



Milestones in Racial Discrimination within the Insurance Sector

August 2020

Overview:

The raw material of an insurance contract is risk. The insurance policyholder transfers certain enumerated risks to the insurer for a fee (called premium) and receives a written promise of indemnification if the enumerated risks (contingencies) occur. Insurance premiums are determined based on a policyholder's expected losses. Therefore, by its nature, insurance aims to discriminate by risk types and charge premiums accordingly. There has been and will always be discrimination by risk types in insurance unless everyone is charged the exact same price for a product. There are many reasons this cannot happen.

However, it is illegal for insurers to *discriminate unfairly*. Unfair discrimination occurs when an insurer uses a socially unacceptable risk classification factor (like race or national origin) to differentiate on either the price of or access to an insurance product. Yet, historically there are numerous examples where the insurance industry has discriminated against people of protected classes such as race.

It is the goal of the legislative and regulatory framework to eliminate such unfair discrimination. There are many examples where insurers, insurance producers, regulators, state legislators and members of Congress have come together to eliminate these discriminatory practices. While many forms of direct unfair discrimination have been eliminated, subtle, less obvious forms of discrimination remain in access to insurance and risk classification.

We present a historical timeline summary of key events in the insurance industry (focused on Life, Home, and Auto) to provide context on primarily racial discrimination within the insurance sector along with prior actions taken by regulators in response. Links are embedded throughout where applicable with a list of references by categorized insurance issue at the end.

Disclaimer: The information presented herein is for discussion/educational purposes only and is not intended to be a full and exhaustive explanation of legal and regulatory developments on the topic of discrimination.

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Historical Timeline Summary:

Date	Event	Related Insurance Issue
1693	In 1693, Cotton Mather noted in his diary the efforts of “poor Negroes” to provide for the less fortunate among them, including collecting money to ensure decent burials.	Historical Event
1752	Benjamin Franklin and friends establish the first fire insurance company in the U.S. – <i>The Philadelphia Contributionship for the Insurance of Houses from Loss by Fire.</i>	Property Insurance
1759	The first U.S. life insurer is formed – <i>The Presbyterian Ministers’ Fund.</i>	Life Insurance
1787	In the post-colonial period, several mutual aid societies, such as the Free Aid Society , were formed in Philadelphia. These entities were essentially savings and insurance institutions that “paid benefits to widows and to members who had fallen on hard times... [and] stressed moral living and thrift.”	
1863	President Abraham Lincoln issued the Emancipation Proclamation on Jan. 1, 1863. It did not immediately end slavery, but rather was contingent on the Union prevailing in the Civil War.	Historical Event
1864	The Travelers Insurance Company introduces the first accident insurance policy in the U.S.	Accident Insurance
1865	Juneteenth is a holiday commemorating the emancipation of those previously enslaved in the U.S. On June 19, 1865 Union Army General Gordon Granger announced federal orders proclaiming all slaves in Texas were free.	Historical Event
1869	Paul v. Virginia . 75 US 168 – Supreme Court 1869. The U.S. Supreme Court determines that insurance is not interstate commerce and thus is subject to regulation by states as they see fit.	Legal; Historical Event
1881	Prudential announces life insurance policies held by black adults would be worth one-third less than the same plans held by whites. Weekly premiums remained the same for both groups. Benefits for black children did not change, but weekly premiums increased by five cents. Prudential used statistical information to support its claim that the mortality rate for blacks was higher than whites.	Life Insurance
1897	The Travelers Insurance Company issues the first auto insurance policy in the U. S.	Auto Insurance
1912	The NAIC (then known as NCIC) studied abuses occurring in Fraternal Benefit Societies and identify potential regulatory actions. It noted some of these societies target Black people with high-premium, low-value policies. (1912 Proceedings of the NAIC, 196)	NAIC Activity; Life Insurance
1920	As many as 42 large , black-owned insurance companies existed in the 1920’s. (See also: <i>The Negro in the Insurance Industry</i> by Linda Pickthorne Fletcher**)	
1921	Tulsa Massacre . Over 18 hours between May 31 and June 1, 1921, a white mob attacked residents, homes and businesses in the predominantly Black Greenwood neighborhood of Tulsa, OK, also known as Black Wall Street.	Historical Event
1925	Connecticut (Connecticut Public Acts, 1925, Chapter 183) and Massachusetts (Chapter 346, June 1925) establish the first financial responsibility laws.	Auto Insurance
1934	The National Housing Act of 1934 created the Federal Housing Administration	Redlining

