced a sharp increase in claims losses and expenses. In order to maintain the balance required between premium receipts and the total amounts paid for claims losses and expenses, companies writing automobile liability insurance have had to adopt more restrictive underwriting policies which, in many respects, have resulted in a shrinking voluntary market for automobile liability insurance. This shrinking voluntary market has had a direct and serious impact on the public seeking insurance.

Restrictive underwriting practices are justifiable when based on valid criteria reasonably related to risk. However, when



criteria are used which are not validly related to risk, such practice represents discrimination and cannot be permitted to exist.

During the past few years, members of the Legislature have received numerous complaints concerning cancellations, non-renewals and refusals to write automobile liability insurance because of discrimination based solely on race or advanced age. As a result of these complaints bills were introduced in the General Assembly in 1963 and in 1964 to amend the "Law Against Discrimination", Chapter 169 of the Laws of New Jersey, 1945, to prohibit any insurance company from discriminating against any person because of race, creed, color, national origin or ancestry in the issuance, withholding, extension or renewal of any policy of insurance, or in fixing of the rates, terms or conditions therefor, or in the issuance or acceptance of any application therefor. In addition, resolutions were introduced to create a special committee to investigate these complaints of discrimination. One such resolution, Assembly Resolution Number 2 of 1964, was adopted, and is the authority for the present investigation.

The Special Committee was organized in the late Spring of 1964 and immediately undertook a thorough and extensive investigation of the complaints received and a study of the laws in New Jersey and other states dealing with the problem. During the course of its study the Committee consulted with and received valuable assistance from the Honorable Charles R. Howell, Commissioner of Banking and Insurance, members of his staff and staff members of the Division

of Motor Vehicles in the Department of Law and Public Safety. The Committee has held several closed hearings and three public hearings. Heard at the hearings, which were held on July 31, August 21 and October 7, 1964, were members of the general public, representatives of insurance companies operating in New Jersey, insurance agents and brokers, and representatives of various inspection agencies serving insurance companies.

Initially the Committee had intended to confine the scope of its investigation and study to the subject of discrimination based on race and advanced age. However, as a result of subsequent developments, the Committee expanded the scope of its study to a consideration of the organization and operation of "motor clubs".

#### THE EXISTING NEW JERSEY LAW

Article I, paragraph 5 of the Constitution of New Jersey, 1947, provides that:

"No person shall be denied the enjoyment of any civil or military right, nor be discriminated against in the exercise of any civil or military right, nor be segregated in the militia or in the public schools, because of religious principles, race, color, ancestry or national origin."

Although our insurance laws contain some provisions prohibiting certain forms of discrimination, including a specific prohibition against discrimination on the basis of race in our life insurance law, there is no specific statutory prohibition against discrimination on the basis of race, color, creed, national origin

ancestry or age in our laws which apply to automobile liability insurance.

Our "Law Against Discrimination", P. L. 1945, c. 169, as amended and supplemented, also does not specifically prohibit discrimination in the writing of insurance.

The New Jersey Department of Banking and Insurance has, for many years, taken executive action to prohibit discrimination because of race, color or creed in the writing of automobile liability insurance. Such executive action has been predicated on the belief that the Department has authority to prohibit discrimination as a result of the self-executing Constitutional provision, even in the absence of supplemental statutory provisions.

The policy of the Department of Banking and Insurance was set forth in a letter dated September 17, 1952, from then Commissioner Warren N. Gaffney to automobile liability insurance companies in New Jersey which stated, in part, that:

"I realize that the placing of automobile liability risks today is a large responsibility of management. However, restrictions in underwriting based solely upon race, color or creed cannot be justified and certainly are contrary to the public policy of the State of New Jersey.

"Please furnish me with written assurance that you are not doing anything directly or indirectly which results in discrimination on account of race, color or creed in accepting risks...."

This policy of the Department of Banking and Insurance was re-emphasized by Commissioner Charles R. Howell in his letter of March 26, 1962, addressed to automobile liability insurance companies

in New Jersey. In that letter Commissioner Howell called attention to the earlier statement of Commissioner Gaffney and added:

"... I would like to take this opportunity to re-emphasize and affirm that restrictions in underwriting based upon race, color or creed cannot be justified and are contrary to the public policy of the State of New Jersey. Such restrictions are not justified in any form of insurance. Your attention is particularly directed to forms employed by companies engaged by you to make inspection reports preparatory to final underwriting of the risk. Your prompt advices as to your practices in this regard will be appreciated."

Commissioner Howell's letter was followed by another, dated December 20, 1963, addressed to automobile liability insurance companies. This letter is reported in full below because it is a clear restatement of the policy of the Department of Banking and Insurance and also contains a summary of the responses of insurance companies to the March, 1962, letter.

"Together with my staff, I have carefully reviewed the replies to my letter of March 26, 1962 respecting the underwriting of risks based upon race, color, or creed.

