S252035

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

MANNY VILLANUEVA, et al.,
Plaintiffs and Appellants,

v.

FIDELITY NATIONAL TITLE COMPANY,
Defendant and Appellant.

AFTER A DECISION BY THE COURT OF APPEAL,
SIXTH APPELLATE DISTRICT
CASE NO. H041870
(SANTA CLARA COUNTY SUPER. CT. NO. 1-10-CV173356)

AMICI CURIAE CONSUMER WATCHDOG, CONSUMER FEDERATION OF AMERICA, AND CONSUMER FEDERATION OF CALIFORNIA'S MOTION FOR JUDICIAL NOTICE; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF; DECLARATION OF HARVEY ROSENFIELD; PROPOSED ORDER IN SUPPORT OF PLAINTIFFS MANNY VILLANUEVA, ET AL.

Harvey Rosenfield (SBN 123082)
Pamela Pressley (SBN 180362)
Consumer Watchdog
6330 San Vicente Blvd., Suite 250
Los Angeles, California 90048
T: (310) 392-0522 • F: (310) 861-0862
harvey@consumerwatchdog.org
pam@consumerwatchdog.org

ATTORNEYS FOR AMICUS CURIAE
CONSUMER WATCHDOG
CONSUMER FEDERATION OF AMERICA
CONSUMER FEDERATION OF CALIFORNIA

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MOTION FOR JUDICIAL NOTICE IN SUPPORT OF AMICI CURIAE BRIEF

Pursuant to Rule 8.252 of the California Rules of Court, Evidence Code section 452, subdivision (c), and Evidence Code section 459, proposed amici curiae Consumer Watchdog, Consumer Federation of America, and Consumer Federation of California hereby move this Court to take judicial notice of the following documents, true and correct copies of which are attached as exhibits A–J hereto, in support of their amicus curiae brief:

Exhibit A is a true and correct copy of the text of Proposition 103 as enacted on November 8, 1998. (1988 Cal. Legis. Serv. Prop. 103 (West)).

Exhibit B is the text of the McBride-Grunsky Insurance Regulatory Act of 1947 ("McBride Act") as enacted and amended through 1987.

Exhibit C is a letter from J.R. Maloney, Deputy Insurance Commissioner, on behalf of Wallace K. Downey, Insurance Commissioner, to Gov. Earl Warren, June 10, 1947.

Exhibit D is a memorandum from Harold B. Haas, Deputy Attorney General, on behalf of the California Dept. of Justice, to Gov. Earl Warren, June 11, 1947.

Exhibit E is an analysis by the Sen. Claims and Corporations Committee of Assembly Bill 1687 (1987–1988 Reg. Sess.) July 15, 1987.

Exhibit F is a copy of the Ballot Pamphlet materials for Proposition 104 that were published in the November 8, 1988 ballot pamphlet.

Exhibit G is a copy of the Ballot Pamphlet materials for Proposition 103 from the November 8, 1988 Ballot Pamphlet.

Exhibit H is a letter from Janice E. Kerr, General Counsel, California Department of Insurance on behalf of Insurance Commissioner John Garamendi submitted to this Court on December 18, 1991, in

connection with this Court's review in *Farmers Insurance Exchange v. Superior Court* (1992) 2 Cal.4th 377.

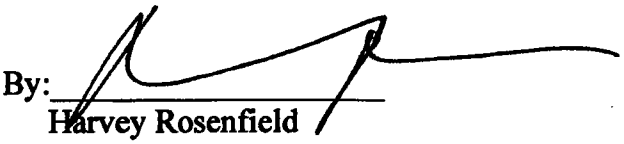
Exhibit I is a letter from Adam Cole, General Counsel, California Department of Insurance, on behalf of Insurance Commissioner Steve Poizner, submitted to this Court on November 19, 2010, requesting Depublication or Review of *MacKay v. Superior Court* (2010) 188 Cal.App.4th 1427.

Exhibit J is a letter from Adam Cole, General Counsel, California Department of Insurance on behalf of Insurance Commissioner Steve Poizner, submitted to this Court on November 19, 2010, requesting depublication or review of *MacKay v. Superior Court* (2010) 188 Cal.App.4th 1427.

This request is based upon the instant Motion, the accompanying Memorandum of Points and Authorities; and the Declaration of Harvey Rosenfield.

Dated: January 17, 2020

CONSUMER WATCHDOG

By: 

Harvey Rosenfield
Pamela Pressley
Attorneys for Amici Curiae
Consumer Watchdog
Consumer Federation of America
Consumer Federation of California

MEMORANDUM OF POINTS AND AUTHORITIES

Under Evidence Code section 459, "the reviewing court shall take judicial notice of ... (2) each matter that the trial court was required to notice under Section 451 or 453." (Evid. Code § 459(a).) In addition, reviewing courts "may take judicial notice of any matter specified in Section 452." (*Id*; *Larson v. State Personnel Bd.* (1994) 28Cal.App.4th 265, 270.)

Accordingly, pursuant to Evidence Code section 459, proposed amici curiae request that this Court take judicial notice of the attached materials, which are all judicially noticeable under Evidence Code section 451(a) and/or 452. (*See, e.g., Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1135, fn. 1.)

Exhibits A and **B** display the McBride Act as it was enacted and amended through 1987 and Proposition 103 as it was enacted on November 7, 1988. They were compiled through a search on Westlaw. These documents are relevant because the Court of Appeal, the parties here, and proposed amici rely on various cases construing provisions of the Insurance Code, including Proposition 103, for which some courts have discerned an intra-Code conflict. To properly construe and harmonize the Insurance Code statutes in question, proposed amici believe it would be helpful to the Court to be able to review the statutory scheme as the Proposition 103 voters originally enacted it, and the provisions of prior law that they repealed. Courts generally take notice of documents such as these even without a formal request for judicial notice. (*See Quelimane Co., Inc. v. Stewart Title Guar. Co.* (1998) 19 Cal.4th 26, 45, fn. 9.)

Exhibits H, I, and **J** are documents submitted to this Court in this case and previous cases that adjudicated legal issues related to those here. They are relevant because they convey the consistent position of the

Insurance Commissioners in support of the right of Californians to challenge unlawful conduct in the courts, and the special rights that voters accorded themselves to enforce and challenge violations of the provisions of Proposition 103 in the courts. Courts generally take notice of court documents such as these even without a formal request for judicial notice. (*See Quelimane Co., Inc. v. Stewart Title Guar. Co.* (1998) 19 Cal.4th 26, 45, fn. 9.)

Exhibits C, D, E, F, and **G** constitute legislative history of the statutes at issue; they concern the adoption of the McBride-Grunsky Regulatory Act of 1947, and the meaning and scope of the provision of that law are primarily at issue here. The "wider historical circumstances" of Proposition 103's adoption are instructive in interpreting its language. (*Spanish Speaking Citizens' Foundation v. Low* (2000) 85 Cal.App.4th 1179, 1214.) They reference "the legislative history, public policy, . . . and the statutory scheme of which the statute is a part." (*Hoechst Celanese Corp. v. Franchise Tax Bd.*, (2001) 25 Cal.4th 508, 519; see also *American Tobacco Co. v. Superior Court* (1989) 208 Cal.App.3d 480, 486 [in determining intent, a court is "bound to consider not only the words used, but also other matters, 'such as context, the object in view, the evils to be remedied, the history of the times and of legislation upon the same subject, public policy and contemporaneous construction (citation omitted)].'") (*American Tobacco Co. v. Superior Court* (1989) 208 Cal.App.3d 480, 486 [citing *Alford v. Pierno* (1972) 27 Cal.App.3d 682, 688].)

Proposed amici therefore respectfully request that this Court take judicial notice of these documents, which are relevant to the key issues on appeal and would be helpful to the Court in deciding those issues.

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///

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Dated: January 17, 2020

CONSUMER WATCHDOG

By: _____

Harvey Rosenfield
Pamela Pressley
Attorneys for Amici Curiae
Consumer Watchdog
Consumer Federation of America
Consumer Federation of California

DECLARATION OF HARVEY ROSENFIELD IN SUPPORT OF PROPOSED AMICI CURIAE'S MOTION FOR JUDICIAL NOTICE

I, HARVEY ROSENFIELD, declare as follows:

1. I am an attorney admitted to practice in the State of California and am one of the attorneys of record representing proposed amici curaie Consumer Watchdog, Consumer Federation of America, and Consumer Federation of California in this matter. I make this declaration in support of proposed amici's instant Motion for Judicial Notice. The matters set forth in this declaration are based on my personal knowledge and the documents are true and correct copies.

2. The exhibits the Court is requested to judicially notice pertain to the issues of statutory construction before the Court in this matter.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 17, 2020 at Los Angeles, California.

By: _____

Harvey Rosenfield

[PROPOSED] ORDER

For good cause shown, the Motion for Judicial Notice of amici curie Consumer Watchdog, Consumer Federation of America, and Consumer Federation of California is granted. The Court takes judicial notice of the documents presented in the Motion.

Dated:_____ _____

CHIEF JUSTICE

EXHIBIT A

CALIFORNIA LEGISLATIVE SERVICE 1987-88
ELECTION RESULTS--1988 PROPOSITIONS

Proposition 103
Insurance Rate Reduction and Reform Act

Approved by the electors November 8, 1988

Section 1. Findings and Declaration.

The People of California find and declare as follows:

Enormous increases in the cost of insurance have made it both unaffordable and unavailable to millions of Californians.

The existing laws inadequately protect consumers and allow insurance companies to charge excessive, unjustified and arbitrary rates.

Therefore, the People of California declare that insurance reform is necessary. First, property-casualty insurance rates shall be immediately rolled back to what they were on November 8, 1987, and reduced no less than an additional 20%. Second, automobile insurance rates shall be determined primarily by a driver's safety record and mileage driven. Third, insurance rates shall be maintained at fair levels by requiring insurers to justify all future increases. Finally, the state Insurance Commissioner shall be elected. Insurance companies shall pay a fee to cover the costs of administering these new laws so that this reform will cost taxpayers nothing.

Section 2. Purpose.

The purpose of this chapter is to protect consumers from arbitrary insurance rates and practices, to encourage a competitive insurance marketplace, to provide for an accountable Insurance Commissioner, and to ensure that insurance is fair, available, and affordable for all Californians.

Section 3. Reduction and Control of Insurance Rates.

Article 10, commencing with Section 1861.01 is added to Chapter 9 of Part 2 of Division 1 of the Insurance Code to read:

§1861.01. Insurance Rate Rollback

(a) For any coverage for a policy for automobile and any other form of insurance subject to this

chapter issued or renewed on or after November 8, 1988, every insurer shall reduce its charges to levels which are at least 20% less than the charges for the same coverage which were in effect on November 8, 1987.

(b) Between November 8, 1988, and November 8, 1989, rates and premiums reduced pursuant to subdivision (a) may be only increased if the commissioner finds, after a hearing, that an insurer is substantially threatened with insolvency.

(c) Commencing November 8, 1989, insurance rates subject to this chapter must be approved by the commissioner prior to their use.

(d) For those who apply for an automobile insurance policy for the first time on or after November 8, 1988, the rate shall be 20% less than the rate which was in effect on November 8, 1987, for similarly situated risks.

(e) Any separate affiliate of an insurer, established on or after November 8, 1987, shall be subject to the provisions of this section and shall reduce its charges to levels which are at least 20% less than the insurer's charges in effect on that date.

§1861.02. Automobile Rates & Good Driver Discount Plan

(a) Rates and premiums for an automobile insurance policy, as described in subdivision (a) of Section 660, shall be determined by application of the following factors in decreasing order of importance:

(1) The insured's driving safety record.

(2) The number of miles he or she drives annually.

(3) The number of years of driving experience the insured has had.

(4) Such other factors as the commissioner may adopt by regulation that have a substantial relationship to the risk of loss. The regulations shall set forth the respective weight to be given each factor in determining automobile rates and premiums. Notwithstanding any other provision of law, the use of any criterion without such approval shall constitute unfair discrimination.

(b)(1) Every person who (A) has been licensed to drive a motor vehicle for the previous three years and (B) has had, during that period, not more than one conviction for a moving violation which has not eventually been dismissed shall be qualified to purchase a Good Driver Discount policy from the insurer of his or her choice. An insurer shall not refuse to offer and sell a Good Driver Discount policy to any person who meets the standards of this subdivision. (2) The rate

charged for a Good Driver Discount policy shall comply with subdivision (a) and shall be at least 20% below the rate the insured would otherwise have been charged for the same coverage. Rates for Good Driver Discount policies shall be approved pursuant to this article.

(c) The absence of prior automobile insurance coverage, in and of itself, shall not be a criterion for determining eligibility for a Good Driver Discount policy, or generally for automobile rates, premiums, or insurability.

(d) This section shall become operative on November 8, 1989. The commissioner shall adopt regulations implementing this section and insurers may submit applications pursuant to this article which comply with such regulations prior to that date, provided that no such application shall be approved prior to that date.

§ 1861.03. Prohibition on Unfair Insurance Practices

(a) The business of insurance shall be subject to the laws of California applicable to any other business, including, but not limited to, the Unruh Civil Rights Act (Civil Code Sections 51 through 53), and the antitrust and unfair business practices laws (Parts 2 and 3, commencing with section 16600 of Division 7, of the Business and Professions Code).

(b) Nothing in this section shall be construed to prohibit (1) any agreement to collect, compile and disseminate historical data on paid claims or reserves for reported claims, provided such data is contemporaneously transmitted to the commissioner, or (2) participation in any joint arrangement established by statute or the commissioner to assure availability of insurance.

(c) Notwithstanding any other provision of law, a notice of cancellation or non-renewal of a policy for automobile insurance shall be effective only if it is based on one or more of the following reasons: (1) non-payment of premium; (2) fraud or material misrepresentation affecting the policy or insured; (3) a substantial increase in the hazard insured against.

§ 1861.04. Full Disclosure of Insurance Information

(a) Upon request, and for a reasonable fee to cover costs, the commissioner shall provide consumers with a comparison of the rate in effect for each personal line of insurance for every insurer.

§ 1861.05. Approval of Insurance Rates

(a) No rate shall be approved or remain in effect which is excessive, inadequate, unfairly discriminatory or otherwise in violation of this chapter. In considering whether a rate is

excessive, inadequate or unfairly discriminatory, no consideration shall be given to the degree of competition and the commissioner shall consider whether the rate mathematically reflects the insurance company's investment income.

(b) Every insurer which desires to change any rate shall file a complete rate application with the commissioner. A complete rate application shall include all data referred to in Sections 1857.7, 1857.9, 1857.15, and 1864 and such other information as the commissioner may require. The applicant shall have the burden of proving that the requested rate change is justified and meets the requirements of this article.

(c) The commissioner shall notify the public of any application by an insurer for a rate change. The application shall be deemed approved sixty days after public notice unless (1) a consumer or his or her representative requests a hearing within forty-five days of public notice and the commissioner grants the hearing, or determines not to grant the hearing and issues written findings in support of that decision, or (2) the commissioner on his or her own motion determines to hold a hearing, or (3) the proposed rate adjustment exceeds 7% of the then applicable rate for personal lines or 15% for commercial lines, in which case the commissioner must hold a hearing upon a timely request.

§ 1861.06

Public notice required by this article shall be made through distribution to the news media and to any member of the public who requests placement on a mailing list for that purpose.

§ 1861.07

All information provided to the commissioner pursuant to this article shall be available for public inspection, and the provisions of Section 6254(d) of the Government Code and Section 1857.9 of the Insurance Code shall not apply thereto.

§ 1861.08

Hearings shall be conducted pursuant to Sections 11500 through 11528 of the Government Code, except that: (a) hearings shall be conducted by administrative law judges for purposes of Sections 11512 and 11517, chosen under Section 11502 or appointed by the commissioner; (b) hearings are commenced by a filing of a Notice in lieu of Sections 11503 and 11504; (c) the commissioner shall adopt, amend or reject a decision only under Section 11517(c) and (e) and solely on the basis of the record; (d) Section 11513.5 shall apply to the commissioner; (e) discovery shall be liberally construed and disputes determined by the administrative law judge.

§ 1861.09

Judicial review shall be in accordance with Section 1858.6. For purposes of judicial review, a decision to hold a hearing is not a final order or decision; however, a decision not to hold a hearing is final.

§ 1861.10. Consumer Participation

(a) Any person may initiate or intervene in any proceeding permitted or established pursuant to this chapter, challenge any action of the commissioner under this article, and enforce any provision of this article.

(b) The commissioner or a court shall award reasonable advocacy and witness fees and expenses to any person who demonstrates that (1) the person represents the interests of consumers, and, (2) that he or she has made a substantial contribution to the adoption of any order, regulation or decision by the commissioner or a court. Where such advocacy occurs in response to a rate application, the award shall be paid by the applicant.

(c)(1) The commissioner shall require every insurer to enclose notices in every policy or renewal premium bill informing policyholders of the opportunity to join an independent, non-profit corporation which shall advocate the interests of insurance consumers in any forum. This organization shall be established by an interim board of public members designated by the commissioner and operated by individuals who are democratically elected from its membership. The corporation shall proportionately reimburse insurers for any additional costs incurred by insertion of the enclosure, except no postage shall be charged for any enclosure weighing less than 1/3 of an ounce. (2) The commissioner shall by regulation determine the content of the enclosures and other procedures necessary for implementation of this provision. The legislature shall make no appropriation for this subdivision.

§ 1861.11. Emergency Authority

In the event that the commissioner finds that (a) insurers have substantially withdrawn from any insurance market covered by this article, including insurance described by Section 660, and (b) a market assistance plan would not be sufficient to make insurance available, the commissioner shall establish a joint underwriting authority in the manner set forth by Section 11891, without the prior creation of a market assistance plan.

§ 1861.12. Group Insurance Plans

Any insurer may issue any insurance coverage on a group plan, without restriction as to the

purpose of the group, occupation or type of group. Group insurance rates shall not be considered to be unfairly discriminatory, if they are averaged broadly among persons insured under the group plan.

§ 1861.13. Application

This article shall apply to all insurance on risks or on operations in this state, except those listed in Section 1851.

§ 1861.14. Enforcement & Penalties

Violations of this article shall be subject to the penalties set forth in Section 1859.1. In addition to the other penalties provided in this chapter, the commissioner may suspend or revoke, in whole or in part, the certificate of authority of any insurer which fails to comply with the provisions of this article.

Section 4. Elected Commissioner

Section 12900 is added to the Insurance Code to read:

(a) The commissioner shall be elected by the People in the same time, place and manner and for the same term as the Governor.

Section 5. Insurance Company Filing Fees

Section 12979 is added to the Insurance Code to read:

Notwithstanding the provisions of Section 12978, the commissioner shall establish a schedule of filing fees to be paid by insurers to cover any administrative or operational costs arising from the provisions of Article 10 (commencing with Section 1861.01) of Chapter 9 of Part 2 of Division 1.

Section 6. Transitional Adjustment of Gross Premiums Tax

Section 12202.1 is added to the Revenue & Taxation Code to read:

Notwithstanding the rate specified by Section 12202, the gross premiums tax rate paid by insurers for any premiums collected between November 8, 1988 and January 1, 1991 shall be

adjusted by the Board of Equalization in January of each year so that the gross premium tax revenues collected for each prior calendar year shall be sufficient to compensate for changes in such revenues, if any, including changes in anticipated revenues, arising from this act. In calculating the necessary adjustment, the Board of Equalization shall consider the growth in premiums in the most recent three year period, and the impact of general economic factors including, but not limited to, the inflation and interest rates.

Section 7. Repeal of Existing Law

Sections 1643, 1850, 1850.1, 1850.2, 1850.3, 1852, 1853, 1853.6, 1853.7, 1857.5, 12900, Article 3 (commencing with Section 1854) of Chapter 9 of Part 2 of Division 1 [§§ 1854.1, 1854.2, 1854.25, 1854.3, 1854.4, 1854.5], and Article 5 (commencing with Section 750) of Chapter 1 of Part 2 of Division 1, of the Insurance Code [§§ 750, 750.1, 751, 752, 753, 754, 755, 755.2, 755.5, 755.6, 755.7,756, 757, 758, 759, 760, 760.5, 761, 763, 763.5, 764, 765, 766, 767] are repealed.

Section 8. Technical Matters

(a) This act shall be liberally construed and applied in order to fully promote its underlying purposes.

(b) The provisions of this act shall not be amended by the Legislature except to further its purposes by a statute passed in each house by roll call vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electorate.

(c) If any provision of this act or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

CA LEGIS (1988) Prop. 103

END OF DOCUMENT

EXHIBIT B

INSURANCE CODE
DIVISION 1. GENERAL RULES GOVERNING INSURANCE
PART 2. THE BUSINESS OF INSURANCE
CHAPTER 9. RATES AND RATING AND OTHER ORGANIZATIONS [1]

ARTICLES 1 through 9 – McBride-Grunsky Insurance Regulatory Act of 1947

Sections repealed by Prop 103 in ~~strikethrough~~.

Sections added by statute after 1947 and prior to 1988 election in *italics*

Sections of Article 7 (Hearings, Procedure and Judicial Review), and Article 8 (Penalties), are shown both in original [block indented] and amended (through 1988) form.

ARTICLE 1. PURPOSE AND SCOPE OF CHAPTER

~~§ 1850. Purpose of chapter~~

~~The purpose of this chapter is to promote the public welfare by regulating insurance rates as herein provided to the end that they shall not be excessive, inadequate or unfairly discriminatory, to authorize the existence and operation of qualified rating organizations and advisory organizations and require that specified rating services of such rating organizations be generally available to all admitted insurers, and to authorize cooperation between insurers in rate making and other related matters.~~

~~It is the express intent of this chapter to permit and encourage competition between insurers on a sound financial basis and nothing in this chapter is intended to give the Commissioner power to fix and determine a rate level by classification or otherwise.~~

~~(Added by Stats.1947, c. 805, p. 1896, § 1.)~~

~~§ 1850.1. Rating organization defined~~

~~In this chapter "rating organization" means every person, other than an admitted insurer, whether located within or outside this State, who has as his object or purpose the making of rates, rating plans or rating systems. Two or more admitted insurers which act in concert for the purpose of making rates, rating plans or rating systems, and which do not operate within the specific authorizations contained in~~

[1] This document presents the state of the law as it appeared at the time Proposition 103 was placed on the ballot in 1988. It does not include an Article 10 that was passed by the Legislature in 1988, after the initiative petition had been approved for circulation by electors, but which was superseded by the Article 10 added by Prop. 103.

~~Sections 1853.5, 1853.7, 1853.8, and Article 5 shall be deemed to be a rating organization. No single insurer shall be deemed to be a rating organization.~~

~~(Added by Stats.1947, c. 805, p. 1896, § 1.)~~

~~§ 1850.2. Advisory organization defined~~

~~In this chapter "advisory organization" means every person, other than an admitted insurer, whether located within or outside this State, who prepares policy forms or makes underwriting rules incident to but not including the making of rates, rating plans or rating systems, or which collects and furnishes to admitted insurers or rating organizations loss or expense statistics or other statistical information and data and acts in an advisory, as distinguished from a rate making, capacity. No duly authorized attorney at law acting in the usual course of his profession shall be deemed to be an advisory organization.~~

~~(Added by Stats.1947, c. 805, p. 1896, § 1.)~~

~~§ 1850.3. Member and subscriber defined~~

~~Unless otherwise apparent from the context, in this chapter:~~

~~(a) "Member" means an insurer who participates in or is entitled to participate in the management of a rating, advisory or other organization.~~

~~(b) "Subscriber" means an insurer which is furnished at its request (1) with rates and rating manuals by a rating organization of which it is not a member, or (2) with advisory services by an advisory organization of which it is not a member.~~

~~(Added by Stats.1947, c. 805, p. 1897, ß 1.)~~

§ 1850.4. Casualty insurance defined

In this chapter "casualty insurance" means all classes of insurance to which the provisions of this chapter are applicable and which are included within Sections 105, 107, 108, 110, 112, 113, 115, and, when written by insurers not admitted to transact fire or marine insurance, Sections 111, 114, 116, 118 and 120.

(Added by Stats.1947, c. 805, p. 1897, § 1. Amended by Stats.1949, c. 426, p. 773, § 1.)

§ 1850.5. Wilful and wilfully defined

In this chapter "wilful" or "wilfully" in relation to an act or omission which constitutes a violation of this chapter means with actual knowledge or belief that such act or omission constitutes such violation

and with specific intent to commit such violation.

(Added by Stats.1947, c. 805, p. 1897, § 1.)

§ 1851. Exempt insurance

The provisions of the chapter shall apply to all insurance on risks or on operations in this state, except:

(a) Reinsurance, other than joint reinsurance to the extent stated in Article 5.

(b) Life insurance.

(c) Insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance policies. Inland marine insurance shall be deemed to include insurance now or hereafter defined by statute, or by interpretation thereof, or if not so defined or interpreted, by ruling of the commissioner or as established by general custom of the business, as inland marine insurance.

(d) Title insurance.

(e) Disability insurance.

(f) Workers' compensation insurance and insurance of any liability of employers for injuries to, or death of, employees arising out of, and in the course of, employment when this insurance is incidental to, and written in connection with, the workers' compensation insurance issued to the same employer and covering the same employer interests.

(g) Mortgage insurance.

(h) Insurance transacted by county mutual fire insurers or county mutual fire reinsurers.

(Added by Stats.1947, c. 805, p. 1897, § 1. Amended by Stats.1949, c. 426, p. 773, § 2; Stats.1982, c. 1241, p. 4566, § 1.)

§ 1851.1. Employers' coverage under Longshoremen's and Harbor Workers' Compensation Act; applicability of chapter

Notwithstanding subdivision (f) of Section 1851 or any other provision of law and except as and to the extent otherwise provided in Section 1854.5 and 11753.3, any classification of risks and premium rates or system of rating for insurance covering employers against their liability for compensation or damages under the United States Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 901, et seq.) shall be subject to the provisions of this chapter.