Date	Event	Related Insurance Issue
	(FHA). While racial segregation and discrimination predated the establishment of the FHA, some of the FHA policies aggravated the decay of urban housing by limiting access to mortgages.	
1935	The Federal Home Loan Bank Board (FHLBB) asks the Home Owners' Loan Corporation (HOLC) to create "residential security maps" related to security of real estate investments. The HOLC maps created four, color-coded "desirability" categories. Type A (Green) were typically affluent suburbs. Type B (Blue) neighborhoods were considered still desirable. Type C (Yellow) were older neighborhoods labeled declining. Type D (Red) were generally older inner-city neighborhoods considered most risky for mortgage support.	Redlining
1935	The FHA underwriting manual was used by lenders if they wished to secure federal backing for loans. The FHA appraisal manual instructed banks to steer clear of "inharmonious racial groups" and recommended municipalities enact racially restrictive zoning ordinances.	Redlining
1938	New Hampshire becomes the first state to enact an assigned risk plan. ¹	Auto Insurance
1940	NAIC Study of Mortality Rates – This study differentiated mortality rates by race. These rates would be used by insurers until race-based premiums were outlawed (and in some cases, longer than that).	NAIC Activity; Life Insurance
1944	United States v. South-Eastern Underwriters Association. 322 U.S. 533 – Supreme Court 1944. The U.S. Supreme Court found that insurance could be regulated by the U.S. Congress under the Commerce Clause, thus overturning Paul v. Virginia. The immediate result was that the Sherman Act (federal antitrust law) could be applied to insurance.	Legal; Historical Event
1945	McCarran-Ferguson Act. 15 U.S.C. §§ 1011-1015. In 1945 Congress passed the McCarran-Ferguson Act that provides limited exemption from federal antitrust laws to the "business of insurance" to the extent that states regulate the "business of insurance." Further the Act provides that Acts of Congress that do not expressly purport to regulate the "business of insurance" will not preempt state laws or regulations that regulate the "business of insurance."	Legal; Historical Event
1946	The all-industry rating laws introduced the actuarial/ regulatory concept that rates should not be excessive, inadequate, nor unfairly discriminatory. There were two original NAIC model laws to reflect the way insurance was written at the time—one for property and one for casualty. (1946 Proceedings of the NAIC, 396)	NAIC Activity; Anti-Discrimination Practices
1947	The first version of the Unfair Trade Practices Act is adopted by the NAIC membership. The Act defines and prohibits "unfair discrimination" for life, health, property and casualty insurance. Included are refusing to insure, refusing to renew, cancelling or limiting the amount of coverage because of: geographic location of the risk; the age of the dwelling; or sex, marital status, race, religion, or national origin of the individual. The Act also defines rebates	NAIC Activity; Anti-Discrimination Practices

¹ Report of the Federal Insurance Administration (FIA) to the Secretary, Department of Housing and Urban Development, on Full Insurance Availability. Page 39. 1974. **