"I should like you to know that, in general, I was quite pleased with the responses and the companies are to be commended for the unequivocal expression that there is no discrimination on account of race, color, or creed in accepting risks.

"It does appear, however, that some companies are still using application forms and engage inspection companies which, in reporting on the risk, indicate on the forms used by them the race, color, or creed of the risk.

"After a careful study, we are satisfied that there is no proper basis for the continuation of forms, or other means, which contain an indication of race, color, or creed, either by the companies or by the inspection services engaged by them. Accordingly, the utilization of any such forms after March 1, 1964 will subject an offending company to appropriate action.

"In conclusion, I should like to point out that a fairly large number of companies engaged solely in the underwriting of automobile risks apparently misconstrued my letter of March

26, 1962 as being applicable to only life insurance companies despite the fact that the letter contained the statement, 'Such restrictions are not justified in any form of insurance'. I wish it emphasized that this letter, as did that of March 26, 1962, applies to all companies underwriting risks in this State."

### FINDINGS AND RECOMMENDATIONS

#### A. Discrimination Based Solely on Age

The Committee received many letters of complaint charging that insurance companies were refusing to renew policies for persons of advanced age, refusing to issue insurance to new applicants of advanced age and, in some instances, were reducing the limits of coverage for insureds of advanced age. These charges were also repeated by members of the general public who testified at the public hearings. The evidence indicated that age alone was, in many instances, the sole criteria for refusal to renew or issue insurance. No effort was made to secure information on the physical condition of the insured or prospective applicant.

Although most insurance companies stated that they continued to insure persons of advanced age who had carried insurance with them for a long period of time, there was evidence that some insurance companies make it a policy to refuse to renew after a certain age, to reduce policy limits after a certain age and evidence a reluctance to accept new applications for insurance by persons after a certain age.

It was also found that inspection companies investigating applications for insurance are requested to furnish information on age.

In a letter to the Committee from Commissioner Howell on July 7, 1964, the Commissioner stated the following on the subject of discrimination based on the age of a driver:

"... [T]here came to my attention several years ago the fact that some companies were cancelling or refusing to renew automobile bodily injury and property damage for older drivers. While, obviously, such action was reasonable if the physical abilities of the driver had deteriorated to a point where he is not fit to drive, arbitrary cancellation or refusal to renew merely because the assured had attained a certain numerical age appeared manifestly improper. Accordingly, I directed a letter to the presidents of all companies writing automobile bodily injury and property damage insurance coverages in New Jersey advising them of my views and requiring them to advise me of their underwriting policies and practices in this regard ...."

The Committee concurs with the Commissioner in his conclusion that advanced age alone is not a valid criterion for insurability. It is the incidents of age, i.e., slower reflexes, impaired hearing and eyesight, and the possible existence of serious illnesses, that are valid criteria in determining insurability.

Accordingly, the Committee recommends that the insurance industry voluntarily undertake a program to determine in individual cases the existence of conditions which result in increased risk to a degree that an insured or an applicant is uninsurable.

In addition, the Committee recommends the inclusion in the proposed amendment to the "Law Against Discrimination" of the prohibition of discrimination solely on the basis of age.

B. Discrimination Based on Race, Color, Creed, National Origin or Ancestry

Although the Committee received several letters

complaining of discrimination in the issuance and renewal of liability insurance based on race, no concrete evidence was found to substantiate these claims of discrimination by insurance companies based solely on race. At the public hearing held August 21, 1964, in the Assembly Chambers, certain practices of the Allstate Insurance Company were questioned. This company was asked to investigate allegations of racial discrimination within their agency system. This was done and a very thorough report was filed with this Committee. It was found that there was no substantial evidence of any racial discrimination practiced by the said Allstate Insurance Company. It was further found that, in general, the insurance industry has attempted to concur with the regulations set forth by the Department of Banking and Insurance. Only one member of the general public appeared at the public hearings to testify to the point of racial discrimination. However, on the basis of the testimony, the Committee concluded that race was not the prime cause for difficulties encountered in securing insurance.

Each of the insurance companies appearing at the hearings unequivocally denied discriminating on account of race, color or creed in accepting risks. In addition, and, in some cases, in response to the directives of the Commissioner of Banking and Insurance, the insurance companies have removed any reference to race from their application forms. References to race also appear to have been removed from the investigation report forms used by inspection companies employed by insurance companies.

In connection with this Committee's investigation, Commissioner Howell checked into the total number of complaints received during the calendar year 1963 and found that there were a total of 1,993. His staff reviewed the files to determine how many complaints involved discrimination based on the assured or applicant being a negro. Only two such complaints were found, one of which related to automobile insurance.

It would appear that the high percentage of negroes who have difficulty in securing insurance and are forced to accept "assigned risk" coverage may be due to the existence of factors, other than race, which are valid underwriting considerations. These factors, which may result in the creation of special marketing areas, include moral, income and family stability, the availability of off-street parking, the crime rate and the incidence of vandalism in the area.