(Added by Stats.1977, c. 459, p. 1514, § 1.5, urgency, eff. Aug. 31, 1977. Amended by Stats.1978, c. 813, p. 2599, § 1.)

West's Ann. Cal. Ins. Code § 1851.1

ARTICLE 2. MAKING AND USE OF RATES

~~§ 1852. Standards in making and using rates~~

~~The following standards shall apply to the making and use of rates pertaining to all classes of insurance to which the provisions of this chapter are applicable:~~

~~(a) Excessive, inadequate, or unfairly discriminatory rates. Rates shall not be excessive or inadequate, as herein defined, nor shall they be unfairly discriminatory.~~

~~No rate shall be held to be excessive unless (1) such rate is unreasonably high for the insurance provided and (2) a reasonable degree of competition does not exist in the area with respect to the classification to which such rate is applicable.~~

~~No rate shall be held to be inadequate unless (1) such rate is unreasonably low for the insurance provided and (2) the continued use of such rate endangers the solvency of the insurer using the same, or unless (3) such rate is unreasonably low for the insurance provided and the use of such rate by the insurer using same has, or if continued will have, the effect of destroying competition or creating a monopoly.~~

~~(b) Loss experience. Consideration shall be given, to the extent applicable, to past and prospective loss experience within and outside this State, to conflagration and catastrophe hazards, to a reasonable margin for underwriting profit and contingencies, to past and prospective expenses both country-wide and those specially applicable to this State, and to all other factors, including judgment factors, deemed relevant within and outside this State; and in the case of fire insurance rates, consideration may be given to the experience of the fire insurance business during the most recent five-year period for which such experience is available.~~

~~Consideration may also be given in the making and use of rates to dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers.~~

~~(c) Expense provisions. The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the operating methods of any such insurer or group with respect to any kind of insurance, or with respect to any subdivision or combination thereof.~~

~~(d) Risk classification. Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any difference among risks that have a probable effect~~

~~upon losses or expenses. Classifications or modifications of classifications of risks may be established based upon size, expense, management, individual experience, location or dispersion of hazard, or any other reasonable considerations. Such classifications and modifications shall apply to all risks under the same or substantially the same circumstances or conditions.~~

~~(Added by Stats.1947, c. 805, p. 1897, § 1.)~~

~~§ 1853. Concerted action of insurers~~

~~Subject to and in compliance with the provisions of this chapter authorizing insurers to be members or subscribers of rating or advisory organizations or to engage in joint underwriting or joint reinsurance, two or more insurers may act in concert with each other and with others with respect to any matters pertaining to the making of rates or rating systems, the preparation or making of insurance policy or bond forms, underwriting rules, surveys, inspections and investigations, the furnishing of loss or expense statistics or other information and data, or carrying on of research.~~

~~(Added by Stats.1947, c. 805, p. 1898, § 1.)~~

§ 1853.5. Insurers having common ownership or management; concerted action

With respect to any matters pertaining to the making of rates or rating systems, the preparation or making of insurance policy or bond forms, underwriting rules, surveys, inspections and investigations, the furnishing of loss or expense statistics or other information and data, or carrying on of research, two or more admitted insurers having a common ownership or operating in this State under common management or control, are hereby authorized to act in concert between or among themselves the same as if they constituted a single insurer, and to the extent that such matters relate to co-surety bonds, two or more admitted insurers executing such bonds are hereby authorized to act in concert between or among themselves the same as if they constituted a single insurer.

(Added by Stats.1947, c. 805, p. 1899, § 1.)

~~§ 1853.6. Agreements to adhere to rates~~

~~Members and subscribers of rating or advisory organizations may use the rates, rating systems, underwriting rules or policy or bond forms of such organizations, either consistently or intermittently, but, except as provided in Sections 1853.5, 1853.8, and Article 5, shall not agree with each other or rating organizations or others to adhere thereto. The fact that two or more admitted insurers, whether or not members or subscribers of a rating or advisory organization, use, either consistently or intermittently, the rates or rating systems made or adopted by a rating organization, or the underwriting rules or policy or bond forms prepared by a rating or advisory organization, shall not be sufficient in itself to support a finding that an agreement to so adhere exists, and may be used only for the purpose of~~

~~supplementing or explaining direct evidence of the existence of any such agreement.~~

~~(Added by Stats.1947, c. 805, p. 1899, § 1.)~~

~~§ 1853.7. Exchange of information and experience data~~

~~Licensed rating organizations and admitted insurers are authorized to exchange information and experience data with rating organizations and insurers in this and other states and may consult with them with respect to rate-making and the application of rating systems.~~

~~(Added by Stats.1947, c. 805, p. 1899, § 1.)~~

§ 1853.8. Agreements to apportion risks

Agreements may be made among admitted insurers with respect to the equitable apportionment among them of casualty insurance which may be afforded applicants who are in good faith entitled to but who are unable to procure such insurance through ordinary methods, and with respect to the use of reasonable rate modifications for such insurance, such agreements to be subject to the approval of the commissioner.

Commissioner's approval. All such agreements shall be submitted in writing to the commissioner for his consideration and approval, together with such information as he may reasonably require. The commissioner shall approve only such agreements as are found by him to contemplate (a) the use of rates which meet the standards prescribed by this chapter and (b) activities and practices that are not unfair, unreasonable or otherwise inconsistent with the provisions of this chapter.

Review by commissioner. At any time after such agreements are in effect the commissioner may review the practices and activities of the adherents to such agreements and if after a hearing upon not less than 10 days notice to such adherents he finds that any such practice or activity is unfair or unreasonable, or is otherwise inconsistent with the provisions of this chapter, he may issue a written order to the parties to any such agreement specifying in what respects such act or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter and requiring the discontinuance of such activity or practice. For good cause, and after hearing upon not less than 10 days notice to the adherents thereto, the commissioner may revoke approval of any such agreement.

(Added by Stats.1947, c. 805, p. 1899, § 1.)

§ 1853.9. Compliance with chapter provisions

Upon compliance with the provisions of this chapter applicable thereto any rating organization, advisory organization, and any group, association or other organization of admitted insurers which engages in joint underwriting or joint reinsurance through such organization or by standing agreement

among the members thereof, may conduct operations in this State. As respects insurance risks or operations in this State, no insurer shall be a member or subscriber of any such organization, group or association that has not complied with the provisions of this chapter applicable to it.

(Added by Stats.1947, c. 805, p. 1899, § 1.)

ARTICLE 2.5 MAKING AND USE OF RATES—INSURANCE OF PROPERTIES BEING PURCHASED FROM DEPARTMENT OF VETERANS AFFAIRS

§ 1853.95. Agreements with department of veterans affairs

Admitted insurers are hereby expressly authorized to enter into agreements with the Department of Veterans Affairs with respect to the furnishing of insurance covering property being purchased from such department pursuant to Chapter 3, Division 4 of the Military and Veterans Code or the Veterans' Farm and Home Purchase Act of 1943, at special rates and forms for such insurance as are determined by the Director of Veterans Affairs to be reasonable.

(Added by Stats.1950, 1st Ex.Sess., c. 19, p. 456, § 1.)

§ 1853.96. Use of rates and forms

The use of such rates and forms by insurers pursuant to such agreements is hereby expressly permitted, and the provisions of Section 1852 are not applicable thereto.

(Added by Stats.1950, 1st Ex.Sess., c. 19, p. 456, § 1.)

ARTICLE 3. RATING ORGANIZATIONS

~~§ 1854. Requirement of license; application; fee~~

~~No rating organization shall conduct its operations in this state without first filing with the commissioner a written application for and securing a license to act as a rating organization. Any rating organization may make application for and obtain a license as a rating organization if it shall meet the requirements for license set forth in this chapter. Every such rating organization shall file with its application (a) a copy of its constitution, its articles of incorporation, agreement or association, and of its bylaws, rules and regulations governing the conduct of its business, all duly certified by the custodian of the originals thereof, (b) a list of its members and subscribers, (c) the name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting such rating organization may be served, and (d) a statement of its qualifications as a rating organization.~~

~~The fee for filing an application for license as a rating organization is one hundred seventy-seven dollars ($177) lawful money of the United States, payable in advance to the commissioner.~~

~~(Added by Stats.1947, c. 805, p. 1900, § 1. Amended by Stats.1963, c. 1917, p. 3939, § 22.)~~

~~§ 1854.1. Requisites for obtaining and retaining license~~

~~To obtain and retain a license, a rating organization shall provide satisfactory evidence to the commissioner that it will:~~

~~(a) Permit any admitted insurer to become a member of or a subscriber to such rating organization at a reasonable cost and without discrimination, or withdraw therefrom.~~

~~(b) Neither have nor adopt any rule or exact any agreement, the effect of which would be to require any member or subscriber as a condition to membership or subscribership, to adhere to its rates, rating plans, rating systems, underwriting rules, or policy or bond forms.~~

~~(c) Neither adopt any rule nor exact any agreement the effect of which would be to prohibit or regulate the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers.~~

~~(d) Neither practice nor sanction any plan or act of boycott, coercion or intimidation.~~

~~(e) Neither enter into nor sanction any contract or act by which any person is restrained from lawfully engaging in the insurance business.~~

~~(f) Notify the commissioner promptly of every change in its constitution, its articles of incorporation, agreement or association, and of its by-laws, rules and regulations governing the conduct of its business; its list of members and subscribers; and the name and address of the resident of this State designated by it upon whom notices or orders of the commissioner or process affecting such organization may be served.~~

~~(g) Comply with the provisions of Section 1857.~~

~~(Added by Stats.1947, c. 805, p. 1900, § 1.)~~

~~§ 1854.2. Investigation of applicant; requirements for issuance of license; limited license; license period~~

~~The commissioner shall examine each application for license to act as a rating organization and the documents filed therewith and may make such further investigation of the applicant, its affairs and its proposed plan of business, as he deems desirable.~~

~~The commissioner shall issue the license applied for within 60 days of its filing with him if from such examination and investigation he is satisfied that:~~

~~(a) The business reputation of the applicant and its officers is good.~~

~~(b) The facilities of the applicant are adequate to enable it to furnish the services it proposes to furnish.~~

~~(c) The applicant and its proposed plan of operation conform to the requirements of this chapter.~~

~~Otherwise, but only after hearing upon notice, the commissioner shall in writing deny the application and notify the applicant of his decision and his reasons therefor.~~

~~The commissioner may grant an application in part only and issue a license to act as a rating organization for one or more of the classes of insurance or subdivisions thereof or class of risk or a part or combination thereof as are specified in the application if the applicant qualifies for only a portion of the classes applied for.~~

~~Licenses issued pursuant to this section shall remain in effect until revoked as provided in this chapter.~~

~~(Added by Stats.1947, c. 805, p. 1901, § 1.)~~

~~§ 1854.25. Annual fee~~

~~Notwithstanding the provision of Section 1854.2, each rating organization possessing a license of indefinite term pursuant to such section shall owe and pay to the commissioner an annual fee of one hundred dollars ($100) in lawful money of the United States in advance on account of such license until its final termination. Such fee shall be for periods commencing on July 1, 1964, and on each July 1st thereafter and ending on June 30, 1965, and each June 30th thereafter, and shall be due and payable on March 1, 1964, and on each March 1st thereafter and shall be delinquent on April 1, 1964, and each April 1st thereafter.~~

~~(Added by Stats.1963, c. 1917, p. 3939, § 23. Amended by Stats.1968, c. 548, p. 1208, § 8, eff. July 15, 1968.)~~

~~§ 1854.3. Membership eligibility rules~~

~~Subject to the approval of the commissioner licensed rating organizations may make reasonable rules governing eligibility for membership.~~

~~(Added by Stats.1947, c. 805, p. 1901, § 1.)~~

~~§ 1854.4. Insurers with common ownership or management; conditions of membership~~

~~If two or more insurers having a common ownership or operating in this State under common management are admitted for the classes or types of insurance for which a rating organization is licensed to make rates, the rating organization may require as a condition to membership or subscribership of one or more that all such insurers shall become members or subscribers.~~

~~(Added by Stats.1947, c. 805, p. 1901, § 1.)~~

~~§ 1854.5. Workers' compensation insurance rating organizations; exemption from licensing or registration requirements of this chapter; authority~~

~~A workers' compensation insurance rating organization licensed pursuant to the provisions of Article 3 (commencing with Section 11750) of Chapter 3 of Part 3 of Division 2 which does not make rates, rating plans or rating systems for insurance covering the liability of employers for compensation or damages under the United States Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 901, et seq.) shall not be required to be licensed as a rating organization or registered as an advisory organization pursuant to the provisions of this chapter and shall have authority under its license as a workers' compensation insurance rating organization to:~~

~~(a) Collect and tabulate loss and expense experience statistics and other information and data relating to insurance covering employers against their liability for compensation under the United States Longshoremen's and Harbor Workers' Compensation Act.~~

~~(b) Furnish or exchange such information and experience data to or with rating organizations, advisory organizations and insurers in this and other states.~~

~~(c) Adopt and enforce compliance by its insurer members with reasonable rules and statistical plans to be used in the recording and reporting by insurer members of their California longshoremen's and harbor workers' insurance loss and expense experience in order that such experience of all of its insurer members shall be available in such form and detail as will be of aid to the commissioner in the enforcement of, and to its insurer members in complying with, the provisions of this chapter.~~

~~(d) Engage in the same activities and carry out the same functions with respect to insurance covering the liability of employers for compensation or damages under the United States Longshoremen's and Harbor Workers' Compensation Act that it is authorized to engage in or carry out with respect to California workers' compensation insurance generally under the provisions of Article 3 (commencing with Section 11750) of Chapter 3 of Part 3 of Division 2 other than the making of rates, rating plans and rating systems.~~

~~(Added by Stats.1978, c. 813, p. 2600, § 2.)~~

ARTICLE 4. ADVISORY ORGANIZATIONS

§ 1855. Requirements for doing business in state

No advisory organization shall conduct its operations in this State unless and until it has filed with the commissioner (a) a copy of its constitution, articles of incorporation, agreement or association, and of its by-laws, or rules and regulations governing its activities, all duly certified by the custodian of the originals thereof, (b) a list of its members and subscribers, and (c) the name and address of a resident of

this State upon whom notices or orders of the commissioner or process may be served.

Every such advisory organization shall notify the commissioner promptly of every change in its constitution, its articles of incorporation, agreement or association, and of its by-laws, rules and regulations governing the conduct of its business; its list of members and subscribers; and the name and address of the resident of this State designated by it upon whom notices or orders of the commissioner or process affecting such organization may be served.

No such advisory organization shall engage in any unfair or unreasonable practice with respect to such activities.

(Added by Stats.1947, c. 805, p. 1902, § 1.)

ARTICLE 5. JOINT UNDERWRITING AND JOINT REINSURANCE

§ 1856. Requirements for doing business in state

Every group, association or other organization of insurers which engages in joint underwriting or joint reinsurance through such group, association or organization or by standing agreement among the members thereof shall file with the commissioner (a) a copy of its constitution, its articles of incorporation, agreement or association, and of its by-laws, rules and regulations governing its activities, all duly certified by the custodian of the originals thereof, (b) a list of its members, and (c) the name and address of a resident of this State upon whom notices or orders of the commissioner or process may be served.

Every such group, association or other organization shall notify the commissioner promptly of every change in its constitution, its articles of incorporation, agreement or association, and of its by-laws, rules and regulations governing the conduct of its business; its list of members; and the name and address of the resident of this State designated by it upon whom notices or orders of the commissioner or process affecting such group, association or organization may be served.

No such group, association or organization shall engage in any unfair or unreasonable practice with respect to such activities.

(Added by Stats.1947, c. 805, p. 1902, § 1.)

ARTICLE 6. RECORDS AND EXAMINATIONS

§ 1857. Records

Every insurer, rating organization or advisory organization and every group, association or other organization of insurers which engages in joint underwriting or joint reinsurance shall maintain reasonable records, of the type and kind reasonably adapted to its method of operation, of its experience or the experience of its members and of the data, statistics or information collected or used by it in

connection with the rates, rating plans, rating systems, underwriting rules, policy or bond forms, surveys or inspections made or used by it so that such records will be available at all reasonable times to enable the commissioner to determine whether such organization, insurer, group or association, and, in the case of an insurer or rating organization, every rate, rating plan and rating system made or used by it, complies with the provisions of this chapter applicable to it. The maintenance of such records in the office of a licensed rating organization of which an insurer is a member or subscriber will be sufficient compliance with this section for any insurer maintaining membership or subscribership in such organization, to the extent that the insurer uses the rates, rating plans, rating systems or underwriting rules of such organization. Such records shall be maintained in an office within this State or shall be made available for examination or inspection within this State by the commissioner at any time upon reasonable notice.

(Added by Stats.1947, c. 805, p. 1903, § 1.)

§ 1857.1. Examination

The commissioner shall, at least once every five years, and may as often as may be reasonable and necessary, make or cause to be made an examination of each licensed rating organization, and he may, as often as may be reasonable and necessary, make or cause to be made an examination of any advisory organization or group, association or other organization of insurers which engages in joint underwriting or joint reinsurance.

In lieu of any such examination the commissioner may accept the report of an examination made by the insurance supervisory official of another state.

In examining any organization, group or association pursuant to this section the commissioner shall ascertain whether such organization, group or association, and, in the case of a rating organization, any rate or rating system made or used by it, complies with the requirements and standards of this chapter applicable to it.

(Added by Stats.1947, c. 805, p. 1903, § 1.)

§ 1857.2. Additional examinations

The commissioner may, at any reasonable time, make or cause to be made an examination of every admitted insurer transacting any class of insurance to which the provisions of this chapter are applicable to ascertain whether such insurer and every rate and rating system used by it for every such class of insurance complies with the requirements and standards of this chapter applicable thereto. Such examination shall not be a part of a periodic general examination participated in by representatives of more than one state.

(Added by Stats.1947, c. 805, p. 1903, § 1.)

§ 1857.3. Persons and things subject to examination

The officers, managers, agents and employees of any such organization, group, association or insurer may be examined at any time under oath and shall exhibit all books, records, accounts, documents or agreements governing its method of operation, together with all data, statistics and information of every kind and character collected or considered by such organization, group, association or insurer in the conduct of the operations to which such examination relates.

(Added by Stats.1947, c. 805, p. 1904, § 1.)

§ 1857.4. Cost of examination

The reasonable cost of any examination authorized by this article shall be paid by the organization, group, association or insurer to be examined.

(Added by Stats.1947, c. 805, p. 1904, § 1.)

~~§ 1857.5. Rules and statistical plans; promulgation; compilations~~

~~(a) The commissioner may promulgate reasonable rules and statistical plans, reasonably adapted to each of the rating systems in use within the state, which may be modified from time to time and which shall be used thereafter by each insurer in the recording and reporting of its loss and countrywide expense experience, in order that the experience of all insurers may be made available at least annually in such form and detail as may be necessary to aid him in determining whether rating systems comply with the standards set forth in this chapter. Such rules and plans may also provide for the recording and reporting of expense experience items which are specially applicable to this state and are not susceptible of determination by a prorating of countrywide expense experience. In promulgating such rules and plans, the commissioner may give due consideration to the rating systems in use and, in order that such rules and plans may be as uniform as is practicable among the several states, to the rules and to the form of the plans used for such rating systems in other states. No insurer shall be required to record or report its loss experience on a classification basis that is inconsistent with the rating system in use by it. The commissioner may designate one or more rating organizations or advisory organizations to assist him in gathering such experience and making compilations thereof, and such compilations shall be made available, subject to reasonable rules promulgated by the commissioner, to insurers and rating organizations.~~

~~(b) Reasonable rules and plans may be promulgated by the commissioner for the interchange of data necessary for the application of rating plans.~~

~~(c) In order to further uniform administration or rate regulatory laws, the commissioner and every insurer and rating organization may exchange information and experience data with insurance supervisory officials, insurers and rating organizations in other states and may consult with them with~~

~~respect to ratemaking and the application of rating systems.~~

~~(Added by Stats.1978, c. 676, p. 2165, § 1.)~~

ARTICLE 6.5. RECORDING AND REPORTING OF LOSS AND EXPENSE EXPERIENCE

§ 1857.7. Products liability insurers; transmission of information

(a) Any insurer issuing a policy of products liability insurance in this state shall transmit the following information, based on its nationwide products liability insurance writings, to the department each year in the annual report of the insurer:

(1) Premiums written.

(2) Premiums earned.

(3) Unearned premiums.

(4) The dollar amount of claims paid.

(5) The number of outstanding claims.

(6) Net loss reserves for outstanding claims excluding claims incurred but not reported.

(7) Net loss reserves for claims incurred but not reported.

(8) Losses incurred as a percentage of premiums earned.

(9) Net investment gain or loss and other income or gain or loss allocated to products liability lines.

(10) Net income before federal and foreign income taxes.

(11) Expenses incurred including loss adjustment expense, commission and brokerage expense, other acquisition expense and general expense.

(b) The reports provided pursuant to subdivision (a) shall be available for public inspection and shall be retained on file by the department for five years.

(c) The reports required by subdivision (a) shall only contain information for the year for which the reports are being filed.

(d) Any information provided by any insurer to the department pertaining to a specific claim or a products liability insurance policy shall be classified as confidential and shall not be revealed by the department.

(Added by Stats.1982, c. 627, p. 2630, § 1.)

§ 1857.9. Report; contents; designating classes of insurance generally unavailable, unaffordable, or for which there have been unusually great premium increases; information on classes of insurance; excluded commercial liability insurance; filing reports; emergency regulations

(a) Every insurer doing business in this state, except as provided by subdivision (g), shall report on a calendar year basis for each class of insurance designated in the prior calendar year by the commissioner pursuant to subdivision (b) and for each class listed in subdivision (c), both for policies issued or issued for delivery in California, and for policies issued or issued for delivery in the United States and territories:

(1) The number of policies written, the direct premiums written, the direct premiums earned, the direct losses paid, the direct losses incurred, the direct losses unpaid (not including losses incurred but not reported) the number of outstanding claims at year end and the number of claims paid in the preceding year, the allocated loss adjustment expense, and the percentage of allocated loss adjustment expense attributable to defense attorney expenses.

(2) Whether policies are written on a claim made or occurrence basis, and whether there has been a change in the preceding 12 months.

(3) For each loss reserve for each class, whether the reserve is discounted in anticipation of future investment earnings.

(4) The commissioner shall waive the requirements of paragraph (1) for any information that has been provided to the Insurance Services Office by the insurer, if the Insurance Services Office provides the information to the commissioner on or before the date on which the insurer is required to file the statement.

(b) No later than October 1 of each year the commissioner shall designate those classes of insurance, as defined by the Insurance Services Office, that are generally unavailable or unaffordable in California, or for which there have been unusually great premium increases. The factors the commissioner shall consider in making this determination shall include, but are not limited to, the following:

(1) Consumer complaints.

(2) Rate complaints.

(3) Surveillance by the department.

(4) Market conduct.

(c) In addition to the classes designated by the commissioner pursuant to subdivision (b) the insurer shall include the information required by subdivision (a) for those classes of insurance, as defined by the Insurance Services Office, covering liability insurance for municipalities, products liability insurance, liability insurance for any business or nonprofit enterprise required to carry liability insurance by state law, news publishers' liability insurance, and professional errors and omissions (malpractice) liability insurance for doctors and for lawyers. Collection of the data described in this section shall be terminated upon a joint resolution of the Legislature specifying such termination of collection. Insurers shall not be required to report under this section information required to be reported under Sections 1857.7, 1864, 11555.2, and 12958.

(d) The insurer shall also report for both California and for the United States and its territories for the calendar year:

(1) Each class of commercial liability insurance, as defined by the Insurance Services Office, that is specifically excluded from any reinsurance treaty for reinsurance ceded.

(2) Each class of commercial liability insurance, as defined by the Insurance Services Office, that is specifically excluded from any reinsurance treaty for reinsurance assumed.

(e) The department shall retain the information reported pursuant to this section for a period of no less than five years.

(f) Insurers that are members of the same insurance group may aggregate the information required by this section in a single report.

(g) The reports required by this section shall not be applicable to any insurer that has been established for less than three years.

(h) The reports required by this section shall be filed on a form provided by the commissioner no later than May 1 of the calendar year following the year for which the information is reported.

(i) The department shall adopt regulations implementing this section as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code, except that for the purposes of Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code, any regulations adopted under this section shall be deemed to be necessary for the immediate preservation of the public peace, health and safety, or general welfare. These regulations shall remain in effect for 180 days. The regulations may require insurers to report the information required by subdivision (d) by categories other than those used by the Insurance Services Office.

(j) The information provided pursuant to subdivision (a) shall be confidential and not revealed by the department, except that the commissioner may publish an analysis of the data in aggregate form or in a manner which does not disclose confidential information about identified insurers or insureds.

(Added by Stats.1986, c. 1329, § 2.)

§ 1857.15. Report; director and officer liability claims experience; forms; findings and recommendations

(a) Each insurer engaged in writing director and officer liability insurance coverage for nonprofit public benefit corporations in this state shall submit to the commissioner a report of its operations regarding director and officer liability claims experience for the preceding calendar year ending on December 31 on a form furnished by the commissioner. Each report shall separately state the following information for nonprofit public benefit corporations:

(1) Direct premiums earned.

(2) Direct premiums written.

(3) Earned exposures per year for nonprofit public benefit corporations.

(4) Number of new claims made during the reporting period.

(5) Number of claims paid during the reporting period.

(6) Number of claims outstanding at the end of the reporting period.

(7) Total losses incurred and total losses unpaid by calendar year and either occurrence year or reporting year.

(8) Total losses incurred and reported, including loss adjustment expense, as a percentage of premiums earned.

(9) Total number of policies written during the reporting period.

(10) The average and median amount of claims paid during the reporting period.