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	and prohibits them. (1947 Proceedings of the NAIC, 383, 392-400, 413)	
1948	In <i>Shelley v. Kraemer</i> , the U.S. Supreme Court rules that racially restrictive covenants in property deeds are unenforceable. The Court found that although racial restrictive covenants are private, not government contracts, they are nonetheless legally unenforceable, as they are in violation of the Equal Protection Clause of the Fourteenth Amendment.	Legal ; Historical Event
1950	The first homeowners insurance policy is filed by the Insurance Company of North America and approved by the Pennsylvania Insurance Department on Aug. 11, 1950, to be effective Sept. 11, 1950. Prior to 1950, a person would purchase a dwelling fire policy from one insurer to cover fire and extended coverages to cover the physical loss to the home and a comprehensive personal liability policy to cover liability exposure from another insurer.	Homeowners Insurance
1957	Maryland establishes the Maryland Automobile Insurance Fund ² to replace its Maryland Auto Insurance Plan (an assigned risk plan) and Unsatisfied Claim and Judgment Fund Board. It is the only state fund to provide auto liability insurance to Maryland resident who cannot obtain coverage from a private insurer. Two rejections from private insurers are required to access coverage from the fund.	Auto Insurance
1958	The Travelers Insurance Company first offers life insurance to women at lower rates than men.	Life Insurance
1964	The Civil Rights Act was passed, eliminating the discriminatory practice of charging different life insurance premiums based on race that had been ongoing since the 1940s. Life insurers charged Black customers higher premiums for so-called industrial life insurance policies — cheap life insurance that was usually bought to cover burial costs. Insurance agents at the time allegedly carried around two rate books, one for whites and one for blacks. The rates for black people were sometimes as much as 30% higher. However, in 2000, a lawsuit was filed, alleging some existing policies from the 1960s were not changed and black policyholders were still being charged higher premiums than whites for industrial life insurance policies.	Legal ; Life Insurance
1965	The Housing and Urban Development Act of 1965 was enacted on Aug. 10. The Act expanded funding for existing federal housing programs and added programs providing rent subsidies for the elderly and disabled, housing rehabilitation grants to homeowners of limited means, access to low down-payment loans for military veterans, changes to access to public housing and infrastructure investments.	Legal ; Homeowners Insurance
1968	The President’s National Advisory Panel . The Panel evaluated the impact of urban riots in the 1960s. It is the source of recommendations that states enact legislation to establish Fair Access to Insurance Requirements (FAIR) Plans. Over the ensuing years many states established FAIR Plans to serve as the market of last resort for property insurance coverage.	Legal ; Homeowners Insurance
1968	The Fair Housing Act of 1968 was passed to address racial discrimination in	Legal ; Redlining

² Maryland General Assembly. Chapter 836, Acts of 1957. Codified as Maryland Insurance Code, Article 48A §243-243L.

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	housing. According to the Department of Housing and Urban Development (HUD), the Act makes it unlawful to discriminate in the terms, conditions, or privileges of sale of a dwelling because of race or national origin. In addition, the Act outlaws the use of racially restrictive covenants in deeds.	
1968	Urban Property Protection and Reinsurance Act of 1968. ³ As a result of the 1960s urban riots, Congress enacted the Urban Property Protection and Reinsurance Act to assist and encourage states and the insurance industry to establish programs offering insurance protection for those meeting reasonable insurability standards, and to provide a federal reinsurance program while placing appropriate financial responsibility on the states.	Property Insurance
1968	The National Flood Insurance Act of 1968 ⁴ , as amended and the Flood Disaster Protection Act of 1973, as amended, form the basis for the National Flood Insurance Program (NFIP). The NFIP writes flood insurance directly and through licensed insurance producers. It was created in response to the unwillingness of private insurers to include coverage for floods in homeowners and property insurance policies voluntarily.	<u>Homeowners Insurance</u>
1968	<u>Meeting the Insurance Crisis of Our Cities</u> . A Report by the President's National Advisory Panel on Insurance in Riot-affected Areas.	<u>NAIC Activity</u>
1970	The Federal Crime Insurance Program was established by Title VI of the Housing and Urban Development Act of 1970 ⁵ . The program was operational in August 1971. It made insurance for burglary, theft and similar crimes available to residential and commercial consumers where coverage from private insurers or state programs was either unavailable or prohibitively expensive.	<u>Legal;</u> <u>Homeowners Insurance;</u> Business Property Insurance
1970	Fair Credit Reporting Act (FCRA). 15 U.S. C. §1681. Congress enacted the original FCRA on Oct. 26, 1970. It is primarily a banking act; however, it allows credit reporting activity to be used for insurance underwriting purposes.	<u>Legal; Credit Reporting</u>
1970	Massachusetts becomes the first state to adopt a no-fault auto insurance law.	<u>Auto Insurance</u>
1974	<p>**Report of the Federal Insurance Administration (FIA) to the Secretary, Department of Housing and Urban Development, on Full Insurance Availability. The FIA report recommends the adoption of what it calls the Full Insurance Availability Report with the following features:</p> <ul style="list-style-type: none"> • Insurance would be available to all insurable consumers; • Each consumer would receive the full amount of coverage requested; • Each consumer would pay the same rate as other similarly situated risks based on objectively defined classifications and territories; • Denials of coverage would be based on approved objective standards uniformly applied; • Access to an insurance market would be guaranteed; • No penalty would be applied to an agent or broker for producing 	Federal Report; <u>Auto Insurance;</u> Property Insurance