Although the Department of Banking and Insurance has taken executive action to prohibit racial discrimination, has acted diligently to correct all complaints based on racial discrimination, and the insurance industry has acted to eliminate racially discriminatory practices, the Committee believes that the policy of the State of New Jersey would be better expressed if put in the form of a statute.

Accordingly, the Committee recommends enactment of legislation to supplement the "Law Against Discrimination". (See Appendix A.)



C. Motor Clubs

During the course of the public hearings, the Committee became aware of the operation of certain "motor club plans". In some cases, applicants for insurance must also join a motor club plan in order to be accepted for liability insurance. Frequently, the applicant is unable to secure insurance elsewhere and, therefore, is forced to purchase the plan membership. Charges for membership in such plans vary. One such plan charges a fee of \$30.00. Benefits derived from the plans also vary and include such items as towing and road service, touring information, bail bonding when necessary and counsel fees when necessary. Some of the benefits furnished by the club plan would normally be available at less cost from most automobile liability insurance companies.

This Committee has found no evidence of improper activities in the conduct of the motor club which it looked into. However, in order to insure proper protection of the public in the operation of such plans and to avoid any possible opportunity for the motor club plan membership fee to become an increased premium rate for liability insurance, the Committee recommends enactment of legislation to regulate the operation of motor club plans and provide for their supervision by the Department of Banking and Insurance.

Fourteen states now have laws regulating motor clubs. Those states are:

Arizona  
Arkansas  
California  
Florida  
Montana

Nevada  
New Hampshire  
Oklahoma  
Oregon  
Tennessee

Texas  
Utah  
Virginia  
Wisconsin

Utah and Texas enacted their laws in 1963.

The Committee is still in the process of preparing its legislative proposal providing for the regulation of "motor clubs". It is expected that the Committee's recommended bill will be ready for introduction within the next few weeks.

D. Other Improper Practices

During the course of its study the Committee had called to its attention the possible existence of other practices which warrant further study and consideration of possible regulation.

These problem areas include the plight of the insured in seeking insurance when his agent's relationship with an insurance company has been severed, the imposition of a quota system whereby an insurance company will restrict the number of high risk policies in certain geographical areas, the existence of discriminatory practices in writing other forms of insurance and the practice of cancelling an insured's automobile liability insurance if other forms of insurance are not also carried with the same insurer.

The Committee therefore recommends that it be reconstituted with additional members and enlarged scope. (See Appendix B.)

APPENDIX A

Recommended supplemental paragraphs to be contained in a bill to amend the "Law Against Discrimination", approved April 16, 1945 (P. L. 1945, c. 169).

Section 11 of the act of which this act is amendatory is amended to read as follows:

11. It shall be an unlawful employment practice, or, as the case may be, an unlawful discrimination:

\* \* \*

j. For any insurance company engaged in doing any type of insurance business in this State, or any agent or employee thereof:

(1) To discriminate against any person or group of persons because of the race, creed, color, national origin, ancestry or solely age of such person or group of persons in the issuance, withholding, extension or renewal of any policy of insurance, or in the fixing of the rates, terms or conditions therefor, or in the issuance or acceptance of any application therefor; or

(2) To use any form of application for any policy of insurance, or to make any record or inquiry in connection with applications for a policy of insurance which expresses, directly or indirectly, any limitation or discrimination as to race, creed, color, national origin, ancestry or solely age, or any intent to make any such limitation or discrimination.

APPENDIX B

AN ASSEMBLY RESOLUTION creating a special committee of the General Assembly to study and investigate certain allegedly questionable practices in connection with the writing of insurance.

WHEREAS, The General Assembly created a special committee by resolution adopted on May 11, 1964, to study and investigate certain allegedly discriminatory practices in connection with the writing of automobile liability insurance; and

WHEREAS, The special committee has reported that during the course of its study, the existence of other, possibly questionable, practices in the writing of certain other types of insurance was called to its attention; and

WHEREAS, The special committee has recommended that it be continued with additional membership and authority; now, therefore,

BE IT RESOLVED by the General Assembly of the State of New Jersey:

1. There is hereby created a special committee of the General Assembly to consist of 5 members, 3 of whom shall be the members of the special committee created by AR 2 of 1964, and 2 members to be appointed from the membership of the General Assembly by the Speaker thereof, no more than 1 of whom shall be of the same political party.

2. The special committee shall have the same powers and duties provided by AR 2 of 1964, and, in addition thereto, shall study

and investigate other practices employed in the writing and issuance of insurance, other than life insurance.

3. The special committee shall be entitled to call to its assistance and avail itself of the services of such employees of any State department, board, bureau, commission or agency as it may require and as may be available to it for said purpose, and to employ such stenographic and clerical assistants and incur such traveling and other miscellaneous expenses as it may deem necessary, in order to perform its duties, and as may be within the limits of funds appropriated or otherwise made available to it for said purposes.

4. The special committee shall have all the powers provided by the provisions of chapter 13 of Title 52 of the Revised Statutes.