(11) Net underwriting gain or loss.

(b) The commissioner shall develop and issue reporting forms to insurers in accordance with the department's current insurance reporting procedures.

The commissioner shall make available upon request, but in any event no later than 120 days after the last day of the preceding reporting period, a report summarizing the information required in this section. The commissioner shall make findings and recommendations, as appropriate, relative to the availability and affordability of public benefit corporation director and officer liability insurance and the rates thereof.

(Added by Stats.1987, c. 1290, § 1.) (This section was repealed in 1991)

ARTICLE 7. HEARINGS, PROCEDURE AND JUDICIAL REVIEW

§ 1858. Complaint requesting review; hearing; denial; request for review to insurer or rating organization

(a) Any person aggrieved by any rate charged, rating plan, rating system, or underwriting rule followed or adopted by an insurer or rating organization, may file a written complaint with the commissioner requesting that the commissioner review the manner in which the rate, plan, system, or rule has been applied with respect to the insurance afforded to that person. In addition, the aggrieved person may file a written request for a public hearing before the commissioner, specifying the grounds relied upon.

(b) The commissioner shall advise the insurer or rating organization that a complaint has been filed against it and the nature of the complaint and provide the insurer or rating organization with an opportunity to respond to the complaint.

(c) If the commissioner has information concerning a similar complaint, he or she may deny the request for a public hearing until a determination is made or a public hearing is held on the similar complaint or may consolidate similar complaints for determination or public hearing. If he or she believes, after review and investigation of the facts alleged in the complaint and the facts alleged in any response to the complaint, that probable cause for the complaint does not exist or that the complaint is not made in good faith, he or she shall so advise the complainant and shall deny any request made for a public hearing. If he or she believes, after review and investigation of the facts alleged in the complaint and the facts alleged in any response to the complaint, that probable cause for the complaint does exist, that the complaint charges a violation of this chapter, and that the complainant would be aggrieved if the violation is proven, he or she shall proceed as provided in Section 1858.1 unless the complaint was accompanied by a request for public hearing, in which case he or she shall proceed as provided in Section 1858.2.

(d) Nothing in this section prohibits or limits the right of any aggrieved person, either prior to or in conjunction with the filing of a written complaint with the commissioner under this section, from requesting an insurer or rating organization to review the manner in which the rate, plan, system, or rule has been applied with respect to the insurance afforded to that person.

(Added by Stats.1947, c. 805, p. 1904, § 1. Amended by Stats.1987, c. 1289, § 1.)

§ 1858. Request for review; denial; complaint; hearing

Any person aggrieved by any rate charged, rating plan, rating system, or underwriting rule followed or adopted by an insurer or rating organization may request the insurer or rating organization to review the manner in which the rate,

plan, system, or rule has been applied with respect to insurance afforded him. Such request may be made by his authorized representative, and shall be written. If the request is not granted within 30 days after it is made, the requestor may treat it as rejected. Any person aggrieved by the action of an insurer or rating organization in refusing the review requested, or in failing or refusing to grant all or part of the relief requested, may file a written complaint and request for hearing with the commissioner, specifying the grounds relied upon. If the commissioner has information concerning a similar complaint he may deny the hearing. If he believes that probable cause for the complaint does not exist or that the complaint is not made in good faith he shall deny the hearing. Otherwise, and if he finds that the complaint charges a violation of this chapter and that the complainant would be aggrieved if the violation is proven, he shall proceed as provided in Section 1858.1.

(Added by Stats.1947, c. 805, p. 1904, § 1.) (Original language as enacted in 1947 prior to 1987 amendment)

§ 1858.01. Determination of probable cause; grant or denial of hearing; time; personal or commercial insurance; informal conciliation

(a) Whenever a written complaint has been filed with the commissioner, the commissioner shall review and investigate the matter complained of as provided by Section 1858 and shall make a determination whether there is probable cause to believe that a violation of this chapter has occurred. This determination shall be made within a reasonable time, but in no event more than 60 days after the complaint regarding a policy in a personal line of insurance or 90 days in the case of a policy in a class of commercial insurance is filed unless the complainant consents to a greater time or unless the complainant enters into informal conciliation of the complaint. The time and location of the conciliation shall be mutually agreeable to the complainant and to the insurer.

(b) Whenever a written complaint is accompanied by written request for a public hearing, the commissioner shall review and investigate the matter complained of as provided in Section 1858 and shall grant or deny the request for a public hearing within a reasonable time, but in no event more than 90 days when the complaint is regarding a policy in a personal line of insurance or 120 days in the case of a policy in a class of commercial insurance, unless the complainant consents to a greater time or unless the complainant enters into informal conciliation of the complaint. The time and location of the conciliation shall be mutually agreeable to the complainant and to the insurer.

(c) In the event the complainant enters into informal conciliation of the complaint, the time set forth in subdivisions (a) and (b) for making a determination or for granting or denying a request for a public hearing shall be tolled for up to 10 working days until informal conciliation results in resolution of the complaint or informal conciliation is ended without resolution of the complaint. Should informal conciliation fail to result in resolution of the complaint, the commissioner shall review the facts presented by the complainant and the insurer or rating organization, together with the facts alleged in the complaint and any response to the complaint, to determine whether probable cause exists to believe

that a violation of this chapter has occurred.

(d) For purposes of this subdivision, "personal insurance" means all coverages combined in private passenger automobile insurance policies as those policies are described in Section 660 and all forms combined in property or multiperil insurance policies as those policies are described in Section 675.

(e) For purposes of this subdivision, "commercial insurance" means any class, as defined by the Insurance Services Office of commercial insurance and any class of insurance designated under subdivisions (b) and (c) of Section 1857.9.

(Added by Stats.1987, c. 1289, § 1.5.)

§ 1858.02. Informal conciliation of complaints; confidential communications; report

(a) The commissioner may seek resolution of a complaint by informal conciliation at any time and may require the complainant and insurer or rating organization to meet and confer for the purposes of resolving the matter complained of by informal conciliation. The commissioner may decline to find probable cause for a complaint and may deny a request for a public hearing if the complainant refuses to enter into informal conciliation at the commissioner's request. Likewise, the commissioner may find probable cause for a complaint and may act to hold a public hearing, whether or not a request for a public hearing accompanied the complaint, if the insurer or rating organization refuses to enter into informal conciliation at the commissioner's request.

(b) Communications to the commissioner in respect to resolution of a complaint by informal conciliation shall be made to him or her in official confidence within the meaning of Sections 1040 and 1041 of the Evidence Code and shall not be disclosed by the commissioner. However, the commissioner may report on the results of informal conciliation.

(Added by Stats.1987, c. 1289, § 1.6.)

§ 1858.05. Medical malpractice insurance; procedure

Whenever a written complaint and request for hearing with the commissioner has been filed pursuant to Section 1858, and the complaint concerns medical malpractice insurance, the commissioner shall within 30 days either by order deny the hearing or proceed as provided in Sections 1858.1 or 1858.2. The complainant may petition the court for an order to compel compliance with this section.

(Added by Stats.1975, 2nd Ex. Sess., c. 2, p. 3997, § 1.43, urgency, eff. Sept. 24, 1975.)

§ 1858.1. Notice to correct noncompliance; options of insurer, organization, group or association; penalty; public hearing

If after examination of an insurer, rating organization, advisory organization, or group, association, or other organization of insurers which engages in joint underwriting or joint reinsurance, or upon the basis of other information, or upon sufficient complaint as provided in Section 1858, the commissioner has good cause to believe that the insurer, organization, group, or association, or any rate, rating plan or rating system made or used by any such insurer or rating organization, does not comply with the requirements and standards of this chapter applicable to it, he or she shall give notice in writing to that insurer, organization, group, or association stating therein in what manner and to what extent that noncompliance is alleged to exist and specifying therein a reasonable time, not less than 10 days thereafter, in which that noncompliance may be corrected.

An insurer, organization, group, or association served with that notice of noncompliance may, within the time specified therein, (a) establish to the satisfaction of the commissioner that such noncompliance does not exist, or (b) request a public hearing, notice of which shall be given at least 30 days prior to the date set for hearing, or (c) enter into an informal conciliation with the commissioner and any complainant making a complaint pursuant to Section 1858 to resolve the matter complained of, or (d) enter into a consent order with the commissioner to correct the specified noncompliance within a period of time specified in the consent order. A consent order shall provide that in the event the noncompliance is not corrected within the time specified therein that a money penalty of not to exceed ten thousand dollars ($10,000) shall attach and be collected by the commissioner for each day the violation of the consent order continues. This money penalty shall not exceed in the aggregate the sum of one hundred thousand dollars ($100,000). In addition to or in lieu of the procedure provided herein the commissioner may proceed with a public hearing as provided in Section 1858.2.

(Added by Stats.1947, c. 805, p. 1904, § 1. Amended by Stats.1977, c. 994, p. 2983, § 2; Stats.1987, c. 1289, § 2.)

§ 1858.1. Notice to correct noncompliance

If after examination of an insurer, rating organization, advisory organization, or group, association or other organization of insurers which engages in joint underwriting or joint reinsurance, or upon the basis of other information, or upon sufficient complaint as provided in Section 1858, the commissioner has good cause to believe that such insurer, organization, group or association, or any rate, rating plan or rating system made or used by any such insurer or rating organization, does not comply with the requirements and standards of this chapter applicable to it, he shall, unless he has good cause to believe such noncompliance is wilful, give notice in writing to such insurer, organization, group or association stating therein in what manner and to what extent such noncompliance is alleged to exist and specifying therein a reasonable time, not less than 10 days thereafter, in which such noncompliance may be corrected. Notices under this section shall be confidential as between the commissioner and the parties unless a hearing is held under Section 1858.2.

(Added by Stats.1947, c. 805, p. 1904, § 1.) (Original language prior to 1987 amendment)

§ 1858.15. Medical malpractice insurance; examination; conduct and conclusion; order compelling compliance

Once commenced, an examination pursuant to Section 1858.1 shall be promptly conducted and concluded within a reasonable time. If the examination is being conducted as the result of a written complaint and request for hearing filed pursuant to Section 1858, and the complaint concerns medical malpractice insurance, the complainant may petition the court for an order to compel compliance with this section.

(Added by Stats.1975, 2nd Ex. Sess., c. 2, p. 3998, § 1.45, urgency, eff. Sept. 24, 1975.)

§ 1858.2. Public hearings; notices; preference to complainant 70 years of age

(a) If the insurer, organization, group, or association does not make those changes as may be necessary to correct the noncompliance specified in the notice issued under Section 1858.1, or if the insurer, organization, group, or association has failed to establish to the satisfaction of the commissioner that such noncompliance does not exist, the commissioner shall hold a public hearing by mailing a notice to that insurer, organization, group, or association not less than 30 days prior to the date set for hearing specifying the matters to be considered at the hearing.

(b) In the event that the insurer and complainant resolve the matter and the insurer has consented to a rating modification, then that modification shall apply to other policyholders underwritten by the insurer for that class of insurance.

(c) If the insurer, organization, group, or association has refused to enter into informal conciliation at the request of the commissioner, the commissioner may hold a public hearing, whether or not the complaint was accompanied by a request for a public hearing, by mailing a notice to the insurer, organization, group, or association not less than 30 days prior to the date set for hearing specifying the matters to be considered at the hearing.

(d) If a hearing noticed under subdivisions (a) and (c) is based upon a complaint made pursuant to Section 1858, the commissioner shall also mail notice to the complainant not less than 30 days prior to the date set for hearing specifying the matters to be considered at the hearing.

(e) If upon sufficient complaint as provided in Section 1858 and upon review and investigation of the complaint, the commissioner has good cause to believe that the insurer, organization, group, or association, or any rate, rating plan, or rating system made or used by that insurer or rating organization, does not comply with the requirements and standards of this chapter applicable to it, the commissioner shall hold a public hearing by mailing a notice to the complainant and to the insurer, organization,

group, or association not less than 30 days prior to the date set for hearing specifying the matters to be considered at the hearing.

(f) With respect to public hearings under this section, the commissioner may at his or her discretion, grant preference to a hearing in which the complainant has reached the age of 70 years.

(Added by Stats.1977, c. 994, p. 2984, § 4. Amended by Stats.1978, c. 380, p. 1171, § 114; Stats.1979, c. 373, p. 1344, § 216; Stats.1987, c. 1289, ß 3.)

§ 1858.2. Public hearing; notice

If the commissioner has good cause to believe such noncompliance to be wilful, or if within the period prescribed by the commissioner in the notice required by Section 1858.1 the insurer, organization, group or association does not make such changes as may be necessary to correct the noncompliance specified by the commissioner or establish to the satisfaction of the commissioner that such specified noncompliance does not exist, then the commissioner may hold a public hearing in connection therewith, provided that within a reasonable period of time, which shall be not less than 10 days before the date of such hearing, he shall mail written notice specifying the matters to be considered at such hearing to such insurer, organization, group or association. Such notice shall conform to the requirements for an accusation as prescribed by Section 11503 of the Government Code. If no notice has been given as provided in Section 1858.1 such notice shall state therein in what manner and to what extent noncompliance is alleged to exist. The hearingshall not include any additional subjects not specified in the notices required by Section 1858.1 or this section.

(Added by Stats.1947, c. 805, p. 1905, § 1.) (Original language prior to 1987 amendment.)

§ 1858.3. Commissioner's powers

If after a hearing pursuant to Section 1858.2 the commissioner finds:

(a) That any rate, rating plan, or rating system violates the provisions of this chapter applicable to it, he or she shall issue an order to the insurer or rating organization which has been the subject of the hearing specifying in what respects that violation exists and stating when, within a reasonable period of time, the further use of that rate or rating system by that insurer or rating organization in contracts of insurance made thereafter shall be prohibited. The commissioner may, in addition to that order, direct the insurer or rating organization to take such other corrective action as he or she may deem necessary and proper.

(b) That an insurer, rating organization, advisory organization, or a group, association or other organization of insurers which engages in joint underwriting or joint reinsurance, is in violation of the

provisions of this chapter applicable to it other than the provisions dealing with rates, rating plans, or rating systems, he or she may issue an order to that insurer, organization, group, or association which has been the subject of the hearing specifying in what respects that violation exists and requiring compliance within a reasonable time thereafter.

(c) Any order of the commissioner issued pursuant to subdivision (a) or (b) shall provide that a money penalty of not to exceed ten thousand dollars ($10,000) shall attach and be collected by the commissioner for each day such person fails to comply within the time specified therein with the provisions of that order in the same manner as that provided in Section 1858.1. This penalty shall not exceed in the aggregate the sum of one hundred thousand dollars ($100,000).

(Added by Stats.1947, c. 805, p. 1905, § 1. Amended by Stats.1977, c. 994, p. 2984, § 5; Stats.1987, c. 1289, § 4.)

§ 1858.3. Commissioner's powers

If after a hearing pursuant to Section 1858.2 the commissioner finds:

(a) Rate violation. That any rate, rating plan or rating system violates the provisions of this chapter applicable to it, he may issue an order to the insurer or rating organization which has been the subject of the hearing specifying in what respects such violation exists and stating when, within a reasonable period of time, the further use of such rate or rating system by such insurer or rating organization in contracts of insurance made thereafter shall be prohibited.

(b) Other violation. That an insurer, rating organization, advisory organization, or a group, association or other organization of insurers which engages in joint underwriting or joint reinsurance, is in violation of the provisions of this chapter applicable to it other than the provisions dealing with rates, rating plans or rating systems, he may issue an order to such insurer, organization, group or association which has been the subject of the hearing specifying in what respects such violation exists and requiring compliance within a reasonable time thereafter.

(c) Wilful violation. That the violation of any of the provisions of this chapter applicable to it by any insurer or rating organization which has been the subject of hearing was wilful, he may suspend or revoke, in whole or in part, the certificate of authority of such insurer or the license of such rating organization with respect to the class of insurance which has been the subject matter of the hearing.

(d) Fraudulent practice. That any rating organization has wilfully engaged in any fraudulent or dishonest act or practices, he may suspend or revoke, in whole or in part, the license of such organization in addition to any other penalty provided in this chapter.

(Added by Stats.1947, c. 805, p. 1905, § 1.) (Original language prior to 1987 amendment.)

Wilful defined, see § 1850.5.

§ 1858.35. Report; complaints to commissioner

On or before May 1 of the years 1988 and 1989, the commissioner shall submit a report to the Legislature and the Governor stating the number and type of complaints received under this article and the status and disposition of these complaints. The commissioner may make any recommendations for improving the efficiency and effectiveness of complaint handling under this article.

Noinformation shall be provided under this section pertaining to a specified complaint against a specific insurer or rating organization. However, the commissioner may report that information in the aggregate.

(Added by Stats.1987, c. 1289 § 5.*5.)*

§ 1858.4. Failure to comply with order

In addition to other penalties provided in this code, the commissioner shall suspend or revoke, in whole or in part, the license of any rating organization or the certificate of authority of any insurer with respect to the class or classes of insurance specified in that order, which fails to comply within the time limited by that order or any extension thereof which the commissioner may grant, with an order of the commissioner lawfully made by him or her pursuant to Section 1858.3 and effective pursuant to Section 1858.6.

(Added by Stats.1947, c. 805, p. 1905, § 1. Amended by Stats.1987, c. 1289, § 5.)

§ 1858.4. Failure to comply with order

In addition to other penalties provided in this code, the commissioner may suspend or revoke, in whole or in part, the license of any rating organization or the certificate of authority of any insurer with respect to the class or classes of insurance specified in such order, which fails to comply within the time limited by such order or any extension thereof which the commissioner may grant, with an order of the commissioner lawfully made by him pursuant to Section 1858.3 and effective pursuant to Section 1858.6.

(Added by Stats.1947, c. 805, p. 1905, § 1.) (Original language prior to 1987 amendment.)

§ 1858.5. Proceedings for denial, suspension, and suspension of license

Except as otherwise provided in this chapter, all proceedings in connection with the denial, suspension or revocation of a license or certificate of authority under this chapter shall be conducted in accordance with the provisions of Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code, and the commissioner shall have all the powers granted to him therein.

(Added by Stats.1947, c. 805, p. 1906, § 1.)

§ 1858.6. Judicial review

Any finding, determination, rule, ruling or order made by the commissioner under this chapter shall be subject to review by the courts of the State and proceedings on review shall be in accordance with the provisions of the Code of Civil Procedure. In such proceedings on review, the court is authorized and directed to exercise its independent judgment on the evidence and unless the weight of the evidence supports the findings, determination, rule, ruling or order of the commissioner, the same shall be annulled.

Notwithstanding any other provision of law to the contrary, a petition for review of any such finding, determination, rule or order, may be filed at any time before the effective date thereof. No such finding, determination, rule, or order shall become effective before the expiration of 20 days after notice and a copy thereof are mailed or delivered to the person affected, and any finding, determination, rule, or order of the commissioner so submitted for review shall not become effective for a further period of 15 days after the petition for review is filed with the court. The court may stay the effectiveness thereof for a longer period.

(Added by Stats.1947, c. 805, p. 1906, § 1. Amended by Stats.1949, c. 174, p. 406, § 1.)

Review of orders of insurance commissioner, see § 12940.

§ 1858.7. Basis for determinations

Whenever the commissioner determines that a rate is excessive or not excessive, he shall, upon the written request of any complainant, disclose the basis upon which such rate was determined to be excessive or not excessive in writing to the complainant.

(Added by Stats.1978, c. 180, p. 411, § 1.)

ARTICLE 8. PENALTIES

§ 1859. Concealment; misrepresentation

No person, insurer or organization shall wilfully withhold information from, or knowingly give false or misleading information to, the commissioner or to any rating organization, advisory organization, insurer or group, association or other organization of insurers, which will affect the rates, rating systems or premiums for the classes of insurance to which the provisions of this chapter are applicable.

(Added by Stats.1947, c. 805, p. 1906, § 1.)

§ 1859.1. Failure to comply with final order

(a) Any person, insurer, organization, group, or association who fails to comply with a final order of the commissioner under this chapter shall be liable to the state in an amount not exceeding fifty thousand dollars ($50,000) but if the failure is willful he or she or it shall be liable to the state in an amount not exceeding two hundred fifty thousand dollars ($250,000) for the failure. The commissioner shall collect the amount so payable and may bring an action in the name of the people of the State of California to enforce collection. These penalties may be in addition to any other penalties provided by law.

(b) A willful violation of this chapter by any person is a misdemeanor.

(Added by Stats.1947, c. 805, p. 1906, § 1. Amended by Stats.1984, c. 144, § 158; Stats.1987, c. 1289, § 6.)

§ 1859.1. Failure to comply with final order

(a) Any person, insurer, organization, group or association who fails to comply with a final order of the commissioner under this chapter shall be liable to the State in an amount not exceeding fifty dollars ($50) but if such failure be wilful he or it shall be liable to the State in an amount not exceeding five thousand dollars ($5,000) for such failure. The commissioner shall collect the amount so payable and may bring an action in the name of the people of the State of California to enforce collection. Such penalties may be in addition to any other penalties provided by law.

(b) A willful violation of the provisions of this chapter by any person is a misdemeanor.

(Added by Stats.1947, c. 805, p. 1906, § 1.) (Original language prior to 1987 amendment.)

ARTICLE 9. MISCELLANEOUS

§ 1860. Payment of dividends, savings, or unabsorbed premium deposits

Nothing in this chapter shall be construed to prohibit or regulate the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers. A plan for the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers shall not be deemed a rating plan or system.

(Added by Stats.1947, c. 805, p. 1907, § 1.)

§ 1860.1. Applicability of other laws

No act done, action taken or agreement made pursuant to the authority conferred by this chapter shall constitute a violation of or grounds for prosecution or civil proceedings under any other law of this State heretofore or hereafter enacted which does not specifically refer to insurance.

(Added by Stats.1947, c. 805, p. 1907, § 1.)

§ 1860.2. Applicability of other laws

The administration and enforcement of this chapter shall be governed solely by the provisions of this chapter. Except as provided in this chapter, no other law relating to insurance and no other provisions in this code heretofore or hereafter enacted shall apply to or be construed as supplementing or modifying the provisions of this chapter unless such other law or other provision expressly so provides and specifically refers to the sections of this chapter which it intends to supplement or modify.

(Added by Stats.1947, c. 805, p. 1907, § 1.)

§ 1860.3. Code sections applicable to chapter

The provisions of the following sections of this code shall be applicable to the administration, enforcement and interpretation of this chapter:

Sections 1 to 41, both inclusive, 100 to 121, both inclusive, 620, 621, 700, 701, 704, 730 to 737, both inclusive, 12903, 12904, 12919, 12921, 12921.5, 12924 to 12926, both inclusive, 12928, 12930, and 12974 to 12977, both inclusive.

(Added by Stats.1947, c. 805, p. 1907, § 1; Stats.1955, c. 677, p. 1168, § 1.)

The 1955 amendment deleted a reference to sections "1010 to 1062, both inclusive".

EXHIBIT C

WALLACE K. DOWNEY
INSURANCE COMMISSIONER

STATE OF CALIFORNIA
OFFICE OF THE
Insurance Commissioner
417 MONTGOMERY STREET
SAN FRANCISCO 4

June 10, 1947

Honorable Earl Warren
Governor of California
State Capitol
Sacramento, California

Re: SENATE BILL NO. 1572

Dear Governor Warren:

Pursuant to the request of your Legislative Secretary, I am pleased to submit herewith my comments and recommendation on Senate Bill No. 1572, which is presently before you for consideration.

Senate Bill No. 1572 was introduced by Senator McBride on behalf of the Joint Legislative Interim Committee on Insurance Regulations, appointed in 1945 and continued in 1947, of which he is Chairman. In general, it is a fire and casualty insurance rate regulatory law.

As you know, this bill finds its background in the decision of the United States Supreme Court in 1944, in the case of United States v. Southeastern Underwriters, declaring insurance to be commerce, and in Public Law 15 enacted by Congress in 1945. The effect of the Southeastern Underwriters' decision was to make the rating activities of insurers engaged in interstate commerce subject to the Federal Anti-Trust and related laws. Public Law 15 granted the business of insurance a moratorium from these Federal laws until January 1, 1948, at which time they will become applicable "to the extent that such business is not regulated by state law."

Except in the field of Workmen's Compensation insurance, the State of California does not have any law regulating insurance rates and the making and use thereof, and unless such a statute is enacted at this session of the Legislature, this field in the regulation of the insurance business will be preempted, on January 1, 1948, by the Federal Government by virtue of the provisions of Public Law 15. It is generally conceded that concert of action in the making of insurance rates is not only desirable but necessary by reason of the very nature of insurance. Accordingly, to prevent

the application of the Federal Anti-Trust Laws to this necessary activity in the insurance field of interstate commerce it is essential that state legislation be enacted to affirmatively authorize such concert of action in the making of insurance rates to the extent consistent with the public interest and to regulate such concert of action.

This bill requires that insurance rates be not excessive, inadequate or unfairly discriminatory. Its basic, underlying philosophy is that competition and the laws of economic force are the best regulator of rates, but it empowers the Insurance Commissioner to intervene, when no substantial competition exists, to order the discontinuance of excessive rates, and, when the solvency of an insurer is in danger or monoply threatens, to order the discontinuance of inadequate rates.

The bill authorizes insurers to act in concert in rate making and related matters through rating organizations which are licensed and regulated by the Insurance Commissioner. It preserves the spirit of the anti-trust laws, however, by positively prohibiting insurers from making agreements to charge the same rates In other words, while it permits insurers to act in concert in rate matters, subject to regulation by the Commissioner, it forbids them to eliminate competition between themselves by agreeing to use the same rates without deviation.

The principal instrumentality of enforcement is the Commissioner's power of examination and investigation of insurers and rating organizations. The Commissioner is empowered to hold hearings, to issue what are in effect cease and desist orders, and where wilful violations occur, to suspend or revoke licenses of insurers and rating organizations. Penalties that are both substantial and wholly reasonable are provided in the event of violation of the provisions of the bill.