³ Public Law 90-448; §§1101-1106. (Aug. 1, 1968). also known as H.R. 2157, 116th Congress. Short title 12 U.S.C. 1701

⁴ The National Flood Insurance Act of 1968 (Title XII of the Housing and Urban Development Act of 1968 [PL 90-448]).

⁵ Housing and Urban Development Act of 1970. (12 U.S.C. 1749 bbb-10a et seq.)

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	<p>insurance business;</p> <ul style="list-style-type: none"> • The insurance industry would be required to use objective and statistically supported risk classifications and to compile credible statistical data consistent with the basic principles of insurance; • Insurance Departments would establish uniform statistical plans to assure industry experience would be collected in a meaningful and intelligible way; • Insurance Departments would establish State Public Information Centers to assist consumer understanding of insurance; and • Open competition ratemaking (file and use) would replace prior approval regulatory frameworks. Insurance departments would retain prior approval of risk classifications. 	
1975	Home Mortgage Disclosure Act (HMDA). The HMDA requires mortgage lenders to collect and disclose statistical data regarding lending activities by census tract.	Legal; Redlining
1976	The South Carolina Legislature passed Act #694 of 1976. The law provided “that every automobile insurance risk which is insurable...is entitled to automobile insurance.” Thus, South Carolina becomes the first state to provide a legislative guarantee of access to auto insurance for all its citizens. The state employed to strict prior approval system of rate regulation at the time.	Legal; Auto Insurance
1977	“In the mid to late 1970s the NAIC studied (1977-2 Proceedings of the NAIC pg 494) whether it should modify its model state legislation establishing certain minimum recommended nonforfeiture and valuation requirements for life insurance companies. As part of the study, the NAIC briefly considered the development of new gender-merged, unisex mortality tables to replace references to older gender merged mortality tables from the 1940s and 1950s ... However, the NAIC for the first time adopted separate male and female mortality tables in place of a gender merged table for its updated model state standard valuation legislation” (Heen, 2014)	NAIC Activity; Life Insurance
1977	Community Reinvestment Act (CRA). The CRA prohibits redlining by lenders and obligates lenders to respond to the needs of low- and moderate-income neighborhoods.	Redlining; Legal
1977	In March 1977, the Michigan Insurance Bureau issues a report titled, Essential Insurance in Michigan: An Avoidable Crisis . The report criticizes subjectivity in insurance underwriting decisions and recommends replacing the then-current regulatory system with a system where insurers must file underwriting rules with the Bureau and adhere without exception to the underwriting rules they file.	Insurance Rates; Auto Insurance; Homeowner’s Insurance
1978	After briefly experimenting with a competitive rating system, the Massachusetts Legislature enacts a stringent system for regulating auto insurance rates. The system provided for the insurance commissioner to establish auto insurance rates based on the result of an annual public	Auto Insurance

