

1981 S.C. Op. Atty. Gen. 72 (S.C.A.G.), 1981 S.C. Op. Atty. Gen. No. 81-49, 1981 WL 96575

Office of the Attorney General

State of South Carolina

Opinion No. 81-49

May 26, 1981

**\*1 SUBJECT: Insurance, Due Process, Equal Protection**

The Merit Rating Plan presently in effect for automobile insurance does not violate the guarantees of Due Process and Equal Protection contained in the United States and South Carolina Constitutions.

TO: Michael A. Molony, Esquire  
Staff Counsel  
Labor, Commerce, and Industry Committee  
South Carolina House of Representatives

**QUESTION:**

Does the Merit Rating Plan, which validates the payment of a sum of money to an insurer as a result of the criminal process when the insurer was not 'wronged' in any sense, violate the United States or South Carolina Constitutions?

**STATUTES AND CASES:**

[Harrison v. Caudle](#), 141 S.C. 407, 139 S.E. 842 (1927); [United States Fidelity and Guaranty Co. v. City of Newberry](#) 277 S.C. 433, 186 S.E.2d 239 (1972); [Eslinger v. Thomas](#), 324 F. Supp. 1329 (D. S.C. 1971); [State v. Earle](#), 66 S.C. 194, 44 S.E. 781 (1903); [Section 38–37–540\(e\)](#), 540(f), 550(c), 140, CODE OF LAWS OF SOUTH CAROLINA (1976).

**OTHER MATERIALS CITED:**

[CONSTITUTION OF THE UNITED STATES, Amendments V. and IV.](#); [CONSTITUTION OF SOUTH CAROLINA, Article I, Section 3](#); Opinion No. 77–146, [Attorney General's Opinions](#) (1977); Opinion No. 78–104, [Attorney General's Opinions](#) (1978).

**DISCUSSION:**

You have asked whether or not the Merit Rating Plan is constitutional. After reviewing the United States and South Carolina Constitutions, this office feels that only three constitutional guarantees could conceivably affect the Merit Rating Plan. As you indicate in your letter, Attorney General's Opinion No. 78–104 advises that the Merit Plan is not an ex post facto law. This leaves us with a discussion of Equal Protection and Due Process of Law.

(a) Due process of law is assured through the [Constitution of the United States](#), Fifth Amendment, and applied to the States through the Fourteenth Amendment, Section 1. Likewise, the [South Carolina Constitution](#) assures this in [Article I, Section 3](#).

The South Carolina due process clause has been interpreted to mean 'a process pursued in the ordinary mode prescribed by the law; it must be adapted to the end to be attained; and, whenever it is necessary for the protection of the parties, it must give them an opportunity to be heard respecting the justice of judgment sought.' [State v. Earle](#), 66 S.C. 194, 44 S.E. 781 (1903).

The regulation challenged here is questioned on the basis of the invalidity of the payment of a sum of money to an insurer as a result of the criminal process when the insurer was not 'wronged' in any sense.

The South Carolina Code of Laws, 1976, [Section 38-37-540\(e\)](#) authorizes insurers to assess surcharges and grant safe driver discounts. According to [Section 38-37-540\(f\)](#), the initial policy must show the amount of any surcharge and the reason for it. In addition, any aggrieved insured may seek recourse through Section 38-37-140.

\*2 To prevent the unfairness of rates or premium charges, [Section 38-37-550\(c\) of the South Carolina Code](#) requires every insurer writing automobile insurance in the State to file with the Commission complete financial records showing the amount of profit on every line of automobile insurance during the previous year.

It seems that this method adapts the merit system to the requirements of due process in that it provides means to the ends to be attained and an opportunity for aggrieved parties to be heard. *State v. Earle*, supra.

(b) Equal Protection is guaranteed through the [United States Constitution, Amendment XIV, Section 1](#). The South Carolina Constitution assures this in [Article I, Section 3](#). The case of [Harrison v. Caudle](#), 141 S.C. 407, 139 S.E. 842 (1927) has interpreted the South Carolina version of the equal protection clause to mean that 'no person or class of persons shall be denied the protection of the laws enjoyed by other persons or classes in the same place and under like circumstances.' In defining a class subject to legislation, [United States Fidelity & Guaranty Co. v. City of Newberry](#), 257 S.C. 433, 186 S.E.2d 239 (1972) requires that 'the distinctions that are drawn have some relevance to the purpose for which the classification is made.' The case of [Eslinger v. Thomas](#), 324 F. Supp. 1329 (D. S.C. 1971) extended this rationale by stating that, 'only a classification which is arbitrary or wanting in any rational justification is such a classification as would offend the equal protection clause.' Pursuant to Attorney General Opinion No. 77-146, the distinction between males under 25 as opposed to females with regard to liability insurance premiums was allowed on the grounds that it was substantially related to the achievement of important governmental objectives. I have included a copy of that Opinion for you. This Opinion, which is based upon equal protection grounds, provides some insight into the problem at hand. The distinction between those convicted of criminal offenses and those not is intended to further the illegitimate objective of apportioning the cost of rising insurance claims so that those most responsible for the rising claims bear a greater proportionate burden than those who have good driving histories. Therefore, it is the opinion of this office that the merit plan does not violate the Constitutional guarantee of the right to equal protection of the laws.

#### CONCLUSION:

The Merit Rating Plan does not violate the guarantees of Due Process and Equal Protection contained in the United States and South Carolina Constitutions.

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