The bill makes provision for public complaints to the Commissioner by policyholders who believe themselves to be aggrieved by the actions of rating organizations or insurers in rate matters and provides for hearings upon such complaints. All acts and orders of the Commissioner are subject to judicial review and the court is authorized and directed to exercise its independent judgment on the evidence. Proceedings in connection with denial, suspension, or revocation of licenses are required to be conducted in accordance with the Administrative Procedure Act.

This bill necessarily represents a compromise of conflicting viewpoints in the insurance business. It differs materially

from the so-called "all industry" insurance rate regulatory law in that it does not require the filing by insurers of their rates and rating schedules with the Insurance Commissioner for review and affirmative approval by him. While at first impression it would seem that such filing and approval of insurance rates is desirable in the public interest, experience has proven that filing results in uniformity and uniformity, in turn, results in the maintenance of rates at a higher level. Strict rate regulation such as is embodied in the filing and approval type of rating law lacks the flexibility that is essential to the public interest and inevitably results in a situation which may be likened to the common law pleading era in which the substantive wants and needs of the public are subjugated to the approved rates and forms.

In venturing into a field which it has not heretofore occupied it is desirable for the State of California, in our opinion, to proceed cautiously by enacting rating legislation which is both adequate and yet not overly detailed and inflexible.

As heretofore indicated, this bill represents a series of compromises and we deem it necessary to inform you that the Commissioner stated before the Legislative Committees his position that a bill which regulates initial rates but does not prohibit discrimination in the payment of dividends to policyholders by mutual and participating insurers is not complete. This Department has not changed its view in this important matter but recognizes that it stood alone in its position against all branches of the industry and, indeed, against the views of the National Association of Insurance Commissioners as evidenced by the model bills recommended by it which do not contain a dividend regulatory provision. We also concede that dividend plans are not rating plans or systems, although they do have a definite effect on the ultimate cost to the policyholder and that to a large extent dividend regulation, while a related matter, is an entirely separate subject which, it can be argued with considerable merit, warrants separate legislation.

This Department is satisfied that Senate Bill No. 1572, unlike its constituent bills in their original form, affirmatively regulates fire and casualty insurance rates and vests in the

Commissioner powers of enforcement that are real and not illusory. We believe that it constitutes adequate regulation under Public Law 15 and regulation to a degree wholly consistent with the public interest, for which reason we respectfully recommend that it be given your favorable consideration and approval.

Very truly yours,

WALLACE K. DOWNEY
Insurance Commissioner

By
J. R. MALONEY
Deputy Insurance Commissioner

JRM:LL

EXHIBIT D

STATE OF CALIFORNIA

SAN FRANCISCO 2

Inter-Departmental Communication

To: Honorable Earl Warren
Governor of California
State Capitol
Sacramento 14, California

File No.

Date: June 11, 1947

Subject: S. B. 1572

From: Department of Justice
Harold B. Haas, Deputy

S. B. 1572 adds Chapter 9 to Part 2 of Division 1, Insurance Code, entitled "RATES AND RATING AND OTHER ORGANIZATIONS."

It purports to provide insurance rate regulation in order that insurance rates may not be excessive, inadequate, or unfairly discriminatory; provides for licensing rating organizations and a lesser degree of regulation of advisory organizations and "pools"; sets standards for determination of proper rates, authorizes insurers to act in concert in rate-making, rating practices, etc., under prescribed requirements; exempts them from legislation forbidding such practices in other businesses when so acting; defines powers of Insurance Commissioner in connection therewith, and provides for judicial review of his acts in connection therewith. (See section-by-section digest below.)

COMMENT: No constitutional question seems to be raised by the bill.

There are a number of legal features in the bill, mention of which is essential in order to gain a proper picture of the scope and effect of the bill. These are herewith set forth:

PURPOSES OF THE BILL

The first section of the bill declares that its purpose is to (1) promote public welfare by regulating insurance rates so that they shall not be (a) excessive, (b) inadequate, or (c) unfairly discriminatory; (2) to authorize the existence of qualified rating organizations and advisory organizations; (3) require that specified rating services of such rating organizations be generally available to admitted insurers, and (4) to authorize cooperation between insurers in rate-making and other related matters. (Sec. 1850, 1st par.)

The bill goes on to declare it to be (5) the intent of the chapter to permit and encourage competition between insurers on a sound financial basis and that (6) nothing in the bill gives the Commissioner power to determine a rate level by classification or otherwise. (Sec. 1850, 2nd par.)

(1) "Excessive, inadequate, or unfairly discriminatory" rates.

(a) Excessive rates. The bill does not permit a rate to be stigmatized as excessive simply because it is unreasonably high for the insurance provided. This must be the case but also a reasonable degree of competition must not exist in the area with respect to the classification

to which such rate is applicable. (Sec. 1852(a)) It is not specified whether or not the "competition" must offer reasonable rates or lower rates. Unless it is to be implied that such is the case, then if the same rate is observed by the competing insurers, the rate is not "excessive" under the bill and the Commissioner is without power to compel reduction. This must be considered in view of the further provision that the mere fact that members of a rating organization charge the rates adopted by the organization is not evidence of an agreement to adhere to those rates unless there is direct evidence of the existence of the agreement (Sec. 1853.6). See, also, "rate level" below.)

(b) Inadequate rates. The mere fact that the rate is unreasonably low for the insurance provided does not permit it to be stigmatized as inadequate under the bill. It must also be such that either continued solvency of the insurer is endangered by its use or the use of the rate by the insurer has or will have the effect of destroying competition or creating a monopoly. (Sec. 1852(a) So far as the standard of "inadequacy" is concerned, it follows again that so long as other insurers compete at the same rate, and are financially able to do so, the rate is not "inadequate" under the bill. (See, also, "rate level" below.)

(c) Unfairly discriminatory rates. It is possible that the power to determine whether rates are unfairly discriminatory would have some effect as to adequacy or inadequacy of rates if the bill did not, also, impose important limits on this power. In short, the maintenance of an unreasonably low or high rate on a particular class of risks might possibly be termed unfairly discriminatory as to other classes of risks which would be penalized or benefited thereby if the statute did not so expressly limit the use of the standards of "adequac and "inadequacy" as to make this dubious. As between risks of like hazard, it is probable that the Commissioner has power under the bill to require removal of discriminations (Sec. 1852(d), last sentence) but the power to do so as between classes of risks is one which under the bill can only be made certain by court test or amendment. (See, also, "rate level", below.)

(2) "Qualified rating organizations and advisory organizations." It would seem clear that the bill gives the Commissioner fairly complete power to license and supervise rating organizations. (Defined, Sec. 1850.1; regulation,secs.1854 to 1854.4.) It is quite as clear that he has power with respect to "advisory organizations" only to require filing of membership lists, organization documents, and by-laws, rules and regulations governing activities, and such power as may arise out of a prohibition of "unfair" or unreasonable practices with respect to their activities. (Definition, Sec. 1850.2; regulation Sec. 1855.) However, he does have power to examine them at their expense, which is probably sufficient to enforce these powers. (Secs. 1857.1, 1857.3, 1857.4)

The exemption from the Cartwright Act and similar laws, accomplished by a section exempting activities pursuant to authority conferred by the bill from prosecution or civil action, also enters into this, since

these organizations thereby become immune to action under the Cartwright Act. (Speegle v. Bd. of Fire Underwriters, 29 Adv.Cal.27,121; (Sec. 1860.1)
In view of the fact that these "advisory organizations" may make underwriting rules, prepare policy forms and collect and furnish statistical information and data, the adequacy of the above legal powers given the Commissioner is a question of policy upon which, undoubtedly, the Insurance Commissioner will advise.

(3) Requirement that specified rating services be generally available to admitted insurers. This requirement appears to be complete with provision for adequate demonstration of compliance to the Commissioner. (Secs. 1854.1, 1854.2) Eligibility standards for membership, particularly, are subject to Commissioner's approval. (Sec. 1854.3)

(4) Authorization of cooperation between insurers in rate-making and related matters. The bill authorizes acting in concert by insurers respecting rates or rating systems, preparation or making of policy or surety bond forms, underwriting rules, surveys, inspections and investigations, furnishing of loss or expense statistics or other information and data, or carrying on of research. This authorization is made subject to the provisions of the bill relating to regulation of rating or advisory organizations and of joint underwriting or reinsurance (pools) (Sec. 1853).

Something here should be said concerning "pools", that is joint underwriting and reinsurance. Insurance of certain commodities and products, such as cotton and oil, have been found in the past to call for insuring capacity, forms, rates, and underwriting too great for safe handling by any single insurer. As a result, companies have grouped in organizations known as "pools," for the purposes of apportioning risks, etc., under agreements as to division of business, pooling of losses and profits, etc. The bill applies substantially the same regulation to these "pools" as to "advisory organizations. (Sec. 1856, cf. sec.1855.) (See (2)"Qualified Rating and Advisory Organizations," above.)

The point is that all such acts in concert authorized by the bill are expressly exempted from prosecution or civil proceedings under any law of this State which does not expressly refer to insurance. This, obviously, includes the Cartwright Act concerning combinations in restraint of trade. (Speegle v. Bd. of Fire Underwriters, 29 Adv. Cal.27,121.) The exemption is a very broad one and is specified in the title of the bill. thus meeting any constitutional question. If other business regulations such as the Fair Trade Act are applicable to insurance, the exemption applies to them also.

(5) The intent of the bill to permit and encourage competition between insurers on a sound financial basis. No legal questions are presented by the above clause or section 1850. The effect of "competition" in respect to "adequacy" or "inadequacy" of rates in the bill has been commented on above.

(6) Rate level. The bill provides, "Nothing in this chapter is intended to give the Commissioner power to fix and determine a rate level by classification or otherwise." (Sec. 1850, 2nd par.) The meaning of this language is decidedly obscure. Whether or not a rate is "un-

reasonably high" or "unreasonably low" (sec. 1852(a)) may be determinable only on the basis of a determination of the proper rate for the classification of risk involved; that is, the "rate level by classification". (See "(a) Excessive rates" and "(b) inadequate rates", above.)

It is possible that the purpose of the clause was to emphasize such provisions as those recognizing different systems of expense provisions (sec. 1852(c)) or those providing that dividends and dividend plans are not subject to control under the bill (secs. 1850, 1854.1(a)) although they may be considered in making and use of rates (sec. 1852(c) 2nd par.) all of which may make the rate or ultimate cost of insurance of the same risk and hazard different as between different insurers.

But this is merely a guess. The clause throws further doubt upon any powers of the Commissioner to require adjustment of the rate structure to eliminate excessive or inadequate rates.

The clause further raises question as to his power to require correction of unfair discriminations, since the determination as to whether a rate is unfairly discriminatory may also involve determination of a proper rate level.

Again, the whole intent of the bill, as illustrated by the provisions for rating organizations (secs. 1850.1, 1854-1854.4), for consideration of the experience of an entire class of business (sec. 1852(b)) and for collection of experience statistics (sec. 1853.7) is to permit combining of experience and other factors applicable to the business as a whole, as well as individual factors in certain cases. (Sec.1852(c)) How the Commissioner can apply these standards without resulting determination of rate levels is a problem to which any legal solution is highly dubious.

This is best illustrated by the fact that the cases interpreting statutes authorizing the Insurance Commissioner or other official to reduce excessive insurance rates have invariably arisen out of a court test of a Commissioner's action in determining that excessive rates were being charged and ordering a reduction, i.e., that the level of fire rates for various classifications was too high. (Commonwealth v. Aetna, 1929 Rep. of Va. Corp. Comm'n. 29, 160 Va. 698, 169 S.E.698; Aetna v. Travis, 121 Kan. 802, 124 Kan. 350, 257 Pac. 337, 259 Pac. 1068, cert. den. 276 U.S. 628, 48 S. Ct. 321, 72 L. Ed. 740; Aetna v. Hyde, 315 Mo. 113, 285 S.W. 65)

OTHER FEATURES OF THE BILL WHICH REQUIRE CONSIDERATION

A. The "Underwriting Profit" test. Section 1852, subd.(b) requires that one of the standards to be applied to rate-making under the bill is that "Consideration shall be given *** to a reasonable margin for underwriting profit."

As a statement of the rate base this is of great importance. In Bullion Aetna Ins. Co., 151 Ark. 519, 237 S.W. 716, it was held that the expressi

"underwriting profit" as used in an insurance rating statute, referred to the technical meaning of the term, the excess of "premiums earned" over "losses and expenses incurred." The Corporation Commission of Virginia has called attention to the fact that this measure of profit understated the profit from insurance operations and also held that income from investment of reserves should be also considered where the statute did not so limit the rate-regulatory body. (Commonwealth v. Aetna, 1929 Rep. of the State Corp. Comm'n. (Va.) 29) It was sustained in that position by the Supreme Court of that State. (Aetna v. Commonwealth, 160 Va. 698, 169 S. E. 899) Other courts have sustained different measures of profit realized from rates in determining whether the same were excessive, but have included some measure of the investment profit as well in making the determination where the statute did not prescribe "underwriting profit" as the test. (Aetna v. Hyde, 315 Mo. 113, 285 S. W. 65, Aetna v. Travis, 124 Kan. 350, 259 Pac. 1068)

The above clause relating to underwriting profit may therefore be held to the restricted meaning given in the Bullion case supra, thereby excluding consideration of an income item, income from investment of reserves, in determining whether rates are excessive or inadequate. This can easily exceed underwriting profit.

B. Agreements to adhere to rates of rating organization. The bill forbids insurers to agree to adhere to rates of a rating organization (secs. 1853.6, 1854.1(b) - a provision not made with respect to rules of an advisory organization or rules or rates of a "pool", see secs. 1855, 1856) but states that actual adherence by insurers to such rates does not support a finding of such agreement in the absence of direct evidence of the existence of the agreement.

C. Examination of insurers to determine compliance with rating bill. Examinations for this purpose cannot be made part of the usual periodic examination of the company when examiners of other States participate. (Sec. 1857.2) The inclusion in the bill of section 735, Insurance Code, (Sec.1860.3), results in requiring the Commissioner to keep the examinations private unless he deems it necessary to publish the results. The effect may be to raise question as to the Commissioner's right to disclose facts revealed thereby concerning rating practices of insurers in California, to the insurance authorities of their home States without, literally, putting them in the newspapers.

D. Moneys and profits obtained by violation of bill. It should also be noted that no express provision is made whereby the Commissioner upon notifying the insurers, and possibly calling a hearing upon a violation, may, at least from that time forward, require the insurers to refund excess premium collected by reason of an excessive or discriminatory rate, or to hold the excess, subject to refund at time of final determination. (Secs. 1858-1858.6) It is possible that a determined Commissioner might make the period of suspension dependent upon such a refund. There is no present judicial authority in California as to the validity of such an alternative penalty, although it is done from time to time by administrative agencies. But in any event, if the violation continues

during the Commissioner's proceedings, the earliest time when he can compel stoppage is 20 days after his decision finding the violation with a possible 15-day extension from the date a petition for review is filed. Presumably the court could require impound from that time on as a condition to further stay, but the absence of proper provision for requirement of impound by the Commissioner puts a premium upon stalling and delay in the Commissioner's proceedings.

E. No power is given the Commissioner to prescribe form or essential requirements of the records in respect to rates. The requirement is only that records be "reasonably adapted to its method of operation." It follows that the records and method of operation may be such as to make unfair discrimination, or excessive or inadequate rates extremely difficult to detect, if they do not actually tend to concealment. (Cf. secs. 900 et seq., Ins. Code and comment on examinations provided in bill, "C" supra.)

SECTION-BY-SECTION DIGEST

Section 1 of S. B. 1572 adds Chapter 9 to Part 2, Division 1, Insurance Code, entitled: "Rates and Rating and Other Organizations", comprising sections 1850-1860.3; section 2 amends section 1382 thereof, and section 3 adds section 750 thereto. Sections 4, 5 and 6 and provisions re construction and effect of the bill, and section 7 provides short title.

1850: Declares purpose to promote public welfare by regulating insurance rates to the end they be not excessive, inadequate or unfairly discriminatory; authorize rating and advisory organizations and require that specified rating services of rating organizations be generally available to admitted insurers and to authorize cooperation between insurers in rate-making.

Declares intent to permit competition on sound financial basis and that chapter not intended to give Commissioner power to fix and determin rate level.

1850.1: Rating organization defined. Covers all rate-making organizations whether within or without State and includes any admitted insurers acting together when not under common ownership or operating in this State under common management and other than in assigned risk plan or joint underwriting or reinsurance "pool". These exceptions are defined in sections 1853.5, 1853.7, 1853.8, and 1856.

Such definition obviously contemplates organizations such as the former Board of Fire Underwriters of the Pacific, the National Bureau of Casualty Insurers, the Towner Bureau for Surety Insurers and the National Automobile Underwriters Association, organizations which have made the bulk of the fire and casualty insurance rates in this State.

1850.2: "Advisory organization" defined. (Attorneys-at-law acting in usual course of profession excluded.) Includes all organizations which

do not make rates but which prepare policy forms, make underwriting rules, collect and furnish to admitted insurers, or rating organizations, statistical information, and act in advisory as distinguished from rate-making capacity. This is probably intended to cover such organizations as the National Board of Fire Underwriters, the American Mutual Alliance, and similar trade associations of the insurance business.

1850.3: Persons receiving rating and advisory organization services defined as "members" who participate in management and "subscribers" who merely receive the services.

1850.4: Casualty insurance defined as meaning surety, plate glass, liability, common carrier liability, burglary, and team and vehicle insurance and, if written by other than fire or marine insurers, boiler and machinery, sprinkler, automobile (this excludes automobile liability which is written under "liability"), aircraft (similarly, does not include aircraft liability), and miscellaneous, all as defined in sections 105 to 120, Insurance Code.

1850.5: "Wilful" or "wilfully", as used in bill, limited to action with actual knowledge or belief that violation is being committed and with specific intent to commit violation (refers to sections 1858.1 et seq., infra.)

1851: Bill excludes following insurances:

(a) Reinsurance, except "pool" operations ("pool" operations defined in 1856, infra)

(b) Life insurance (rates are not now regulated)

(c) Marine, other than inland marine. Inland marine is not defined by code and is therefore left to be defined by ruling of the Commissioner or establishment by general custom of the business. (For present definition of Inland Marine see sects. 2320-2322 of Title 10, California Administrative Code.)(Rates not now regulated, but business "market" is international.)

(d) Title insurance (rates are not now regulated)

(e) Disability insurance. (This insurance is subject to anti-discrimination provisions and policy form regulation. The anti-discrimination provision is section 10401, Insurance Code.)

(f) Workmen's Compensation and Employers' Liability Insurance incidental thereto and written in connection therewith. (Workmen's compensation (not employers' liability) is subject to sections 11730-11742, Insurance Code, by the provisions of which the Commissioner prescribes minimum rates to be charged. There is no provision therein for correction of excessive or discriminatory rates.)

(g) Credit insurance, (very little written, and rates not regulated at present)

(h) Mortgage insurance (practically moribund in this State at present)

(1) Insurance transacted by county mutual fire insurers or county mutual fire re-insurers (these are the local farmers fire companies provided for by sections 5050 to 7060, Insurance Code, and the present First Reinsurance Company, provided for by sections 7080-9060, Insurance Code, the business of which is confined to reinsuring these local fire companies.

However, these organizations may write a certain amount of city residential business and are not prohibited from reinsuring their business with other stock or mutual insurers.

(QUERY: Whether such another stock or mutual insurer would then be entitled to the exemption. It probably would, as long as it confined its business to reinsurance under the above exemption for reinsurance.)

Article 2: Making and use of rates.

1852: (a) Rates not to be excessive or inadequate "as herein defined," nor unfairly discriminatory. A rate not to be held excessive unless unreasonably high for the insurance provided and a reasonable degree of competition does not exist in the area with respect to the classification to which the rate is applicable.

Rate not inadequate unless unreasonably low for the insurance provided and continued use thereof endangers solvency of insurer writing the same or rate is unreasonably low for insurance provided and use if continued will have effect of destroying competition or creating monopoly.

(b) Consideration to be given to loss experience within or without State, conflagration and catastrophe hazards, reasonable margin for underwriting profit and contingencies, prospective country-wide and local experience and all other factors, including judgment factors within and outside State. On fire insurance rates consideration may be given to experience during most recent five-year period for which available.

Consideration may also be given to dividends and similar savings to insureds.

(c) Systems of expense provisions included in rates may differ.

(d) Risks may be classified to establish rates and minimum premiums and classifications may be modified by rating plans for measuring variations in hazards and expense provisions. Such standards may measure any difference among risks that has probable effect upon losses or expenses. Classifications may be based upon size, expense, management, individual experience or location of hazard, or any other reasonabl consideration, but must apply to all other risks on substantially the same circumstances or conditions.

1853: Subject to the provisions of the bill, insurers may act in concert on rate-making, preparation of policy or bond forms, underwriting rules, surveys, inspection, furnishing of statistics and carrying on of research.

1853.5: With respect to matters listed in section 1853, companies having common ownership or operating under common management or control

in this State may act in concert as if they were a single company.

1853.6: Members and subscribers of rating or advisory organizations may use rates, systems, underwriting rules and policy or bond forms of the organizations, but shall not agree with each other or others to adhere thereto. This is subject to exceptions in 1853.5 (common management), 1853.8 (assigned risk pools), and 1856 (reinsurance pools). Fact of such use is not to be sufficient to support a finding that agreement to adhere to these rates, etc., exists and may be used only to supplement direct evidence of existence of agreement.

1853.7: Licensed rating organizations and admitted insurers are authorized to exchange information and experience data with rating organizations and insurers in this and other States, and to consult in rate-making and application of rating systems.

1853.8: Authorizes "assigned risk pools", that is, agreements among admitted insurers to apportion casualty insurance to applicants who are unable to procure the insurance through ordinary methods and with respect to the use of reasonable rate modifications, (usually surcharges) for such insurance. Agreements subject to approval of the Commissioner must be submitted in writing therefor with such information as he may reasonably require. Commissioner can approve only agreements contemplating use of rates meeting standards in bill and activities and practices not unfair, unreasonable or otherwise inconsistent with bill.

Commissioner may review practices and activities under such agreements, require changes in writing on hearing with ten (10) days' notice, and for good cause after such hearing revoke approval of agreement.

1853.9: Upon compliance with chapter, insurers, organizations, etc., may operate in State. As respects risks or operations in State, no insurer shall be member or subscriber of any organization that has not complied with provisions of bill. (Limitation to risks or operation in State permits such memberships as to business in other States. This is important, as many such bureaus operate on nation-wide basis, yet might conceivably not operate in respect to risks in this State for competitive or other reasons.)

Article 3: Rating organizations.

1854, 1854.1: These and following sections provide for the licensing of rating organizations upon payment of a $25.00 fee and filing of a written application and satisfactory evidence to the Commissioner of compliance with the provisions of the bill. Chief requirements are that the organization

(a) permit membership and withdrawal without discrimination at a reasonable cost

(b) forbid adoption of any measure to compel members or subscribers to adhere to the rates, rating plans, etc., of the organization

(c) take no measure to control dividends of members or subscribers

(d) neither practice nor sanction boycott, coercion or intimidation

(e) neither enter into nor sanction any unlawful engaging in the insurance business

(f) notify the Commissioner of any changes in the organization and its members

(g) keep proper records as defined in section 1857.

1854.2, 1854.3, 1854.4: The Commissioner shall examine the application and make further investigation as he deems desirable and must issue the license if satisfied as to business reputation, adequacy of applicant's facilities and conformity of plan of operation to the requirements of the bill. Commissioner may grant a license to act as rating organization only for selected classes or subdivisions of classes of insurance or risks if the applicant qualifies for only those classes. Licenses are continuing until revoked.

Rules governing eligibility for membership of a rating organization are subject to the Commissioner's approval. Where two or more insurers have common ownership or operate in this State under common management and are admitted for classes of insurance covered by a rati organization, the organization may require both to be members or subscribers as a condition of admitting either to membership or subscribe ship.

Article 4: Advisory organizations.

1855: Advisory organization must file certain information such as its foundation documents, list of members and subscribers and agent for service of process, and notify the Commissioner of any changes. Organi tions are forbidden to engage in unfair or unreasonable practices with respect to their activities. No licensing is prescribed in order to ac as an advisory organization.

Article 5: Joint underwriting and joint reinsurance.

1856: Insurers associate in groups under various arrangements for apportioning, distributing and reinsuring risks in fields where insurance requirements are large and peculiar, such as the insuring of the handling of cotton, grain, oil, etc. These are commonly known in the trade as "pools". With respect to such pools operating in this State, similar requirements as to furnishing information to the Commissioner, and forbidding unfair or unreasonable practices, are imposed as in the case of advisory organizations. Similarly, no licensing is prescribed.

Article 6: Records and examinations.

1857: Every insurer, rating organization, advisory organization and "pool" is required to maintain reasonable records, of the type and kind reasonably adapted to its method of operation, of its experience or the experience of its members, and other proper information, in such fashion

that the records will be available at all reasonable times to enable the Commissioner to determine compliance with the provisions of the bill. Maintenance of the records in the office of a licensed rating organization is sufficient compliance as to the members or subscribers to the extent that the insurer uses the rates, etc., of the organization. The record must be maintained in an office in this State, available for examination by the Commissioner at any time upon reasonable notice.

1857.1: The Commissioner must, at least once every 5 years as to rating organizations, and as often as reasonable and necessary in respect both to rating and other organizations, make these examinations. He may accept the report of an examination made by the insurance supervisory official of another State in lieu of his own.

1857.2: He may at any reasonable time examine any admitted insurer to ascertain compliance with the provisions of the chapter but such examination cannot be a part of a periodic general examination participated in by representatives of more than one State.