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	hearing. The resulting rates were required to be charged by all auto insurers in the commonwealth. The system guaranteed access to all residents and specifically prohibited use of race, national origin or gender for access or pricing decisions. The system was changed to a form of competitive rating in 2008. (Derrig & Tennyson, 2008)	
1978	The Shavers Decision in June 1978 by the Michigan Supreme Court found that compulsory no-fault coverage violated due process and was thus unconstitutional because insurance regulation failed to ensure that coverage would be available at “fair and reasonable” rates.	Legal; Auto Insurance; Insurance Rates
1978	National Association of Insurance Commissioners. Ninety Day Report of the Advisory Committee to the NAIC Redlining Task Force.	NAIC Activity;
1979	Michigan Legislature adopts the Essential Insurance Act of 1979. The Act is largely based on the 1977 report by the Michigan Insurance Bureau. It requires insurers to file and adhere to underwriting rules intended to eliminate subjectivity in underwriting decisions, limits the elements used by insurers to classify risks, limits rate differentials between adjoining territories, introduces the concept of competitive rating and monitoring levels of competition to assure rates are not excessive.	Legal; Insurance Rating
1979	American Insurance Association. “Insurance in Urban Areas: The American Insurance Association Addresses Property Insurance & Redlining.” (1979.)	Redlining
1982	NAIC Task Force and Advisory Committee on Urban Reinvestment - Final Report	NAIC Activity
1983	“In 1983, the NAIC approved the gender-blended mortality tables for the inclusion in its model laws and regulations as an option for those purposes, and many states subsequently adopted NAIC’s model regulations.” (1983 Proceedings of the NAIC V. II)	NAIC Activity; Life Insurance
1986	The Government Accountability Office (GAO) conducted a comprehensive study of auto insurance in the United States. Among the elements studied were how the cost and availability of auto insurance were affected by states using competitive rating approaches instead of prior approval and the experiences of states that restrict the factors insurers may use for pricing.	Federal Report; Auto Insurance
1992	Los Angeles Riots refocused national attention on urban problems including insurance availability and affordability concerns.	Historical Event
1992	The NAIC’s Insurance Affordability and Availability Task Force (EX3) was formed to study urban insurance issues – 1992 Proceedings of the NAIC V.IIA p. 22 (originally called Urban Insurance Issues Subgroup)	NAIC Activity
1993	Fair Isaac Corporation develops and makes available to insurers the first modern credit-based insurance scores for homeowners policies.	Credit-Based Insurance Scoring

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1994	The NAIC's Statistical Task Force developed statistical reporting guidelines (pg. 173) that included zip code level reporting for auto and home insurance for statistical agents. One primary motivator of this was ability to use zip code data to explore possible unfair discrimination in pricing and underwriting. Because of the economic and demographic data available by zip code, the geographic association between race, income, and location can be used to test for unfair discrimination.	NAIC Activity
1995	Fair Isaac Corporation and ChoicePoint introduce credit-based insurance scores for auto insurance policies.	Insurance Scoring; Auto Insurance;
1998	The NAIC's Insurance Affordability and Availability Task Force (EX3) issues its final report on the study on urban insurance markets. The report, <i>Improving Urban Insurance Markets: A Handbook on Available Options</i> provides an array of possible solutions for state legislators and regulators to consider. Despite showing that some minorities pay more for the same coverage as whites or purchase policies with less coverage, the researchers were unable to draw definitive conclusions from the data that unfair discrimination exists. The report contains six studies leading up to the final report and handbook. The report did show favorable improvements in insurance underwriting.	NAIC Activity; Insurance Rating; Access to Insurance
1999	George Nichols III elected in December 1999 as the NAIC's first African-American president in its 128-year history.	NAIC Activity
2000	At the 2000 Summer National Meeting (V2, pg. 17), NAIC members signed a resolution encouraging state regulators to investigate life insurers to learn if they charged black customers higher premiums than white customers for certain life policies. The agreement also urged state regulators to reach a settlement with their insurers so the excess premiums charged over the years could be returned to black policyholders or their beneficiaries.	NAIC Activity; Life Insurance
2003	Professor Gregory D. Squires (George Washington University) publishes a study called Racial Profiling, Insurance Style: Insurance Redlining and the Uneven Development of Metropolitan Areas . In the study, Professor Squires looks at how racial profiling by property insurers affects access to insurance coverage essential for a property owner to secure a mortgage. He suggests insurer practices are at least partially responsible for uneven development of urban areas. He cites lack of a systematic collection of data similar to the data required by HMDA of mortgage lenders as a hinderance to the ability to study the impact of racial profiling in property insurance.	Redlining
2003	Texas Governor Rick Perry signs an amendment to S.B. 14, which makes race-based insurance pricing a felony in the state.	Legal; Insurance Rating
2007	A Federal Trade Commission (FTC) study concludes "that credit-based insurance scores are effective predictors of risk under automobile insurance policies." Further, "Scores have only a small effect as a 'proxy' for membership in racial and ethnic groups in estimating of insurance risk,	Federal Report; Credit-Based Insurance Scoring