1857.3: All personnel of any organization, pool or insurer may be examined at any time under oath and shall exhibit all records and information used in the conduct of operations to which the examination relates.

1857.4: The reasonable cost of any examination shall be paid by the organization, pool or insurer to be examined.

Article 7: Hearings, procedure and judicial review.

1858: Any person aggrieved by a rating action may request the insurer or rating organization to review the same. The request must be in writing and if not granted within 30 days after it is made may treat it as rejected. Any person aggrieved by such refusal may file a written complaint and request for a hearing by the Commissioner, specifying the grounds relied on. If the Commissioner has information concerning a similar complaint or believes that probable cause for the complaint does not exist, or that the complaint is not made in good faith, the hearing can be denied. Otherwise, if he finds the complaint charges a violation and that the complainant would be aggrieved, he may act.

1858.1: The action consists of a 10-day notice to the insurer, pool, or organization, to correct the non-compliance. Notices so given are confidential as between the Commissioner and the parties unless a hearing is held thereafter. Such notice may also be given when his examination reveals a failure of compliance, unless he has good cause to believe the non-compliance is wilful. (Note the definition of "wilful" in 1850.5 above.)

1858.2: If he has such good cause, or correction is not made pursuant to notice given as above, a public hearing may be held by the Commissioner on 10-days' written notice, conforming to the requirements of an accusation as prescribed by section 11503, Government Code. The hearing

cannot include any subjects not specified in the notice to correct non-compliance, or the notice of hearing.

1858.3: Based on the hearing, the Commissioner may take the following actions upon the following findings:

(a) upon finding that a rate, etc., violates the bill, he may prohibit further use thereof after a reasonable time stated

(b) on finding of violation of the bill other than the provisions dealing with rates, rating plans, or rating systems, he may issue an order specifying the violation and require compliance within a reasonable time

(c) upon a finding that the violation was wilful, he may suspend or revoke in whole or in part the certificate of authority of the insurer or the license of the rating organization with respect to the class of insurance involved

(d) upon a finding that any rating organization has wilfully engaged in any fraudulent or dishonest act or practices, he may suspend the license of the organization, in addition to any penalties above.

1858.4: The Commissioner may suspend or revoke in whole or in part the license of any rating organization or the certificate of authority of any insurer with respect to the class or classes of insurance specified in the order where there has been a failure to comply with one of the above orders lawfully made.

1858.5: Except as above specified, all the proceedings above shall be conducted in accordance with the provisions of the administrative procedure act, Chapter 5 of Part 1 of Division 3 of Title 2, Government Code.

1858.6: Provides for court review of the Commissioner's acts under the bill, with the court directed to exercise its independent judgment on the evidence and, unless the weight of the evidence supports the findings determination, rule, ruling or order of the Commissioner, to annul the same.

Petition for review may be filed within 20 days after notice and copy of the order is mailed, or delivered, to the person affected. No such order shall become effective until after the expiration of 20 days and if petition for court review is filed for a further period of 15 days, with power in the court to further stay the effectiveness of the order.

Article 8: Penalties.

1858 and 1859.1: All persons and organizations are forbidden to wilfully withhold information or knowingly give false or misleading information to the Commissioner, or to any rate organization, advisory organization, or pool, which will affect the rates, etc., to which the bill is applicable.

(a) Failure to comply with final order of the Commissioner subject to a penalty of $50.00, unless wilful, in which case subject to a penalty of $5,000.00, to be collected by civil action.

(b) Wilful violation of provisions of the bill made a misdemeanor.

Article 9: Miscellaneous.

1860: The bill does not prohibit or regulate payment of dividends to insureds. Plan for dividend payment not to be deemed a rating plan or system.

1860.1: Nothing done pursuant to authority conferred by the bill constitutes violation of any other law of the State which does not specifically refer to insurance. This, in effect, exempts acts of insurers and other persons done under the provisions of the bill from the Cartwright Act and any other restraint of trade or similar provisions of California law.

1860.2: Provides that the administration and enforcement of the chapter is governed solely by the provisions of the chapter, and no other law or provision in the insurance code is to be construed as modifying or supplementing the chapter, unless such other law or provision expressly so provides "and specifically refers to the sections of this chapter which it intends to supplement or modify."

1860.3: Specifies that certain provisions of the code are applicable to the administration, enforcement and interpretation of the chapter. These are sections 1 to 41 - the general provisions; 100 to 121 - the provisions classifying forms of insurance; 620 to 621 - the definitions of reinsurance; 700 to 701 - prescribing procedure for licensing insurance companies; 704 - authorizing suspension of certificate of authority of an insurer upon a finding of fraudulent business, failure to carry out contracts in good faith, or habitual failure to pay claims; 730 to 737 - providing for examination of insurers; 1010 to 1062 - providing for proceedings in cases of insolvency and hazardous conditions; 12903 and 12904 - authorizing the Commissioner to employ assistants and purchase books and reports in the administration of the insurance laws; 12919 - making certain communications to the Commissioner confidential and free of liability; 12921 - requiring the Commissioner to enforce the regulatory laws; 12921.5 - authorizing him to cooperate with others and disseminate information; 12924 to 12926 - giving him general subpoena and investigatory powers; 12928 and 12930 - requiring him to certify violations to district attorneys and furnish certified copies of his records thereto; 12974 to 12977 - relating to accounting for and use of funds by the Insurance Commissioner.

The bill also amends section 1282 of the Insurance Code to make its provisions applicable to reciprocal or interinsurance exchanges and adds section 754 to the Insurance Code to authorize payment of fees or commissions by insurers or their agents to insurance brokers when otherwise lawful under the Insurance Code, thereby presumably eliminating the application thereto of the Federal Robinson-Pattman Act which forbids

payment of commissions to brokers by a seller under certain circumstances.

The bill also contains a clause providing that unconstitutionality of a portion of the bill shall not affect the rest of the bill.

The bill is made effective January 1, 1948, but preliminary actions, such as applications for licenses and granting of licenses by the Commissioner, may be done prior to the effective date, in order to facilitate compliance on the effective date.

The last section of the bill provides that it shall be known and cited as the "McBride-Grunsky Insurance Regulatory Act of 1947."

Harold B. Haas
Deputy Attorney General

HBH:T

EXHIBIT E

SENATE INSURANCE, CLAIMS AND CORPORATIONS COMMITTEE — ASSEMBLY BILL NO. 1687

SENATOR ALAN ROBBINS, CHAIRMAN

ASSEMBLY BILL NO. 1687 (Moore) As Amended April 28, 1987
Insurance Code

Source: Little Hoover Commission
Prior Legislation: SB 1011, SB 1012, and SB 1013 (Robbins) of 1987
Support: Association of California Insurance Companies
California Trial Lawyers Association
Opposition: Department of Insurance
American Insurance Association
National Association of Independent Insurers
Agents and Brokers Legislative Council
Farmers Insurance Group

SUBJECT

Revision of McBride-Grunsky Insurance Rate Law to allow consumer complaint process, hearings, and to increase fines for violation.

DIGEST

1] Description: AB 1687 revises the McBride-Grunsky Act by increasing penalties for violation and changes the procedures whereby policyholders may petition the Insurance Commissioner to determine whether not his or her insurance rate is excessive, inadequate or unfairly discriminatory as follows:

Increases penalties against insurers who violate a Commissioner's order given pursuant to the McBride-Grunsky Act as follows:

1. Specifies that in the event an insurer or rating organization does not comply with a Commissioner's order of noncompliance in the time specified in the order the insurance Commissioner my fine an insurer or rating organization up to $10,000 (increased from $1,000) for each day of violation of the order not to exceed $300,000 (increased from $100,000) in the aggregate.

2. Specifies that in the event an insurer fails to comply with a final order to Commissioner may fine that insurer up to $50,000 except that the fine may be up to $100,000 if the failure to comply is willful.

3. Requires that the Commissioner to suspend or revoke the certificate of authority of any insurer or the license of any rating organization which does not comply with a Commissioner's final rate order. Existing law gives the discretion to the Commissioner as to whether or not to suspend or revoke a certificate of authority.

Changes the mechanism by which any person aggrieved by any rate charged may have that rate reviewed by the Commissioner as follows:

1. Allows an aggrieved party to file a written complaint to the Commissioner requesting review without first having to have the rate reviewed by the insurer. Upon receipt of the complaint, the Commissioner in required to review and investigate the complaint to determine whether or not there exist probable cause that a violation of McBride-Grunsky has occurred. This determination must be made by the Commissioner within 30 days of the receipt of the complaint unless the complainant agrees to enter into informal conciliation with the insurer and the Commissioner.

If the Commissioner determines that the insurer does not comply with the requirements of McBride-Grunsky, the Commissioner gives a notice of noncompliance, specifying the manner by which the insurer may comply as is done under existing law. Existing law allows insurers the option of complying with the order or challenging the order through an administrative procedure hearings. This measure additionally allows insurers the option of entering into informal conciliation with the Commissioner and the complainant or enter into a consent order with the Commissioner to correct the noncompliance.

2. If the complaint is accompanied by a written request for a public hearing, the Commissioner is required to investigate the matter and grant or deny a public hearing within 60 days unless the complainant agrees to an extension of time for the evaluation by the Commissioner or unless the complainant agrees to enter into informal conciliation with the insurer and the Commissioner.

In the event of informal reconciliation, the decision by the Commissioner for granting or denying a request for public hearing shall be tolled for up to 10 working days until informal conciliation results in resolution, ended without resolution, or the complainant advises the Commissioner that informal conciliation will not result in resolution.

If the Commissioner determines upon review and investigation of a complaint that probable cause exists to believe that a violation of McBride-Grunsky exists, the Commissioner is required to hold a public hearing. The Commissioner notifies the insurer not less than 30 days prior to the hearing specifying the matters to be considered at the hearing. The Commissioner may give scheduling preference to a hearing if the complainant is seventy years or older.

If the Commissioner finds that the insurer has violated McBride-Grunsky, she may order the insurer to take such corrective action that she deems appropriate just as is specified under existing law.

2] Background: The Little Hoover Commission in its detailed report of July 1986 entitled A Report on the Liability Insurance crisis in the State of California set forth the following basic conclusions:

"The Insurance Commissioner does not have sufficient authority to regulate the rates and availability of insurance. While the Commissioner does have authority in some areas, the penalties and fines that exist for noncompliance are insufficient and therefore do not act as an adequate deterrent. Moreover, since the enactment of the statute in 1948, the Insurance Commissioner has never fined an insurance company for excessive rates".

The Commission also found that:

"... The Commissioner is authorized to inspect records periodically in order to determine whether a particular rate or rating system complies with the requirements of the prohibited excessive, inadequate or discriminatory rates... But given the vagueness of the guidelines, the Commissioner was unable to find a single formal determination made by the Department in the past 25 years that a rate is excessive.

The Commission concluded that the procedure that must be employed by the Commissioner under McBride-Grunsky is very cumbersome and that even if it is successfully utilized it would only yield a token fine which would serve as no meaningful detriment to those who have violated the Act.

FISCAL EFFECT Fiscal Committee: Yes

STAFF COMMENTS

1. This Committee earlier this year passed out SB 1011 (Robbins) that likewise modifies the McBride-Grunsky Act. That bill, like the bill before you, increases penalties for violations of McBride-Grunsky by insurers, however, the maximum penalty for a willful violation of a Commissioner's order is $250,000 rather than $100,000 as is proposed by this measure.

More importantly, SB 1011 deletes the requirement that the Commissioner must first determine that there is lack of competition prior to determining whether or not a rate is excessive. This requirement of having to first find that there is a lack of competition prior to being able to reach to the question of excessive rates has prevented the Commissioner from utilizing McBride-Grunsky as an effective mechanism for determining excessive rates.

2. While this bill sets forth a commendable series of requirements for timely investigations, findings and public hearings by the Commissioner, it leaves in place the fatal flaw in this Act which would appear to defeat its worthy motives.

By not removing the language in Section 1852(a)(2) which states that a rate shall not be excessive if a reasonable degree of competition exists for the classification for which the rate is applicable, the Commissioner will still determine whether there is any basis for a finding that a rate is too

high on this dubious basis. Since, in most cases there is another insurer writing this type of coverage, the Commissioner can, has and will most likely continue to find that since there is competition, there is no basis to find that the rate is too high. This is at the heart of SB 1011 (Robbins) and it is likely that this is the reason that all insurers oppose that bill while some have supported this one.

3. To the extent that the McBride-Grunsky Act is the only means by which the Insurance Commissioner can deal with excessive, inadequate or unfairly discriminatory rates in a state noted for its open rating, it must be perceived as the benchmark by which we must judge the adequacy of the regulator's ability to resolve real consumer questions about rates.

The Commissioner has found only one rate excessive in the 40 year history of the law and has never issued a single fine, even at the hopelessly low present amounts. The McBride-Grunsky Act must be judged a failure. There is simply no reason to believe, based on thirty years of evidence that consumers have any hope of protection from moderate overcharging to blatant rate gouging under the present Act.

Notwithstanding evidence to the contrary, the Department of Insurance in opposing this measure states that "the present system has worked very well for the last 40 years ..." It seems fitting that the regulatory who hails 40 years of inaction as a record to be proud of would have serious doubts about removing the Commissioner's discretion over whether to proceed with regulation under this Act.

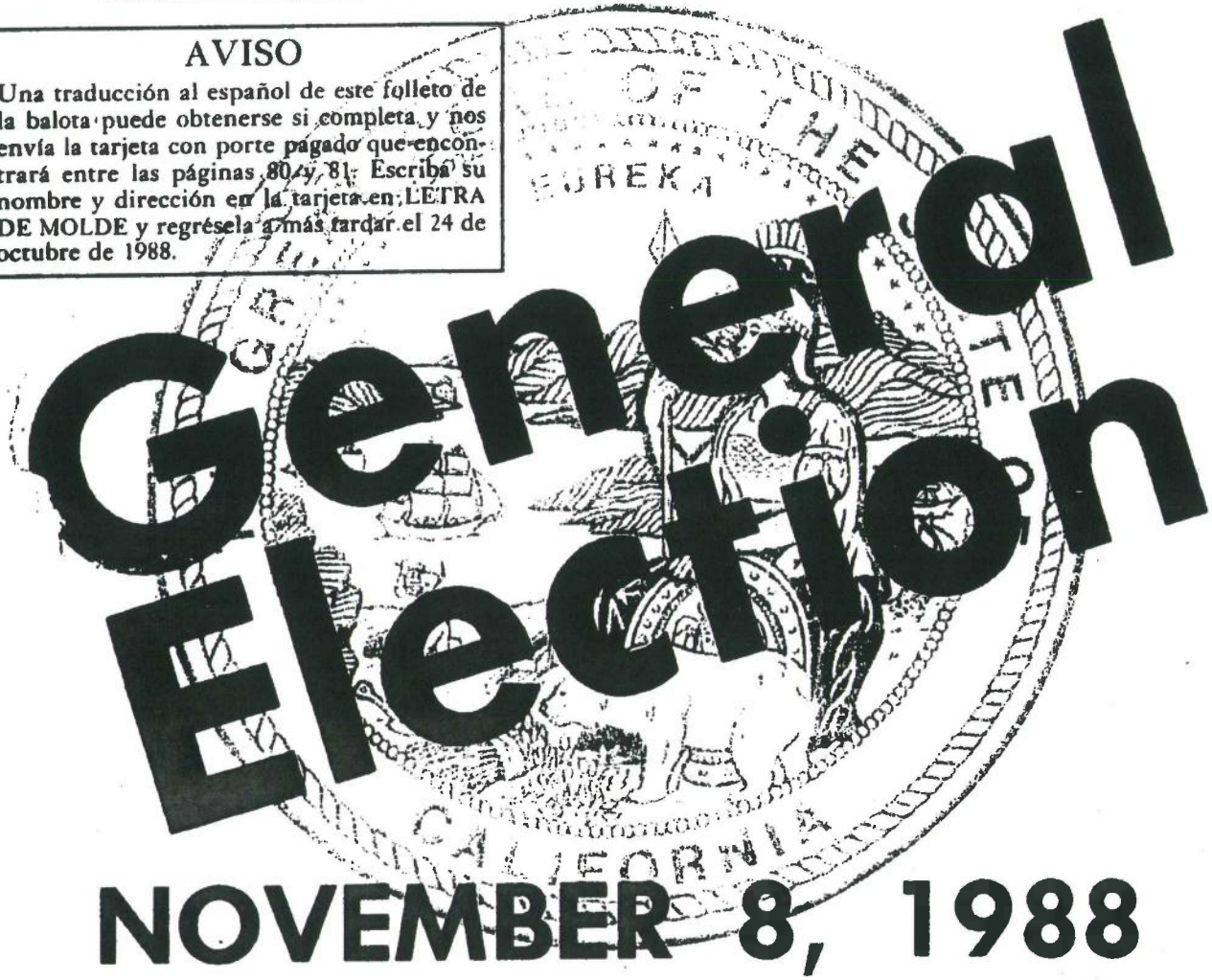
4. It is understood that the author has been presented with numerous clarifying and substantive amendments for her consideration as this analysis is being finalized. She is not yet clear on their impact on the bill as has not agreed to them at this writing.

EXHIBIT F

California
BALLOT PAMPHLET

AVISO

Una traducción al español de este folleto de la balota puede obtenerse si completa y nos envía la tarjeta con porte pagado que encontrará entre las páginas 80 y 81. Escriba su nombre y dirección en la tarjeta en LETRA DE MOLDE y regrésela a más tardar el 24 de octubre de 1988.



General Election

NOVEMBER 8, 1988

CERTIFICATE OF SECRETARY OF STATE

I, March Fong Eu, Secretary of State of the State of California, do hereby certify that the foregoing measures will be submitted to the electors of the State of California at the GENERAL ELECTION to be held throughout the State on November 8, 1988, and that this pamphlet has been correctly prepared in accordance with law.

Witness my hand and the Great Seal of the State in Sacramento, California, this 18th day of August 1988.

March Fong Eu

MARCH FONG EU
Secretary of State

104 Automobile and Other Insurance. Initiative Statute

Official Title and Summary Prepared by the Attorney General

AUTOMOBILE AND OTHER INSURANCE. INITIATIVE STATUTE. Establishes no-fault insurance for automobile accident injuries, covering medical expenses, lost wages, funeral expenses. Accident victim may recover from responsible party only for injuries beyond no-fault limits. Prohibits recovery for noneconomic injuries except cases of serious and permanent injuries and specified crimes. Reduces rates for certain coverages 20 percent for two years. Cancels Propositions 100, 101, 103. Restricts future insurance regulation legislation. Requires arbitration of disputes over insurers' claims practices, limits damage awards against insurers. Prohibits agents and brokers from discounting. Increases Insurance Commissioner's power to prosecute fraudulent claims. Limits plaintiffs' attorney contingency fees in motor vehicle accident cases. Summary of Legislative Analyst's estimate of net state and local government fiscal impact: Would increase state administrative costs by about $2.5 million in 1988–89, varying thereafter with workload, to be paid by additional fees on the insurance industry. State and some local governments would have unknown savings from lower insurance rates and liability limitations. Possible but unknown effect on recovery of workers' compensation. Possible reduction in court costs and court revenues could result from limitations on claims for noneconomic damages. Would reduce state revenue from the gross premiums tax by about $25 million a year for two years if no other changes are made in insurance rates.

Analysis by the Legislative Analyst

Background

Various types of insurance are sold in California, including automobile, liability, fire, health and life. In 1987, insurance companies collected about $50 billion in premiums from the sale of insurance. In turn, they paid about $1 billion to the state in a tax on these premiums.

Motor vehicle insurance is one of the major types of insurance purchased in the state. It accounted for about $12 billion (24 percent) of all premiums collected during 1987. Such insurance may include protection for:

- Liability and property damage (which covers claims for bodily injury and property damage to others when the insured person was at fault);
- Medical (which covers the insured person and others in the automobile, regardless of fault, for "excess" medical expenses, meaning those expenses not covered by other insurance);
- Collision (which covers collision damage to the insured's car regardless of the fault of the insured);
- Comprehensive (which covers damage other than collision, such as fire, theft, glass breakage and vandalism, to the insured's car); and
- Uninsured and underinsured motorist (which covers claims for bodily injury and/or property damage caused by a motorist who is at fault and who has no insurance or inadequate insurance).

Rate Setting by Insurance Companies. Currently, insurance companies set rates for various types of insurance, using a number of factors. For motor vehicle insurance, these factors generally include the age, sex, marital status, driving record, type of vehicle and home address of the insured. The insurance companies also take into consideration other factors such as their claims experience, income and expenses. Insurance companies are not required to tell the public what relative weight they give to these factors when setting rates. In addition, insurance companies are not subject to the state's antitrust laws.

Role of the Department of Insurance in Reviewing Rates. Currently, the Department of Insurance does not review and approve insurance rates before they take effect. Instead, the Department of Insurance can request insurance companies to justify such rates *after* they take effect, as part of the rate examination process or in response to complaints from consumers. Historically, the scope and frequency of rate examinations have been limited.

Current Method of Settling Claims. Currently, the party who is "at fault" in an accident is responsible for paying compensation for both bodily injury and property damage.

If a claim for damages is filed and one or more of the parties involved in an accident is insured, insurance companies attempt to determine who is at fault. These claims are usually settled by negotiations or by court action. After it is determined which party is at fault, the insurance company of that party pays the damages, not to exceed the limits of the insurance policy.

Attorney Fees. Attorney fees in motor vehicle accident cases are usually based on a percentage of the amount the client recovers and are referred to as "contingency fees." The fees are fixed by a contract between the attorney and client. There are no dollar limits on contingency fees in these cases.

Proposal

In summary, this measure:

- Establishes a "no-fault" motor vehicle insurance system that (1) pays benefits up to specified limits to an accident victim who suffers bodily injury and (2) permits individuals to sue for losses which exceed those limits.
- Limits noneconomic losses (such as "pain and suffering") and attorney contingency fees.
- Requires a two-year reduction in certain motor vehicle insurance rates.

Continued on page 144

104 Automobile and Other Insurance. Initiative Statute

Argument in Favor of Proposition 104

NO-FAULT. PROP 104, is the only insurance measure on the ballot that saves consumers money by *truly reforming California's failing auto insurance system.*

PROP 104 is a comprehensive cost-control measure that cuts auto insurance premiums by reducing the costs driving up insurance rates—high legal costs, fraud and the burden of protecting ourselves against uninsured motorists.

This measure enacts a NO-FAULT system, where auto accident victims are guaranteed medical and work-loss benefits from their own insurance company—regardless of fault. By restricting costly lawsuits, except in cases of "serious and permanent" injuries, no-fault saves consumers and taxpayers money now and in the future.

NO-FAULT is fundamental reform that will:

- REDUCE PREMIUMS by requiring all California auto insurers to cut rates for basic personal injury coverage by an average of 20%. This will result in an immediate overall average premium reduction of 7% to 17%.
- PROTECT CONSUMERS by prohibiting insurers from canceling or nonrenewing policies, or increasing rates solely because of a no-fault claim.
- GUARANTEE rapid payment of claims. PROP 104 requires insurers to pay all valid no-fault claims within 30 days of the claim or face a stiff interest penalty.
- SAVE taxpayers and consumers money by reducing court cases. Consider these facts from the Rand Corporation: 43% of civil court cases in California involve auto accidents and the average jury trial for an injury case costs taxpayers $8,300. Other estimates show that 52 cents of every insurance dollar contested in court goes to pay legal expenses, not to compensate victims.
- PRESERVE the right to sue for out-of-pocket expenses that exceed no-fault benefit limits and for "pain and suffering" damages in cases of "serious and permanent" injuries.

PROP 104 requires all drivers to purchase a basic benefits package of $10,000 for medical expenses and $15,000 for work loss. *In 1986, 90% of all auto accident claims would have been fully covered by these basic no-fault benefits.* Drivers who want more coverage can purchase it. Motorists already covered by a health plan, or who don't need wage-replacement coverage, can save even more by purchasing less coverage at lower cost.

PROP 104 creates a new deterrent to driving uninsured because uninsured motorists cannot receive no-fault benefits and cannot sue for compensation unless they are seriously injured.

The U.S. Department of Transportation and numerous consumer organizations have praised the type of no-fault system proposed for California for providing more money to accident victims, more quickly and more efficiently than traditional auto insurance.

Don't be fooled by other initiatives that promise large premium cuts—they either do nothing to cut costs or they don't guarantee that cost reductions will be permanent.

VOTE YES on PROP 104. It is the only responsible, proven auto insurance reform. We urge you to vote for reform by voting YES on PROP 104.

DIANNE FEINSTEIN
Former Mayor of San Francisco

ALFRED F. FEDERICO
President, California State Automobile Association (AAA)

PAT NOLAN
Member of the Assembly, 41st District
Assembly Minority Leader

Rebuttal to Argument in Favor of Proposition 104

Important facts are missing from the statement above.

First, Proposition 104 was written, and is being paid for, by the insurance companies. It will not reduce rates; it will raise them. It will not protect consumers; it will permit further abuse of consumers by the insurance industry.

According to the *Los Angeles Times* (June 24, 1988), at a private meeting of insurance agents on March 14, 1988, that was secretly taped, Donald Stewart, director of the American Agents Alliance and a supporter of 104, admitted that 104 "guarantees no cost savings." Stewart also admitted that insurance companies "can change their rates the day before the election" to offset any rate reductions promised if 104 is approved by the voters.

Finally, Stewart admitted that, under 104, rates could increase by 35% for some drivers.

Second, the statement above fails to mention that there is a hidden section in 104. Its fine print cancels every reform in Voter Revolt's Proposition 103, the initiative backed by Ralph Nader. Because the insurers were afraid they would be unable to defeat 103, they decided to spend $23 million to pass 104, and hide within it regulations that would cancel everything in 103.

Where will the $23 million come from? According to the *Los Angeles Times* (July 8, 1988), $2.3 million will come from State Farm, $2.1 million from Farmers, $1.4 million from Allstate, and the rest from other insurance companies.

Every vote for 104 is a vote against real insurance reform.

Vote NO on 104.

HARVEY ROSENFIELD
Chair, Voter Revolt to Cut Insurance Rates/
Proposition 103

Argument Against Proposition 104

The insurance industry is spending millions of advertising dollars to say "Trust us. Our Proposition 104—the 'no fault' initiative—will lower your automobile insurance rates." The insurance companies don't expect you to read Proposition 104's confusing 24,000 words of legal jargon, which turn insurance law into a "your fault" system.

However, we've studied Proposition 104. It contains many traps and pitfalls for consumers.

For example, Proposition 104 allows insurance companies to continue their anticompetitive behavior and exempts them from California's antitrust and consumer protection laws. It allows insurance companies to continue to raise their rates as much as they want, without opening their books to justify them. It prevents consumers form effectively challenging insurance companies when they unfairly raise rates, cancel policies or refuse to pay a claim. It maintains the present laws which prohibit insurance agents from offering discounts. It permits insurers to continue to base rates unfairly on where you live, rather than upon your driving record. And it does nothing to lower rates for homeowner, business and other kinds of insurance. The insurance companies wrote Proposition 104 to defeat genuine insurance reform proposals on this ballot and obstruct future reform efforts.

Second, the insurance industry's Proposition 104 won't save many consumers a penny. Its promised "7–17% discount" only applies to a portion of your automobile policy. The companies will be free to charge you whatever they wish for the rest of the coverage you must buy. Insurance industry representatives themselves have admitted privately that many drivers will pay more under Proposition 104.

Worse, Proposition 104 allows the automobile insurance companies to continue to raise rates through Election Day, before they give drivers the advertised "discount." Many companies have already raised prices between 10% and 20% this year—so the reduction offered by Proposition 104 is already meaningless.

Third, under Proposition 104 it will be even harder for drivers to make insurance companies pay fully for a legitimate claim. And, under their "no fault" plan, you will have to collect from your own insurance company in most cases if someone else strikes you. Under Proposition 104, careful drivers are treated the same as unsafe drivers.

Finally, Proposition 104 will not lower your taxes. In fact, Proposition 104 forces taxpayer-funded programs like Medi-Cal to pay compensation to victims first, before the insurance companies have to pay. This simply means insurance companies will pay less, while taxpayers shoulder the burden of compensation.

Auto insurance "no fault" systems written by insurance companies do not lower rates or protect consumers. A 1985 U.S. government study shows that car insurance rates are up to 40% higher in states with "no fault" systems. That's why Nevada and Pennsylvania have repealed their "no fault" laws in recent years.

Don't be misled by the insurance industry's advertising campaign. Every vote for Proposition 104 is a vote for higher rates and against needed reforms. We advise you to vote "NO" on the insurance industry's Proposition 104.

RALPH NADER
Consumer Advocate

HARVEY ROSENFIELD
Chair, Voter Revolt to Cut Insurance Rates/ Proposition 103

Rebuttal to Argument Against Proposition 104

PROP 104, NO-FAULT, IS THE ONLY INSURANCE MEASURE THAT REDUCES PREMIUMS BY PERMANENTLY CUTTING COSTS OUT OF THE INSURANCE SYSTEM. VOTE YES ON 104.

Proponents of other insurance initiatives promise temporary premium reductions. What they don't tell you is that hidden provisions of their initiatives mandate massive government intervention. They also don't tell you that bureaucracies in other states have failed miserably to hold down premiums.

Consider New Jersey, where government intervention led to an enormous state-run insurance system with a $2.5-billion deficit.

Don't believe no-fault opponents when they promise premium reductions without fundamental reform.

Only Prop 104 enacts comprehensive reform, through no-fault and other cost-control mechanisms, to regulate the costs driving up insurance rates.

PROP 104 *will:*

GUARANTEE prompt payment of no-fault claims from your own insurance company.

- PROHIBIT insurers from canceling your policy or raising your rates solely because of a no-fault claim.
- REDUCE premiums by requiring all auto insurers to cut rates for basic personal injury coverage by an average of 20%. This will result in an immediate overall average premium reduction of 7% to 17%.

Don't be misled by arguments that lump all no-fault plans together. Some no-fault laws have not worked because they were WATERED DOWN BY TRIAL LAWYERS. PROP 104 is modeled after the most successful no-fault laws nationwide.

ONLY PROP 104 REDUCES RATES IMMEDIATELY AND HOLDS THEM DOWN IN THE FUTURE THROUGH FUNDAMENTAL REFORM.

VOTE YES on PROP 104.

RICHARD U. ROBISON
President, Southern California Auto Club

BETTY SMITH
Former Chair, California Democratic Party

JIM NIELSEN
State Senator, 4th District
Vice Chair, Senate Insurance Claims and Corporations Committee

~~(h) The paying by any life insurer, or the receiving by life insurance policyholders of special compensations, or the allowing and receiving of credits already agreed upon in life insurance contracts now in force.~~

~~(i) The payment by an insurer of any portion of life insurance premiums payable by its employees pursuant to a life insurance program under which 75 per cent or more of its employees are required to carry life insurance on their lives so long as they remain in the employment of insurer.~~

~~(j) The payment or allowance of a fee or commission by one surety insurer to another surety insurer in respect to a risk on which both are counties.~~

~~763.5. The sale of the good will, business, list of policyholders or similar assets of an agent or broker in consideration of commissions or portions thereof to be thereafter earned by the use of such assets and payments of such consideration are not unlawful rebates if the purchaser is duly licensed to transact insurance and the receipt of the commissions would not constitute a violation of Section 760 if the person receiving them were licensed as an insurance agent.~~

~~764. Any person may be compelled to testify or produce evidence at the trial or hearing on a charge of violating a provision of this article, even though such testimony or evidence may incriminate him. A prosecution shall not be brought or maintained against such person for any act concerning which he thus testifies or produces evidence, except for perjury committed in so testifying.~~

~~765. If an insurer knowingly violates any provisions of this article, or knowingly permits any officer, agent, or employee so to do, the commissioner, after a hearing in accordance with the procedure provided in Section 701, may suspend the insurer's certificate of authority to do the class of insurance in which the violation of this article occurred.~~

~~766. If an insurance agent, broker, or solicitor knowingly and wilfully violates any of the provisions of this article, the commissioner, after a hearing in accordance with the procedure provided in Article 13 of Chapter 5 of this part, may suspend or revoke the violator's license.~~

~~767. Notwithstanding any provision in this article to the contrary, it shall be unlawful for any licensed insurance broker to pay a commission to an agent or broker licensed under the laws of Mexico when such agent or broker in Mexico refers to the insurance broker licensed in this state a resident of Mexico who wishes to obtain a policy of automobile liability insurance to be effective in this state from an insurer licensed in this state, and such broker negotiates and effects such a policy of insurance for such resident of Mexico.~~

SECTION 8. Technical Matters

(a) This act shall be liberally construed and applied in order to fully promote its underlying purposes.

(b) The provisions of this act shall not be amended by the Legislature except to further its purposes by a statute passed in each house by roll call vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electorate.

(c) If any provision of this act or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Proposition 104: Analysis

Continued from page 102

- Permits, but does not require, insurance companies to offer an unspecified "good driver" discount.
- Enacts other insurance-related provisions, and reenacts many provisions related to various lines of insurance which are currently in law.
- Provides that if this measure receives a higher number of votes than other measures on this ballot, then those provisions in other measures that relate to the business of insurance shall have no effect.

No-Fault System

Starting July 1, 1989, this measure establishes a no-fault motor vehicle insurance system that (1) applies only to bodily injury and (2) permits individuals to sue for losses which exceed specified limits.

This measure applies to private and commercial motor vehicles including automobiles, trucks, buses and trailers. It does not apply to motorcycles and "off-road-type" vehicles which are not registered with the Department of Motor Vehicles.

This measure contains the following features.

1. **"Basic" Benefits.** Requires the following minimum basic benefits to be paid by insurance companies to injured persons regardless of who is at fault:
   - Up to $10,000 for medical expenses;
   - Up to $15,000 for lost wages; and
   - $5,000 for funeral benefits, in case the injuries result in death.

In general, the basic benefits would not be provided to an uninsured motorist, a person driving a stolen car, or a person engaged in the commission of a felony.

This measure provides that the basic benefits shall be available only to pay medical expenses and lost wages to the extent that these expenses are not covered by workers' compensation and disability benefits.

Any dispute concerning payment of basic benefits would be decided by arbitration, and not by court trial. The arbitration would be conducted in accordance with procedures established by the Insurance Commissioner.

2. **Recovery of Workers' Compensation Costs.** Restricts the ability of employers to be reimbursed for medical expenses and wage losses paid under workers' compensation and other similar programs when employees are injured in motor vehicle accidents. Currently, an employer may recover the cost of benefits—such as workers' compensation—it provides to an employee who was injured in an accident by another person who was at fault.

3. **Additional Recovery.** Permits an injured person to recover costs in excess of the no-fault basic benefits by suing the party at fault for the accident.

4. **Noneconomic Losses.** Prohibits recovery for noneconomic losses (such as pain and suffering), except in cases involving (a) death or (b) serious and permanent disfigurement or injury. It would not limit the right to sue for damages in cases involving (a) the operation of an uninsured vehicle, (b) harm caused intentionally, or (c) specified crimes.

5. **Attorney Fees.** Limits plaintiffs' attorney contingency fees in motor vehicle accident cases involving bodily injury to the following: (a) 15 percent of the basic no-fault benefits recovered; (b) 33.3 percent of the first $50,000 recovered over the basic benefits; (c) 25 percent of the second $50,000 recovered over the basic benefits, and (d) 15 percent of the recovery over $100,000.

6. **Premium Reduction.** Requires insurance companies to reduce—by 20 percent for a two-year period (July 1989 through June 1991)—their average statewide premium rates for specified types of motor vehicle insurance. This would include rates for basic bodily injury liability, uninsured motorist and basic no-fault benefits provided under this measure. This reduction does not apply to the personal property liability damage, collision and comprehensive portions of a motor vehicle insurance policy.

Other Insurance-Related Provisions

The measure enacts other motor vehicle insurance-related provisions including the following.

1. **Claims Settlement Practices.** Requires that disputes between an insurance company and persons other than policyholders be settled by arbitration rather than by court action.

2. **Penalty.** Increases the penalty from an "infraction" to a "misdemeanor" for second and subsequent convictions for violation of the current financial responsibility laws.

3. **Insurance Fraud.** Increases the authority of the Insurance Commissioner to investigate and prosecute insurance fraud.

4. **Premium Discounts.** Permits, but does not require,

great premium increases. The factors the commissioner shall consider in making this determination shall include, but are not limited to, the following:

(1) Consumer complaints.

(2) Rate complaints.

Surveillance by the department.

[arket conduct.

In addition to the classes designated by the commissioner pursuant to subdivision (b) the insurer shall include the information required by subdivision (a) for those classes of insurance, as defined by the Insurance Services Office, covering liability insurance for municipalities, products liability insurance, liability insurance for any business or nonprofit enterprise required to carry liability insurance by state law, news publishers' liability insurance, and professional errors and omissions (malpractice) liability insurance for doctors and for lawyers. Collection of the data described in this section shall be terminated upon a joint resolution of the Legislature specifying such termination of collection. Insurers shall not be required to report under this section information required to be reported under Sections 1857.7, 1864, 11555.2, and 12958.

(d) The insurer shall also report for both California and for the United States and its territories for the calendar year:

(1) Each class of commercial liability insurance, as defined by the Insurance Services Office, that is specifically excluded from any reinsurance treaty for reinsurance ceded.

(2) Each class of commercial liability insurance, as defined by the Insurance Services Office, that is specifically excluded from any reinsurance treaty for reinsurance assumed.

(e) The department shall retain the information reported pursuant to this section for a period of no less than five years.

(f) Insurers that are members of the same insurance group may aggregate the information required by this section in a single report.

(g) The reports required by this section shall not be applicable to any insurer that has been established for less than three years.

(h) The reports required by this section shall be filed on a form provided by the commissioner no later than May 1 of the calendar year following the year for which the information is reported.

(i) The department shall adopt regulations implementing this section as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code, except that for the purposes of Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code, any regulations adopted under this section shall be deemed to be necessary for the immediate preservation of the public peace, he[illegible]th and safety, or general welfare. These regulations shall remain in effect for [illegible]. The regulations may require insurers to report the information required by [illegible]ision (d) by categories other than those used by the Insurance Services Office.

(j) The information provided pursuant to subdivision (a) shall be confidential and not revealed by the department, except that the commissioner may publish an analysis of the data in aggregate form or in a manner which does not disclose confidential information about identified insurers or insureds.,

SECTION 62. Sections 1860.1 and 1860.2 of the Insurance Code are reenacted as follows:

1860.1. *Applicability of other laws.*

No act done, action taken or agreement made pursuant to the authority conferred by this chapter shall constitute a violation of or grounds for prosecution or civil proceedings under any other law of this State heretofore or hereafter enacted which does not specifically refer to insurance.

1860.2. *Applicability of other laws.*

The administration and enforcement of this chapter shall be governed solely by the provisions of this chapter. Except as provided in this chapter, no other law relating to insurance and no other provisions in this code heretofore or hereafter enacted shall apply to or be construed as supplementing or modifying the provisions of this chapter unless such other law or other provisions expressly so provides and specifically refers to the sections of this chapter which it intends to supplement or modify.

SECTION 63. Section 11628.3 of the Insurance Code is reenacted as follows:

11628.3. *Operators over 55; driver improvement course graduates; reduction in premium.*

(a) Based on the actuarial and loss experience data available to each insurer, including the driving records of mature driver improvement course graduates, as recorded by the Department of Motor Vehicles, every admitted insurer shall provide for an appropriate percentage of reduction in premium rates for motor vehicle liability insurance for principal operators who are 55 years of age or older and who produce proof of successful completion of the mature driver improvement course provided for and approved by the Department of Motor Vehicles pursuant to Section 1675 of the Vehicle Code.

(b) The insured shall enroll in and successfully complete the course described in subdivision (a) once every three years in order to continue to be eligible for an appropriate percentage of reduced premium.

(c) The percentage of premium reduction required by subdivision (a) shall be reassessed by the insurer upon renewal of the insured's policy. The insured's eligibility for any percentage of premium reduction shall be effective for a three-year period from the date of successful completion of the course described in subdivision (a), except that the insurer may discontinue the reduced premium rate if the insured is in any case:

(1) Involved in an accident for which the insured is at fault, as determined by the insurer.

(2) Convicted of a violation of Division 11 (commencing with Section 21000) of the Vehicle Code, except Chapter 9 (commencing with Section 22500) of that division, or of a traffic related offense involving alcohol or narcotics.

(d) The percentage of premium rate reduction required by subdivision (a) does not apply in the event the insured enrolls in, and successfully completes, an approved course pursuant to a court order provided for in Section 42005 of the Vehicle Code. Nothing in this subdivision precludes an insured from also enrolling in a driver improvement course.

SECTION 64. Section 11628.4 of the Insurance Code is added as follows:

11628.4. Good driver discounts.

Based on the actuarial and loss experience data available to each insurer, every admitted insurer may provide for an appropriate percentage of reduction in premium rates for motor vehicle liability insurance for good drivers who have not been involved in any accident in the last three years for which the insured was at fault, as determined by the insurer, and who have not been convicted within the last three years of a violation of Division 11 (commencing with Section 21000) of the Vehicle Code, except Chapter 9 (commencing with Section 22500) of that division, or of a traffic related offense involving alcohol or narcotics.

SECTION 65. Section 12900 of the Insurance Code is reenacted as follows:

12900. *Appointment; term.*

The commissioner shall be appointed by the Governor, with the consent of the Senate and shall hold office for a term of four years, coextensive with the term of office of the Governor.

SECTION 66. Severability.

Except as provided in Insurance Code Section 12020, if any provision enacted, reenacted or amended by this initiative or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect any other provisions enacted, reenacted or amended by this initiative or the application thereof which can be given effect without the invalid provision or application, and, to this end, except as provided in Insurance Code Section 12020, the provisions enacted, reenacted or amended by this initiative are deemed severable.

SECTION 67. Inconsistency with Other Initiatives.

The provisions of this initiative constitute an integrated program of insurance reform and are intended to occupy the field of insurance reform in the election in which they are adopted. If this initiative receives a higher number of votes than another initiative statute adopted at the same election as this initiative, such other initiative statute shall not have any force or effect to the extent that its provisions specifically relate to the business of insurance or the regulation of that business by this State.

SECTION 68. Amendment.

Except as provided in section 20 of this initiative, the provisions of this initiative statute shall not be amended by the legislature except by another statute passed in each house by roll call entered in the journal, two-thirds of the membership concurring, or by another statute that becomes effective only when approved by the electorate.

Proposition 105: Text of Proposed Law

Continued from page 107

84502. "Committee" means any committee, as defined in Section 82013 of the Government Code, which has made expenditures of fifty thousand dollars ($50,000) or more, in support of, or in opposition to, an initiative.

84503. "Advertisement" means any general or public advertisement which is authorized and paid for by a committee for the purpose of supporting or opposing an initiative. "Advertisement" does not include a communication from an organization to its members.

84504. "Industry" means those individuals and persons who derive economic benefit from the manufacture, sale, or distribution of a like or similar product, commodity, or service, including but not limited to professional services.

84505. "Person" means any individual, business, and any other organization [illegible] up of persons acting in concert.

"Contributions" means the cumulative contributions of a committee for th[illegible] beginning with January 1 of the year prior to the year during which the initiative is to be voted upon and ending with the closing date for the campaign finance disclosure report whose filing deadline precedes the dissemination to the public of an advertisement by seven days or more. A committee may optionally compute its contributions using only items required to be individually itemized on State campaign finance disclosure reports.

84507. Any advertisement authorized by a committee shall include a statement that each of the following, where applicable, is a major funding source:

(a) Any industry which is both the largest industry contributor to the committee and whose combined contributions to the committee are five hundred thousand dollars ($500,000) or more, or are fifty thousand dollars ($50,000) or more and constitute 25 percent or more of all contributions.

(b) A person whose contributions to the committee are one hundred thousand dollars ($100,000) or more and who is the largest contributor.

(c) Corporations as a group when their combined contributions to the committee are one hundred thousand dollars ($100,000) or more and constitute 50 percent or more of all contributions, and unions as a group when their combined contributions to the committee are one hundred thousand dollars ($100,000) or more, and constitute 50 percent or more of all contributions.

(d) Out-of-state contributors as a group, when their combined contributions to the committee are one hundred thousand dollars ($100,000) or more, and constitute 50% or more of all contributions.

84508. If there are more than two major funding sources, the committee is only required to disclose the first two applicable funding sources, in the order they are listed in in Section 84507.

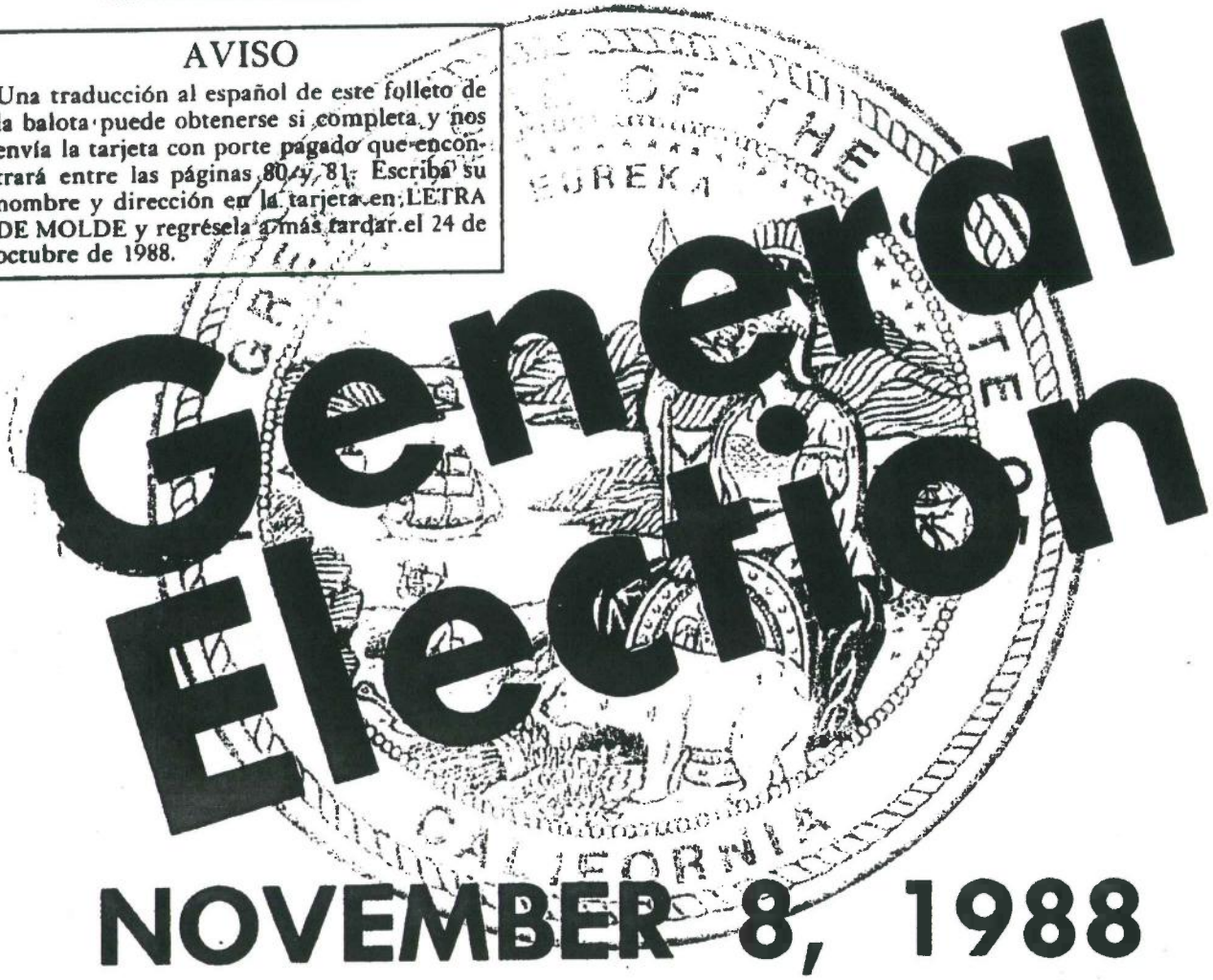
84509. Any disclosure statement required by this chapter shall be printed clearly and legibly in a conspicuous manner, or, if the communication is broadcast, the information shall be spoken.

EXHIBIT G

California
BALLOT PAMPHLET

AVISO

Una traducción al español de este folleto de la balota puede obtenerse si completa y nos envía la tarjeta con porte pagado que encontrará entre las páginas 80 y 81. Escriba su nombre y dirección en la tarjeta en LETRA DE MOLDE y regrésela a más tardar el 24 de octubre de 1988.



General Election

NOVEMBER 8, 1988

CERTIFICATE OF SECRETARY OF STATE

I, March Fong Eu, Secretary of State of the State of California, do hereby certify that the foregoing measures will be submitted to the electors of the State of California at the GENERAL ELECTION to be held throughout the State on November 8, 1988, and that this pamphlet has been correctly prepared in accordance with law.

Witness my hand and the Great Seal of the State in Sacramento, California, this 18th day of August 1988.

March Fong Eu

MARCH FONG EU
Secretary of State

103 Insurance Rates, Regulation, Commissioner. Initiative Statute

Official Title and Summary Prepared by the Attorney General

INSURANCE RATES, REGULATION, COMMISSIONER. INITIATIVE STATUTE. Requires minimum 20-percent rate reduction from November 8, 1987, levels, for automobile and other property/casualty insurance. Freezes rates until November 8, 1989, unless insurance company is substantially threatened with insolvency. Thereafter requires every insurer offer any eligible person a good-driver policy with 20-percent differential. Requires public hearing and approval by elected Insurance Commissioner for automobile, other property/casualty insurance rate changes. Requires automobile premiums be determined primarily by driving record. Prohibits discrimination, price-fixing, unfair practices by insurance companies. Requires commissioner provide comparative pricing information. Authorizes insurance activities by banks. Summary of Legislative Analyst's estimate of net state and local government impact: Would increase Department of Insurance administrative costs by $10 to $15 million in first year, varying thereafter with workload, to be paid by additional fees on the insurance industry. State and some local governments would have unknown savings from lower insurance rates. Gross premium tax reduction of approximately $125 million for first three years offset by required premium tax rate adjustment. Thereafter, possible state revenue loss if rate reductions and discounts continue but gross premium tax is not adjusted.

Analysis by the Legislative Analyst

Background

Various types of insurance are sold in California, including automobile, liability, fire, health and life. In 1987, companies collected about $50 billion in premiums from the sale of insurance. In turn, the state received about $1 billion from a tax on these premiums.

Motor vehicle insurance is one of the major types of insurance purchased in the state. It accounted for about $12 billion (24 percent) of all premiums collected during 1987. Additionally, fire and liability insurance premiums totaled about $10 billion, or 21 percent, of all premiums.

Rate Setting by Insurance Companies. Currently, insurance companies set rates for various types of insurance, using a number of factors. For motor vehicle insurance, these factors generally include the age, sex, marital status, driving record, type of vehicle and home address of the insured. The insurance companies also take into consideration other factors such as their claims experience, income and expenses. Insurance companies are not required to tell the public what relative weight they give to these factors when setting rates. In addition, insurance companies are not subject to the state's antitrust laws.

Role of the Department of Insurance in Reviewing Rates. Currently, the Department of Insurance does not review and approve insurance rate changes before they take effect. Instead, the Department of Insurance can request insurance companies to justify such rates *after* they take effect, as part of the rate examination process or in response to complaints from consumers. Historically, the scope and frequency of rate examinations has been limited.