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	remaining strong predictors of risk when controls for race, ethnicity and income are included in risk models.”	
2011	The California Department of Insurance conducted the first of what has become an annual diversity survey , gathering information to assess insurer diversity practices.	Diversity Initiatives
2016	Insurance commissioners from the District of Columbia, Minnesota, New York and Washington join the California Insurance Department in conducting the annual diversity survey .	Diversity Initiatives
2018	Marsh & McLennan Companies releases “ The Journey of African-American Insurance Professionals .” The report explores the historical and cultural causes of the lack of opportunity for African-Americans in the insurance industry.	
2019	<ul style="list-style-type: none"> • Rep. Bonnie Watson Coleman (D-NJ) introduced H.R. 3693, the <i>Prohibit Auto Insurance Discrimination (PAID) Act</i>, which aims to prohibit private passenger automobile insurers from using certain income proxies to determine insurance rates and eligibility. • Rep. Rashida Tlaib (D-MI) introduced H.R. 1756, the <i>Preventing Credit Score Discrimination in Auto Insurance Act</i>, which would prohibit the use of a credit report, a credit score, or other consumer information in determining auto insurance coverage or rates. • Both bills remain in committee. 	Legal ; Auto Insurance ; Credit-Based Insurance Scoring
2020	<ul style="list-style-type: none"> • The Lloyd’s of London insurance market apologized for its “shameful” role in the 18th and 19th century Atlantic slave trade and pledged to fund opportunities for black and ethnic minority groups. • Life insurance company CEOs release a statement addressing racism and the resulting hurt and anger across the country in the wake of George Floyd’s death. • Washington Insurance Commissioner Mike Kriedler proposes a ban on the use of credit scoring in setting policyholders’ insurance rates, arguing that it institutionalizes racism and hurts low-income consumers. • The NAIC announces the formation of a special committee focusing on race and insurance issues, along with a special session on race and insurance at the virtual 2020 Summer National Meeting 	Historical Event ; Credit-Based Insurance Scoring ; NAIC Activity

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Related NAIC Model Law Activity

- Twelve NAIC Model Laws disallow discrimination on the basis of race (26, 126, 432, 630, 720, 725, 880, 915, 1775, 1776, 1780, 1781).
- 55 jurisdictions have some unfair trade practices (880) provisions.
- 53 jurisdictions have P&C Rating Laws related to 1775 or 1780.
- There are also two relevant state law survey charts available: *MC-20 – Use of Credit Reports/Scoring in Underwriting* and *MC-45 – Prohibitions Against Redlining and Other Geographic Discrimination*. These are free for regulators. Others may contact NAIC Publications to purchase.

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