Proposal

In summary, this measure:

- Requires insurance companies to reduce rates for various types of insurance, including motor vehicle, fire and liability.
- Requires insurance companies to offer a "Good Driver Discount Plan" and makes other changes regarding automobile insurance.
- Requires the Insurance Commissioner to review and approve rate increases—for various types of insurance—before they can take effect.
- Requires that the Insurance Commissioner be elected.

This measure changes the laws that regulate insurance rates for certain types of insurance. It applies to motor vehicle, fire and liability insurance, but not to mortgage and disability insurance.

Rate Reductions

1. **Rate Reduction.** This measure requires that rates for motor vehicle, fire and liability insurance issued or renewed on or after November 8, 1988, be reduced by 20 percent from their levels on November 8, 1987.

2. **Rate Freeze.** The measure requires that the rates be kept at the reduced levels until November 8, 1989. During this period, the rates can be increased only if the Insurance Commissioner determines that the affected insurance company is threatened with insolvency.

Review and Approval of Insurance Rate Filings

Beginning November 8, 1989, the measure requires the Insurance Commissioner to review and approve rate changes before they go into effect. Insurance companies are required to file information with the commissioner to justify the new rates. In general, the commissioner is required to hold a public hearing on the proposed rate change whenever it exceeds certain percentages. Additionally, the commissioner is authorized to hold a hearing when requested by a consumer.

Good Driver Discount Plan and Other Automobile Provisions

1. **"Good Driver" Discount.** This measure requires insurance companies to offer motor vehicle insurance good drivers at reduced rates. These rates would take effect November 8, 1989, (one year after the general rate reduction) and would be 20 percent below the rate which would otherwise have been paid for the same coverage.

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Text of Proposed Law

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8 of the Constitution.

This initiative measure adds and repeals sections of the Insurance Code, and adds a section to the Revenue and Taxation Code: therefore, existing sections proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1. Findings and Declaration.

The People of California find and declare as follows:

Enormous increases in the cost of insurance have made it both unaffordable and unavailable to millions of Californians.

The existing laws inadequately protect consumers and allow insurance companies to charge excessive, unjustified and arbitrary rates.

Therefore, the People of California declare that insurance reform is necessary. First, property-casualty insurance rates shall be immediately rolled back to what they were on November 8, 1987, and reduced no less than an additional 20%. Second, automobile insurance rates shall be determined primarily by a driver's safety record and mileage driven. Third, insurance rates shall be maintained at fair levels by requiring insurers to justify all future increases. Finally, the state Insurance Commissioner shall be elected. Insurance companies shall pay a fee to cover the costs of administering these new laws so that this reform will cost taxpayers nothing.

SECTION 2: Purpose.

The purpose of this chapter is to protect consumers from arbitrary insurance rates and practices, to encourage a competitive insurance marketplace, to provide for an accountable Insurance Commissioner, and to ensure that insurance is fair, available, and affordable for all Californians.

SECTION 3: Reduction and Control of Insurance Rates.

Article 10, commencing with Section 1861.01 is added to Chapter 9 of Part 2 of Division 1 of the Insurance Code to read:

Insurance Rate Rollback

1861.01. (a) For any coverage for a policy for automobile and any other form of insurance subject to this chapter issued or renewed on or after November 8, 1988, every insurer shall reduce its charges to levels which are at least 20% less than the charges for the same coverage which were in effect on November 8, 1987.

(b) Between November 8, 1988, and November 8, 1989, rates and premiums reduced pursuant to subdivision (a) may be only increased if the commissioner finds, after a hearing, that an insurer is substantially threatened with insolvency.

(c) Commencing November 8, 1989, insurance rates subject to this chapter must be approved by the commissioner prior to their use.

(d) For those who apply for an automobile insurance policy for the first time on or after November 8, 1988, the rate shall be 20% less than the rate which was in effect on November 8, 1987, for similarly situated risks.

(e) Any separate affiliate of an insurer, established on or after November 8, 1987, shall be subject to the provisions of this section and shall reduce its charges to levels which are at least 20% less than the insurer's charges in effect on that date.

Automobile Rates & Good Driver Discount Plan

1861.02. (a) Rates and premiums for an automobile insurance policy, as described in subdivision (a) of Section 660, shall be determined by application of the following factors in decreasing order of importance:

(1) The insured's driving safety record.

(2) The number of miles he or she drives annually.

(3) The number of years of driving experience the insured has had.

(4) Such other factors as the commissioner may adopt by regulation that have a substantial relationship to the risk of loss. The regulations shall set forth the respective weight to be given each factor in determining automobile rates and premiums. Notwithstanding any other provision of law, the use of any criterion without such approval shall constitute unfair discrimination.

(b) (1) Every person who (A) has been licensed to drive a motor vehicle for the previous three years and (B) has had, during that period, no more than one conviction for a moving violation which has not eventually been dismissed shall be qualified to purchase a Good Driver Discount policy from the insurer of his or her choice. An insurer shall not refuse to offer and sell a Good Driver Discount policy to any person who meets the standards of this subdivision. (2) The rate charged for a Good Driver Discount policy shall comply with subdivision (a) and shall be at least 20% below the rate the insured would otherwise have been charged for the same coverage. Rates for Good Driver Discount policies shall be approved pursuant to this article.

(c) The absence of prior automobile insurance coverage, in and of itself, shall not be a criterion for determining eligibility for a Good Driver Discount policy, or generally for automobile rates, premiums, or insurability.

(d) This section shall become operative on November 8, 1989. The commissioner shall adopt regulations implementing this section and insurers may submit applications pursuant to this article which comply with such regulations prior to that date, provided that no such application shall be approved prior to that date.

Prohibition on Unfair Insurance Practices

1861.03. (a) The business of insurance shall be subject to the laws of California applicable to any other business, including, but not limited to, the Unruh Civil Rights Act (Civil Code Sections 51 through 53), and the antitrust and unfair business practices laws (Parts 2 and 3, commencing with section 16600 of Division 7, of the Business and Professions Code).

(b) Nothing in this section shall be construed to prohibit (1) any agreement to collect, compile and disseminate historical data on paid claims or reserves for reported claims, provided such data is contemporaneously transmitted to the commissioner, or (2) participation in any joint arrangement established by statute or the commissioner to assure availability of insurance.

(c) Notwithstanding any other provision of law, a notice of cancellation or non-renewal of a policy for automobile insurance shall be effective only if it is based on one or more of the following reasons: (1) non-payment of premium; (2) fraud or material misrepresentation affecting the policy or insured; (3) a substantial increase in the hazard insured against.

Full Disclosure of Insurance Information

1861.04. (a) Upon request, and for a reasonable fee to cover costs, the commissioner shall provide consumers with a comparison of the rate in effect for each personal line of insurance for every insurer.

Approval of Insurance Rates

1861.05. (a) No rate shall be approved or remain in effect which is excessive, inadequate, unfairly discriminatory or otherwise in violation of this chapter. In considering whether a rate is excessive, inadequate or unfairly discriminatory, no consideration shall be given to the degree of competition and the commissioner shall consider whether the rate mathematically reflects the insurance company's investment income.

(b) Every insurer which desires to change any rate shall file a complete rate application with the commissioner. A complete rate application shall include all data referred to in Sections 1857.7, 1857.9, 1857.15, and 1864 and such other information as the commissioner may require. The applicant shall have the burden of proving that the requested rate change is justified and meets the requirements of this article.

(c) The commissioner shall notify the public of any application by an insurer for a rate change. The application shall be deemed approved sixty days after public notice unless (1) a consumer or his or her representative requests a hearing within forty-five days of public notice and the commissioner grants the hearing, or determines not to grant the hearing and issues written findings in support of that decision, or (2) the commissioner on his or her own motion determines to hold a hearing, or (3) the proposed rate adjustment exceeds 7% of the then applicable rate for personal lines or 15% for commercial lines, in which case the commissioner must hold a hearing upon a timely request.

1861.06. Public notice required by this article shall be made through distribution to the news media and to any member of the public who requests placement on a mailing list for that purpose.

1861.07. All information provided to the commissioner pursuant to this article shall be available for public inspection, and the provisions of Section 6254(d) of the Government Code and Section 1857.9 of the Insurance Code shall not apply thereto.

1861.08. Hearings shall be conducted pursuant to Sections 11500 through 11528 of the Government Code, except that: (a) hearings shall be conducted by administrative law judges for purposes of Sections 11512 and 11517, chosen under Section 11502 or appointed by the commissioner; (b) hearings are commenced by a filing of a Notice in lieu of Sections 11503 and 11504; (c) the commissioner shall adopt,

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103 Insurance Rates, Regulation, Commissioner. Initiative Statute

Argument in Favor of Proposition 103

There are important differences between the five insurance initiatives on the November ballot which you should be aware of before voting.

Proposition 103—Voter Revolt to Cut Insurance Rates—is the only insurance initiative written and paid for exclusively by consumers. It alone reduces all of your automobile, home and business insurance premiums to November 1987 prices. Then, it alone cuts them another 20%.

Proposition 103 will also end the insurers' exemption from the antimonopoly laws, allow people to elect the Insurance Commissioner, require a special 20% discount for good drivers, and stop unfair price increases in the future. It specifies that a permanent, independent consumer watchdog system will champion the interests of insurance consumers.

Proposition 103 is written in plain language. There are no loopholes or fine print. Unlike the other propositions, nonlawyers can read it.

Because the polls showed that the insurance industry could not defeat Voter Revolt's 103 directly, the insurance companies came up with a plan to defeat it indirectly. They are pushing Proposition 104—the so-called "no-fault" proposition—and are spending tens of millions of dollars to advertise that it is better for consumers than Proposition 103.

Privately, insurance executives have admitted that their Proposition 104 would actually raise auto insurance premiums for many drivers. Worse, Proposition 104 rewrites the entire California Insurance Code to benefit insurance companies. The 24,000 words of obscure legalese in Proposition 104 turn the law into a "your fault" system. Their fine print cancels out every consumer reform in Voter Revolt's Proposition 103.

Some insurance companies disagree with "no fault," so they're financing Proposition 101, which claims to make the biggest cut in auto insurance. But the big cut they boast about affects only one portion of your auto insurance—they could raise premiums for the rest of your coverage as much as they want. In return, Proposition 101 allows insurance companies to avoid full payment for accidents. It, too, cancels many of the auto insurance reforms in Proposition 103.

Insurance companies are also financing Proposition 106, which restricts your right to quality legal counsel. The insurance companies claim Proposition 106 will cut their costs. In fact, it will limit your ability to make the insurance companies pay up.

Proposition 100, which is paid for by trial lawyers and bankers, simply does not go far enough to protect consumers' interests. Unlike Proposition 103, it does not automatically and immediately cut insurance rates. Nor does it enable consumers to permanently unite to fight against insurance abuse, as Voter Revolt's Proposition 103 does.

Proposition 103 is the only initiative written and paid for exclusively by consumers. It will save you the most money.

To guarantee that every reform in Voter Revolt's Proposition 103 becomes law, it must get more "Yes" votes than any other proposition. Every vote in favor of another insurance proposition cancels your vote for Proposition 103. That's why we advise you to vote "Yes" *only* on Proposition 103.

RALPH NADER
Consumer Advocate

HARVEY ROSENFIELD
Chair, Voter Revolt to Cut Insurance Rates/ Proposition 103

Rebuttal to Argument in Favor of Proposition 103

Proponents of PROP 103 claim that their initiative includes no "fine print," but IT'S FULL OF UNINTENDED CONSEQUENCES THAT WILL WIPE OUT ANY BENEFITS IT PROMISES YOU. VOTE NO ON PROP 103.

The most glaring example of this "fine print" allows for massive government intervention into the insurance industry. A GOVERNMENT-RUN INSURANCE SYSTEM IS NOT THE ANSWER.

In New Jersey, where the government intervened in the insurance business under circumstances similar to those mandated in PROP 103, every driver is paying a surcharge to help foot a $2.5-billion deficit racked up by the state-run insurance system.

PROP 103 advocates also tell you their initiative contains no loopholes. Look again. It's loaded with them.

- RATES WILL INCREASE by an average 22% for two-thirds of the state's drivers, according to the State Department of Insurance, because PROP 103 eliminates rating based on the driving safety record of your neighborhood and forces suburban and rural drivers to subsidize motorists in high-risk areas.
- DRUNK DRIVERS who haven't lost their licenses can qualify for "good driver" discounts.

A MASSIVE BUREAUCRACY IS NOT THE SOLUTION. Only fundamental reform of our auto insurance system will hold down insurance premiums. We need to reduce the cost of litigation, fraud and subsidizing uninsured motorists.

PROP 103 DOES NOT REFORM OUR SYSTEM. IT DOES NOT GUARANTEE YOU LONG-TERM RATE REDUCTIONS.

Vote NO on PROP 103.

ALISTER McALISTER
Former Chair, Assembly Finance and Insurance Committee

ED DAVIS
State Senator, 19th District

KIRK WEST
President, California Chamber of Commerce

 Arguments printed on this page are the opinions of the authors and have not been checked for accuracy by any official agency

Argument Against Proposition 103

KEEP BIG GOVERNMENT OUT OF THE AUTO INSURANCE BUSINESS.

You might think PROP 103's auto insurance rate reductions seem too good to be true. You're right.

Vote NO on PROP 103; it does not enact any cost-cutting reforms. Instead, it attacks the symptoms of our failing auto insurance system. It does not address, let alone begin to grapple with, the real problem—the cost of uninsured motorists, fraud and, most importantly, *runaway auto accident litigation.*

PROP 103 might seem well-intentioned but, unfortunately, it inevitably would lead to a huge, state-run insurance system costing millions of dollars.

Hidden provisions of this measure give the state unprecedented authority to enter the insurance business. If you think lines are long and the bureaucracy impenetrable at government offices today, just wait until you have to deal with the state to purchase insurance.

This sloppily drafted measure will:

- *Raise insurance premiums, in the long term, for the majority of California drivers.* PROP 103 forces insurers to ignore the driving safety record of where you live and, instead, forces you to subsidize drivers in areas that have the highest insurance losses. For example, a 55-year-old suburban driver will end up paying more for insurance so that a young urban driver can pay less. A State Department of Insurance study recently predicted that this aspect of PROP 103 will raise rates for two-thirds of the state's drivers —by an average 22%!
- *Allow convicted drunk drivers who have not lost their licenses to win an additional rate discount for "good driving."*
- *Make the Insurance Commissioner an elected official with* enormous new powers. This "insurance czar" would be a politician first, and a regulator second. As a politician, this official would be preoccupied with raising campaign money from special interests all too willing to "buy" influence.
- *Create a huge government bureaucracy that does nothing to make auto insurance more affordable.* Instead, PROP 103 would add time, expense and lots of lawyers to enact a price-control policy that has failed miserably in New Jersey and other states. To carry out this price-control policy, the measure increases the Department of Insurance's budget by 33% and its staff by at least 100 new bureaucrats.

VOTE NO on PROP 103. Lowering auto premiums for California drivers is a laudable goal, but this measure's flawed methods are not the answer. Please VOTE NO on PROP 103.

KIRK WEST
President, California Chamber of Commerce

WILLIAM CAMPBELL
State Senator, 31st District
Chairman, Joint Legislative Budget Committee

DAVID DAVREUX
Author, Consumers' Guide to Auto Insurance

Rebuttal to Argument Against Proposition 103

The insurance companies want to divert your attention away from the fact that Prop 103 will save *everyone* 20% on their auto insurance as well as their home and business insurance. That's why the statement above employs confusing and often ridiculous arguments against it.

Here are the facts:

- 103 is the *only* initiative that will immediately cut *everyone's* premiums by 20%.
- 103 forces insurance companies to base your rates on your driving record first, rather than on where you live. That means good drivers throughout the state will pay less than they do now, while bad drivers will pay more.
- 103 eliminates the insurance industry's unfair exemption from the antitrust laws. This will reduce rates permanently.
- 103 involves no new government bureaucracy—just a new set of rules to create a competitive marketplace and prohibit excessive rates.
- 103 will actually save money for taxpayers, according to the official California State Legislative Analyst.
- And no wonder the insurance companies don't want an elected Insurance Commissioner—in the states where people elect insurance commissioners, rates average 30% lower than in California.

Voter Revolt's Proposition 103 is the *only* insurance reform initiative written and paid for exclusively by consumers. That's why it is the *only* initiative endorsed by Ralph Nader.

103 will lower insurance rates for everyone. That's why the insurance industry is against it. Don't buy their misleading advertising. Vote YES on Proposition 103.

HARVEY ROSENFIELD
Chair, Voter Revolt to Cut Insurance Rates/ Proposition 103

Proposition 103: Analysis

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In general, this measure defines a good driver as a person who, during the last three years, has (a) held a driver's license and (b) had no more than one conviction for a moving violation.

2. **Determining Factors for Rates.** In general, the measure requires that rates and premiums for automobile insurance be determined on the basis of the insured person's driving record, miles driven and number of years of driving experience.

Other Insurance-Related Provisions

1. **Antitrust Laws.** The measure makes insurance companies subject to the state's antitrust laws.

2. **Election of Insurance Commissioner.** The measure requires that the Insurance Commissioner be elected, the first election taking place in 1990.

3. **Consumer Assistance.** The measure requires the establishment of a nonprofit corporation to represent the interests of insurance consumers. Additionally, the measure requires the Insurance Commissioner to provide consumers—upon request and for a reasonable fee—with a comparison of the rates for *each* personal (that is, noncommercial) type of insurance offered in California. In general, this would include rates for private automobile, homeowner's and renter's insurance.

4. **Discounts or Rebates.** The measure permits insurance agents and brokers to give certain discounts or rebates to those who buy insurance from them. It does so, by eliminating the prohibition in current law against such discounts or rebates.

Fiscal Effect

Costs

Department of Insurance. This measure would increase the Department of Insurance's administrative costs by between $10 million to $15 million during 1988–89. These costs would be financed out of the Insurance Fund which is supported by fees and assessments on the insurance industry. Given the current balance in this fund, fees and assessments would have to be increased to cover these costs.

In years following, these costs could be somewhat l[illegible] or higher, depending on workload.

State and Local Governments. While some local g[illegible]ernments purchase insurance, most "self-insure" by relying upon their own resources to pay losses and claims. The state is generally self-insured, but does purchase some liability and fire insurance. Because this measure reduces the rates for certain types of insurance, including motor vehicle, fire and liability, it would result in unknown savings to the state and those local governments that purchase such insurance.

Revenues

Insurance companies pay a tax based on the amount of gross premiums they receive each year from insurance sold in California. These tax revenues are deposited in the State General Fund.

Starting in November 1988, this measure requires that rates for motor vehicle, fire and liability insurance be reduced. These lines of insurance account for about 45 percent of all California insurance premiums. A good driver discount takes effect a year later. The Department of Insurance's new role in reviewing and approving proposed rate changes also takes effect in November 1989. The rate reductions and the good driver discounts combined normally would reduce state insurance tax revenues by about $125 million a year. This estimate assumes that about 50 percent of the drivers would qualify for the discount. It also assumes that no offset adjustments would be made in other insurance rates. The resulting state revenue loss, however, will not o[illegible]r because this measure provides that for the period November 1988 to January 1991 the State Board of Equalization shall adjust the state tax rate on gross premiums to offset these premium reductions.

Thereafter, there would be an unknown General Fund revenue loss to the extent these rate reductions and discounts continue.

Proposition 103: Text of Proposed Law

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amend or reject a decision only under Section 11517 (c) and (e) and solely on the basis of the record; (d) Section 11513.5 shall apply to the commissioner; (e) discovery shall be liberally construed and disputes determined by the administrative law judge.

1861.09. Judicial review shall be in accordance with Section 1858.6. For purposes of judicial review, a decision to hold a hearing is not a final order or decision; however, a decision not to hold a hearing is final.

Consumer Participation

1861.10. (a) Any person may initiate or intervene in any proceeding permitted or established pursuant to this chapter, challenge any action of the commissioner under this article, and enforce any provision of this article.

(b) The commissioner or a court shall award reasonable advocacy and witness fees and expenses to any person who demonstrates that (1) the person represents the interests of consumers, and, (2) that he or she has made a substantial contribution to the adoption of any order, regulation or decision by the commissioner or a court. Where such advocacy occurs in response to a rate application, the award shall be paid by the applicant.

(c) (1) The commissioner shall require every insurer to enclose notices in every policy or renewal premium bill informing policyholders of the opportunity to join an independant, non-profit corporation which shall advocate the interests of insurance consumers in any forum. This organization shall be established by an interim board of public members designated by the commissioner and operated by individuals who are democratically elected from its membership. The corporation shall proportionately reimburse insurers for any additional costs incurred by insertion of the enclosure, except no postage shall be charged for any enclosure weighing less than ½ of an ounce. (2) The commissioner shall by regulation determine the content of the enclosures and other procedures necessary for implementation of this provision. The legislature shall make no appropriation for this subdivision.

Emergency Authority

1861.11. In the event that the commissioner finds that (a) insurers have substantially withdrawn from any insurance market covered by this article, including insurance described by Section 660, and (b) a market assistance plan would not be sufficient to make insurance available, the commissioner shall establish a joint underwriting authority in the manner set forth by Section 11891, without the prior creation of a market assistance plan.

Group Insurance Plans

1861.12. Any insurer may issue any insurance coverage on a group plan, without restriction as to the purpose of the group, occupation or type of group. Group insurance rates shall not be considered to be unfairly discriminatory, if they are averaged broadly among persons insured under the group plan.

Application

1861.13. This article shall apply to all insurance on risks or on operations in this state, except those listed in Section 1851.

Enforcement & Penalties

1861.14. Violations of this article shall be subject to the penalties set forth in Section 1859.1. In addition to the other penalties provided in this chapter, the commissioner may suspend or revoke, in whole or in part, the certificate of authority of any insurer which fails to comply with the provisions of this article.

SECTION 4. Elected Commissioner

Section 12900 is added to the Insurance Code to read:

12900. (a) The commissioner shall be elected by the People in the same place and manner and for the same term as the Governor.

SECTION 5. Insurance Company Filing Fees

Section 12979 is added to the Insurance Code to read:

12979. Notwithstanding the provisions of Section 12978, the commissioner shall establish a schedule of filing fees to be paid by insurers to cover any

administrative or operational costs arising from the provisions of Article 10 (commencing with Section 1861.01) of Chapter 9 of Part 2 of Division 1

SECTION 6. Transitional Adjustment of Gross Premiums Tax

Section 12202.1 is added to the Revenue & Taxation Code to read:

12202.1 Notwithstanding the rate specified by Section 12202, the gross premium tax rate paid by insurers for any premiums collected between November 8, 1988 and January 1, 1991 shall be adjusted by the Board of Equalization in January of each year so that the gross premium tax revenues collected for each prior calendar year shall be sufficient to compensate for changes in such revenues, if any, including changes in anticipated revenues, arising from this act. In calculating the necessary adjustment, the Board of Equalization shall consider the growth in premiums in the most recent three year period, and the impact of general economic factors including, but not limited to, the inflation and interest rates.

SECTION 7. Repeal of Existing Law

Sections 1643, 1850, 1850.1, 1850.2, 1850.3, 1852, 1853, 1853.6, 1853.7, 1857.5, 12900 Article 3 (commencing with Section 1854) of Chapter 9 of Part 2 of Division 1, and Article 5 (commencing with Section 750) of Chapter 1 of Part 2 of Division 1, of the Insurance Code are repealed.

~~1643. No bank, or bank holding company, subsidiary, or affiliate thereof, or any officer or employee of a bank, bank holding company, subsidiary, or affiliate, may be licensed as an insurance agent or broker or act as an agent or broker for insurance, in this state, or control a licensed insurance agent or broker, except that a bank or a bank holding company subsidiary, or affiliate of a bank, may be issued a license to act as a life and disability agent limited to the transaction of credit life and disability insurance, or an agent limited to the transaction of insurance which is limited solely to assuring repayment of the outstanding balance due on a specific extension of credit by a bank or bank holding company or its subsidiary in the event of the involuntary unemployment of the debtor, or both. A commercial bank may be licensed to sell insurance or act as an insurance broker as provided in Section 1208 of the Financial Code. This section shall not apply to any bank or bank holding company which, under the authorization of the Federal Reserve Board, had prior to January 1, 1976, a subsidiary or affiliate licensed to sell insurance (except that subsequent authorization to expand such activities shall be subject to this section), or to any bank holding company owning a state-chartered bank which had, prior to January 1, 1976, a subsidiary or affiliate licensed to sell insurance. This section shall not apply to any person authorized or licensed to make loans pursuant to Division 7 (commencing with Section 18000), Division 9 (commencing with Section 22000), Division 10 (commencing with Section 24000), or Division 11 (commencing with Section 26000) of the Financial Code.~~

~~For the purposes of this section, the following definitions shall apply:~~

~~(a) "Bank" means any institution in this state defined in Section 102 of the Financial Code except that such term does not include a title insurance company licensed to transact a trust business under the provisions of Article 3 (commencing with Section 12390) of Chapter 1 of Part 6 of Division 2 or a trust company controlled by or under common control with a title insurance company.~~

~~(b) "Bank holding company" means the same as the definition of that term set forth in Section 2 of the federal Bank Holding Company Act of 1956, as amended, but limited to holding companies which control a bank authorized to accept deposits in this state.~~

~~(c) "Subsidiary" means any corporation, association, or partnership, owned in whole or part by a bank or bank holding company.~~

~~(d) "Affiliate" means any corporation, association, or partnership connected through the ownership of a 10/percent or greater interest by a common parent.~~

~~(e) "Credit life, health, and accident insurance" means insurance on the life and health of a borrower from a bank issued to secure the repayment of the amount borrowed.~~

~~(f) "Control" means the possession, by any means, of the power to direct or cause the direction of the management or activities of a licensed insurance agent or broker.~~

~~1850. The purpose of this chapter is to promote the public welfare by regulating insurance rates as herein provided to the end that they shall not be excessive, inadequate or unfairly discriminatory, to authorize the existence and operation of qualified rating organizations and advisory organizations and require that specified rating services of such rating organizations be generally available to all admitted insurers, and to authorize cooperation between insurers in rate making and other related matters.~~

~~It is the express intent of this chapter to permit and encourage competition between insurers on a sound financial basis and nothing in this chapter is intended to give the Commissioner power to fix and determine a rate level by classification or otherwise.~~

~~1850.1. In this chapter "rating organization" means every person, other than an admitted insurer, whether located within or outside this State, who has as his object or purpose the making of rates, rating plans or rating systems. Two or more admitted insurers which act in concert for the purpose of making rates, rating plans or rating systems, and which do not operate within the specific authorizations contained in Sections 1853.5, 1853.7, 1853.8, and Article 5 shall be deemed to be a rating organization. No single insurer shall be deemed to be a rating organization.~~

~~1850.2. In this chapter "advisory organization" means every person, other than admitted insurer, whether located within or outside this State, who prepares forms or makes underwriting rules incident to but not including the making of rates, rating plans or rating systems, or which collects and furnishes to admitted insurers or rating organizations loss or expense statistics or other statistical information and data and acts in an advisory, as distinguished from a rate making, capacity. No duly authorized attorney at law acting in the usual course of his profession shall be deemed to be an advisory organization.~~

~~1850.3. Unless otherwise apparent from the context, in this chapter:~~

~~(a) "Member" means an insurer who participates in or is entitled to participate in the management of a rating, advisory or other organization.~~

~~(b) "Subscriber" means an insurer which is furnished at its request (1) with rates and rating manuals by a rating organization of which it is not a member, or (2) with advisory services by an advisory organization of which it is not a member.~~

~~1852. The following standards shall apply to the making and use of rates pertaining to all classes of insurance to which the provisions of this chapter are applicable:~~

~~(a) Rates shall not be excessive or inadequate, as herein defined, nor shall they be unfairly discriminatory.~~

~~No rate shall be held to be excessive unless (1) such rate is unreasonably high for the insurance provided and (2) a reasonable degree of competition does not exist in the area with respect to the classification to which such rate is applicable.~~

~~No rate shall be held to be inadequate unless (1) such rate is unreasonably low for the insurance provided and (2) the continued use of such rate endangers the solvency of the insurer using the same, or unless (3) such rate is unreasonably low for the insurance provided and the use of such rate by the insurer using same has, or if continued will have, the effect of destroying competition or creating a monopoly.~~

~~(b) Consideration shall be given, to the extent applicable, to past and prospective loss experience within and outside this State, to conflagration and catastrophe hazards, to a reasonable margin for underwriting profit and contingencies, to past and prospective expenses both country-wide and those specially applicable to this State, and to all other factors, including judgment factors, deemed relevant within and outside this State; and in the case of fire insurance rates, consideration may be given to the experience of the fire insurance business during the most recent five-year period for which such experience is available.~~

~~Consideration may also be given in the making and use of rates to dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers.~~

~~(c) The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the operating methods of any such insurer or group with respect to any kind of insurance, or with respect to any subdivision or combination thereof.~~

~~(d) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any difference among risks that have a probable effect upon losses or expenses. Classifications or modifications of classifications of risks may be established based upon size, expense, management, individual experience, location or dispersion of hazard, or any other reasonable considerations. Such classifications and modifications shall apply to all risks under the same or substantially the same circumstances or conditions.~~

~~1853. Subject to and in compliance with the provisions of this chapter authorizing insurers to be members or subscribers of rating or advisory organizations or to engage in joint underwriting or joint reinsurance, two or more insurers may act in concert with each other and with others with respect to any matters pertaining to the making of rates or rating systems, the preparation or making of insurance policy or bond forms, underwriting rules, surveys, inspections and investigations, the furnishing of loss or expense statistics or other information and data, or carrying on of research.~~

~~1853.6. Members and subscribers of rating or advisory organizations may use the rates, rating systems, underwriting rules or policy or bond forms of such organizations, either consistently or intermittently, but, except as provided in Sections 1853.5, 1853.8, and Article 5, shall not agree with each other or rating organizations or others to adhere thereto. The fact that two or more admitted insurers, whether or not members or subscribers of a rating or advisory organization, use, either consistently or intermittently, the rates or rating systems made or adopted by a rating organization, or the underwriting rules or policy or bond forms prepared by a rating or advisory organization, shall not be sufficient in itself to support a finding that an agreement to so adhere exists, and may be used only for the purpose of supplementing or explaining direct evidence of the existence of any such agreement.~~

~~1853.7. Licensed rating organizations and admitted insurers are authorized to exchange information and experience data with rating organizations and insurers in this and other states and may consult with them with respect to rate-making and the application of rating systems.~~

~~1857.5. (a) The commissioner may promulgate reasonable rules and statistical plans, reasonably adapted to each of the rating systems in use within the state, which may be modified from time to time and which shall be used thereafter by each insurer in the recording and reporting of its loss and countrywide expense experience, in order that the experience of all insurers may be made available at least annually in such form and detail as may be necessary to aid him in determining whether rating systems comply with the standards set forth in this chapter. Such rules and plans may also provide for the recording and reporting of expense experience items which are specially applicable to this state and are not susceptible of determination by a prorating of countrywide expense experience. In promulgating such rules and plans, the commissioner may give due consideration to the rating systems in use and, in order that such rules and plans may be as uniform as is practicable among the several states, to the rules and to the form of the plans used for such rating systems in other states. No insurer shall be required to record or report its loss experience on a classification basis that is inconsistent with the rating system in use by it. The commissioner may designate one or more rating organizations or advisory organizations to assist him in gathering such experience and making compilations thereof, and such compilations shall be made available, subject to reasonable rules promulgated by the commissioner, to insurers and rating organizations.~~

(b) Reasonable rules and plans may be promulgated by the commissioner for the interchange of data necessary for the application of rating plans.

(c) In order to further uniform administration or rate regulatory laws, the commissioner and every insurer and rating organization may exchange information and experience data with insurance supervisory officials, insurers and rating organizations in other states and may consult with them with respect to ratemaking and the application of rating systems.

10900. The commissioner shall be appointed by the Governor, with the consent of the Senate and shall hold office for a term of four years, coextensive with the term of office of the Governor.

Article 2. Rating Organizations

1851. No rating organization shall conduct its operations in this state without first filing with the commissioner a written application for and securing a license to act as a rating organization. Any rating organization may make application for and obtain a license as a rating organization if it shall meet the requirements for license set forth in this chapter. Every such rating organization shall file with its application (a) a copy of its constitution, its articles of incorporation, agreement or association, and of its bylaws, rules and regulations governing the conduct of its business, all duly certified by the custodian of the originals thereof, (b) a list of its members and subscribers, (c) the name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting such rating organization may be served, and (d) a statement of its qualifications as a rating organization.

The fee for filing an application for license as a rating organization is one hundred seventy/seven dollars ($177) lawful money of the United States, payable in advance to the commissioner.

1851.1. To obtain and retain a license, a rating organization shall provide satisfactory evidence to the commissioner that it will:

(a) Permit any admitted insurer to become a member of or a subscriber to such rating organization at a reasonable cost and without discrimination, or withdraw therefrom.

(b) Neither have nor adopt any rule or exact any agreement, the effect of which would be to require any member or subscriber as a condition to membership or subscribership, to adhere to its rates, rating plans, rating systems, underwriting rules, or policy or bond forms.

(c) Neither adopt any rule nor exact any agreement the effect of which would be to prohibit or regulate the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policy holders, members or subscribers.

(d) Neither practice nor sanction any plan or act of boycott, coercion or intimidation.

(e) Neither enter into nor sanction any contract or act by which any person is restrained from lawfully engaging in the insurance business.

(f) Notify the commissioner promptly of every change in its constitution, its articles of incorporation, agreement or association, and of its bylaws, rules and regulations governing the conduct of its business, its list of members and subscribers, and the name and address of the resident of this State designated by it upon whom notices or orders of the commissioner or process affecting such organization may be served.

(g) Comply with the provisions of Section 1857.

1851.2. The commissioner shall examine each application for license to act as a rating organization and the documents filed therewith and may make such further investigation of the applicant, its affairs and its proposed plan of business, as he deems desirable.

The commissioner shall issue the license applied for within 60 days of its filing with him if from such examination and investigation he is satisfied that:

(a) The business reputation of the applicant and its officers is good.

(b) The facilities of the applicant are adequate to enable it to furnish the services it proposes to furnish.

(c) The applicant and its proposed plan of operation conform to the requirements of this chapter.

Otherwise, but only after hearing upon notice, the commissioner shall in writing deny the application and notify the applicant of his decision and his reasons therefor.

The commissioner may grant an application in part only and issue a license to act as a rating organization for one or more of the classes of insurance or subdivisions thereof or class of risk or a part or combination thereof as are specified in the application if the applicant qualifies for only a portion of the classes applied for.

Licenses issued pursuant to this section shall remain in effect until revoked as provided in this chapter.

1851.25. Notwithstanding the provision of Section 1851.2, each rating organization possessing a license of indefinite term pursuant to such section shall owe and pay to the commissioner an annual fee of one hundred seventy/seven dollars ($177) in lawful money of the United States in advance on account of such license until its final termination. Such fee shall be for periods commencing on July 1, 1961, and on each July 1st thereafter and ending on June 30, 1965, and each June 30th thereafter, and shall be due and payable on March 1, 1961, and on each March 1st thereafter and shall be delinquent on April 1, 1961, and each April 1st thereafter.

1851.3. Subject to the approval of the commissioner licensed rating organizations may make reasonable rules governing eligibility for membership.

1851.4. If two or more insurers having a common ownership or operating in this State under common management are admitted for the classes or types of insurance for which a rating organization is licensed to make rates, the rating organization may require as a condition to membership or subscribership of one or more that all such insurers shall become members or subscribers.

1851.5. A workers' compensation insurance rating organization licensed pursuant to the provisions of Article 3 (commencing with Section 11750) of Chapter 3 of Part 3 of Division 2 which does not make rates, rating plans or rating systems for insurance covering the liability of employers for compensation or damages under the United States Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 901, et seq.) shall not be required to be licensed as a rating organization or registered as an advisory organization pursuant to the provisions of this chapter and shall have authority under its license as a workers' compensation insurance rating organization to:

(a) Collect and tabulate loss and expense experience statistics and other information and data relating to insurance covering employers against their liability for compensation under the United States Longshoremen's and Harbor Workers' Compensation Act.

(b) Furnish or exchange such information and experience data to or with rating organizations, advisory organizations and insurers in this and other states.

(c) Adopt and enforce compliance by its insurer members with reasonable rules and statistical plans to be used in the recording and reporting by insurer members of their California longshoremen's and harbor workers' insurance loss and expense experience in order that such experience of all of its insurer members shall be available in such form and detail as will be of aid to the commissioner in the enforcement of, and to its insurer members in complying with, the provisions of this chapter.

(d) Engage in the same activities and carry out the same functions with respect to insurance covering the liability of employers for compensation or damages under the United States Longshoremen's and Harbor Workers' Compensation Act that it is authorized to engage in or carry out with respect to California workers' compensation insurance generally under the provisions of Article 3 (commencing with Section 11750) of Chapter 3 of Part 3 of Division 2 other than the making of rates, rating plans and rating systems.

Article 5. Unlawful Rebates, Profits, and Commissions

750. An insurer, insurance agent, broker, or solicitor, personally or by any other party, shall not offer or pay, directly or indirectly, as an inducement to insurance on any subject/matter in this State, any rebate of the whole or part of the premium payable on an insurance contract, or of the agent's or broker's commission thereon, and such rebate is an unlawful rebate.

750.1. The Legislature hereby finds and declares that the continued regulation of the business practices of insurers and their producers is in the interest of the citizens of the state and that the control and limitations of unlawful rebates, profits, and commissions is an essential component of that regulation which is necessary to effectuate an adequate and complete system and regulation of insurer and producer business practices.

The Legislature finds that the statutes controlling unlawful rebates, profits, and commissions continue to provide critical protection to insureds in this state from the numerous consequences that would occur in the absence of such regulation including company insolvencies, unfair discrimination between insureds of identical risks creating subsidies from small purchasers of insurance in favor of large purchasers of insurance, decreased quality of services to insurance consumers, increased concentration of insurance distribution and sales mechanisms, and misrepresentation and unethical sales practices such as improper replacement or twisting to the detriment of the public.

It is the intent of the Legislature in enacting this section to clearly set forth the legislative intent supporting the enactment, continuing vitality, and importance of the unlawful rebates, profits, and commissions sections of this code.

751. An insurer, or an insurance agent, broker, or solicitor, personally or otherwise, shall not offer or pay, directly or indirectly, as an inducement to enter into an insurance contract, any valuable consideration which is not clearly specified, promised or provided for in the policy, or application for the insurance, and any such consideration not appearing in the policy is an unlawful rebate.

752. Any person named as the insured in any policy or named as the principal, or obligee, in any surety policy or the agent or representative of any such person who, directly or indirectly, knowingly accepts or receives any unlawful rebate is guilty of a misdemeanor.

753. (a) It is unlawful for any insurance agent or broker, or any insurance solicitor employed thereby, to receive any financial benefit from an automobile repair facility or any other form of direct or indirect consideration from any person for referring insureds to that person or that person's designee for vehicle repairs covered under automobile comprehensive coverage, property damage coverage, or automobile collision coverage, of an insurance policy issued through the insurance agent or broker or by an insurer represented by the insurance agent.

(b) Subdivision (a) applies with respect to commercial and noncommercial policies of automobile insurance.

(c) For purposes of this section, "financial benefit" means the receiving of any commission or gratuity, discount on repair costs, free repairs, or employment by a repair facility.

754. Payments of commissions or fees by insurers or their agents to insurance brokers, when otherwise lawful under this code, are expressly authorized.

755. The paying or allowing of any commission or other valuable consideration on insurance business in this State to other than an admitted insurer or a licensed insurance agent, broker or solicitor is an unlawful rebate.

755.2. If at the time of the solicitation and issuance of a policy of life or disability insurance, or of a surety bond which by its terms continues until canceled, a person may lawfully receive commissions thereon, such person, the event of his death, his estate or heirs may continue to receive commissions thereon during the continuance in force or renewal of such policy or bond while being licensed under the provisions of Chapter 5, Part 2, Division 1 of this code, provided:

(a) Such recipient does not transact insurance in connection with such policy or bond while not so licensed; and

(b) The payment is made pursuant to a contract entered into, before such

solicitation and issuance, between the insurer paying or allowing the commission and such person.

755.5. It is unlawful for an insurance agent who is not also licensed as an insurance broker to receive commissions derived from insurance placed with an insurer which has not appointed him to act as its agent in the transaction of such

It is unlawful for an insurance solicitor to receive commissions on insurance from any source other than the employer for whom he is licensed excepting on life or disability insurance transacted by him under individual licenses as life or disability agent issued to him pursuant to this code.

It is unlawful for any person to pay to an insurance agent or solicitor any commissions which he can not lawfully receive.

Except as provided in Section 763 it is unlawful for an insurer to receive for its own use commissions on insurance placed with another insurer.

755.6. Notwithstanding the provisions of Section 755.5, an insurer participating in any Assigned Risk Plan, as provided for in Article 4 (commencing with Section 11620), Chapter 1, Part 2, Division 2 of the Insurance Code, may pay to a licensed insurance agent, and such agent may receive, a commission or consideration on any automobile or liability coverages written in addition to any commission or consideration required under such plan if such agent has been designated by the applicant for insurance as producer of record for the coverages required under such plan.

755.7. Any person, including but not limited to any person licensed, certificated under this code or exempted under this code from regulation, who for consideration advises, or agrees to advise, any person concerning insurance, insurance policies, insurance needs or insurance programs of any sort and who agrees to, or does, allow credit against such consideration for such services for any portion of any insurance commission which may accrue, directly or indirectly, to such person who so advises or agrees to advise, is guilty of making an unlawful rebate and guilty of a misdemeanor.

756. When the premium on a policy insuring an employer is based upon the amount or segregation of the employer's pay roll, and the employer, personally or knowingly through his employee, procures a lower premium by wilfully misrepresenting the amount or segregation, such misrepresentation is an unlawful rebate as to the employer.

In addition to any penalty provided by law for unlawful rebates, the employer in such case is liable to the State in an amount ten times the difference between the lower premium paid and the premium properly payable. The commissioner shall collect the amount so payable and may bring a civil action in his name as commissioner to enforce collection unless the misrepresentation is made to and lower premium procured from the State Compensation Insurance Fund. In the latter case the liability to the State under this section shall be enforced in a civil action in the name of the State Compensation Insurance Fund and any amount so collected shall become a part of that fund.

757. When a statement of the amount or segregation of a pay roll is materially false, and an insurer, through a person employed by it in a managerial capacity, accepts the statement as the basis for the premium on a policy, the acceptance is an unlawful rebate if the accepting employee knows of the falsity.

758. Every insurer shall exercise reasonable diligence in securing the observance of this article by its agents.

759. It is unlawful for any insurer to appoint an agent for the purpose of enabling such agent, or the employer or person requesting the appointment of the agent, to obtain insurance at a cost less than that specified in the policy, or at a cost less than that specified in the application therefor.

760. As used in this section "personal or controlled insurance" means insurance covering an insurance agent, broker, or solicitor, or

(a) His spouse, his employer or his employer's spouse.

(b) Any person related to him or the persons mentioned in subdivision (a) within the second degree by blood or marriage.

(c) If his employer is a corporation, any person directly or indirectly owning or controlling a majority of the voting stock or controlling interest in such corporation.

(d) If his employer is a partnership or association, any person owning any interest in such partnership or association.

(e) If the agent or broker is a corporation, any person directly or indirectly owning or controlling a majority of the voting stock or controlling interest in the agent or broker and any corporation which is also similarly directly or indirectly controlled by the person who directly or indirectly controls the agent or broker.

(f) If the agent or broker is a corporation, any corporation making consolidated returns for United States income tax purposes with any corporation described in subdivision (e).

If premiums on personal or controlled insurance transacted by an insurance agent, broker, or solicitor payable in one year exceed the premiums on other insurance transacted by such licensee payable in the same year, the receipt of commissions upon the excess is an unlawful rebate.

Provided that during and after the sixth calendar year following the initial licensing of such agent, broker, or solicitor, in any manner as an agent, broker or solicitor, whether continuously licensed or not, if premiums on personal or controlled insurance transacted by him payable in any one such calendar year exceed 33⅓ percent of the other premiums transacted by him payable in the same calendar year, the receipt of commissions upon the excess over such 33⅓ percent is an unlawful rebate. For the purposes of this paragraph, if the agent or broker be an organization the sixth calendar year shall be the first calendar year beginning five years or more after the initial licensing of the organization, or any predecessor thereof, as an agent or broker.

Provided further, that this section does not apply to an individual licensee who: (1) is licensed during all of such calendar year as a solicitor, or individually as an agent or broker; (2) during such calendar year conducts an individual business, not being named to transact on any organization license nor owning any interest in any corporation or partnership transacting an insurance agency or brokerage business; (3) has been continuously licensed in some manner as an active agent, broker or solicitor for at least 25 years; and (4) is at least 65 years of age at the beginning of the calendar year.

Whenever an officer or director of a corporation acts as agent, broker, or solicitor in the transaction of insurance covering the corporation, he shall be conclusively presumed to have received the full commission on such contract while an employee of the corporation. Whenever the remuneration for services of an employee is decreased by the employer or is made unreasonably small in amount but the employee is permitted, as an insurance agent, broker, or solicitor, to transact personal or controlled insurance, it shall be conclusively presumed that such employee receives the full amount of commission on such personal or controlled insurance.

"Year" as used in this section means the calendar year. Suspension, revocation or denial of license for violation of this section may be ordered at any time within five years after the close of the year in which the violation occurred.

760.5. As used in this section "personal or controlled insurance" means insurance covering a life agent, or

(a) His spouse, his employer, his employer's spouse, or any group of employees under a group policy issued to his employer.

(b) Any person related to him, his spouse, his employer or his employer's spouse within the second degree by blood or marriage.

(c) If his employer is a corporation, any person directly or indirectly owning or controlling a majority of the voting stock or controlling interest in such corporation.

(d) If his employer is a partnership or association, any person owning any interest in such partnership or association.

(e) If the agent is a corporation, any person directly or indirectly owning or controlling a majority of the voting stock or controlling interest in the agent.

If commissions on personal or controlled insurance transacted by a life agent under his license as a life agent received in one year exceed the commissions received in that year on other insurance transacted by such licensee under his license as life agent, the receipt of commissions upon personal or controlled insurance in excess of those on such other insurance is an unlawful rebate.

Provided that during and after the sixth calendar year following the initial licensing of such life agent in any manner as a life agent, disability agent or life and disability agent, whether continuously licensed or not, if commissions on personal or controlled insurance transacted by him under any or all such licenses received in any such calendar year exceed 33⅓ percent of the commissions received in the same calendar year on other insurance transacted by him under any or all such licenses, the receipt of commissions upon personal or controlled insurance in excess of 33⅓ percent of those on such other insurance is an unlawful rebate. For the purposes of this paragraph, if the license be a joint firm license. The sixth calendar year as respects the firm shall be the first calendar year beginning five years or more after the initial licensing of the firm or any predecessor thereof as a joint firm licensee with any individual; the firm may be charged with a violation of this section separately based upon all joint firm licenses it may have held during the calendar year; and an individual named on one or more joint firm licenses may be charged with a violation of this section separately based upon all life licenses, individual and joint firm, he may have held during the calendar year.

Provided, further, that this section does not apply to an individual licensee who: (1) is licensed during all of such calendar year under one or more kinds of individual life licenses; (2) during all of such calendar year conducts an individual business, not being named in any joint firm license nor owning any interest in a corporation or partnership transacting business under any kind of life license; (3) has been continuously licensed in some manner as an active agent under some kind of life license for at least 25 years; and (4) is at least 65 years of age at the beginning of the calendar year.

"Year" as used in this section means the calendar year. Suspension, revocation or denial of license for violation of this section may be ordered at any time within five years after the close of the year in which the violation occurred.

761. Any insurer, insurance agent, broker, solicitor, or life agent and any officer or employee of an insurer, insurance agent, broker, or life agent that makes or receives an unlawful rebate is guilty of a misdemeanor.

762. The following acts are not unlawful rebates:

(a) The return by an insurer issuing policies on a participating plan, or any portion of the premium as a dividend after the expiration of the term covered by such policy.

(b) The payment of commission by any insurer, or insurance agent, broker or solicitor, to another insurer, or insurance agent, broker or solicitor, upon insurance lawfully transacted in that capacity.

(c) The allowance by any marine insurer, or marine insurance agent, broker, or solicitor to any insured, of such usual discount as is sanctioned by custom among marine insurers as being additional to the agent's or broker's commission.

(d) The paying by an insurer to another insurer, or to an insurance agent, broker, or solicitor, of a commission in respect to a policy under which the payee is insured, or the receiving by such payee of such commission.

(e) The paying by an insurer of bonuses to policyholders on nonparticipating life insurance or otherwise abating their premiums, in whole or in part, out of surplus accumulated from nonparticipating insurance.

(f) The return as a dividend by a life insurer of any portion of the premium on policies issued on a participating plan at any time.

(g) The return, by an insurer transacting industrial insurance on a weekly payment plan, to policyholders who have made premium payments for a period of at least one year directly to the insurer at its home or district office, of a percentage of the premium which the insurer would have paid for the weekly collection of such premiums.

~~(h) The paying by any life insurer, or the receiving by life insurance policyholders of special compensations, or the allowing and receiving of credits already agreed upon in life insurance contracts now in force.~~

~~(i) The payment by an insurer of any portion of life insurance premiums payable by its employees pursuant to a life insurance program under which 75 per cent or more of its employees are required to carry life insurance on their lives so long as they remain in the employment of insurer.~~

~~(j) The payment or allowance of a fee or commission by one surety insurer to another surety insurer in respect to a risk on which both are counties.~~

~~763.5. The sale of the good will, business, list of policyholders or similar assets of an agent or broker in consideration of commissions or portions thereof to be thereafter earned by the use of such assets and payments of such consideration are not unlawful rebates if the purchaser is duly licensed to transact insurance and the receipt of the commissions would not constitute a violation of Section 760 if the person receiving them were licensed as an insurance agent.~~

~~764. Any person may be compelled to testify or produce evidence at the trial or hearing on a charge of violating a provision of this article, even though such testimony or evidence may incriminate him. A prosecution shall not be brought or maintained against such person for any act concerning which he thus testifies or produces evidence, except for perjury committed in so testifying.~~

~~765. If an insurer knowingly violates any provisions of this article, or knowingly permits any officer, agent, or employee so to do, the commissioner, after a hearing in accordance with the procedure provided in Section 701, may suspend the insurer's certificate of authority to do the class of insurance in which the violation of this article occurred.~~

~~766. If an insurance agent, broker, or solicitor knowingly and wilfully violates any of the provisions of this article, the commissioner, after a hearing in accordance with the procedure provided in Article 13 of Chapter 5 of this part, may suspend or revoke the violator's license.~~

~~767. Notwithstanding any provision in this article to the contrary, it shall be unlawful for any licensed insurance broker to pay a commission to an agent or broker licensed under the laws of Mexico when such agent or broker in Mexico refers to the insurance broker licensed in this state a resident of Mexico who wishes to obtain a policy of automobile liability insurance to be effective in this state from an insurer licensed in this state, and such broker negotiates and effects such a policy of insurance for such resident of Mexico.~~

SECTION 8. Technical Matters

(a) This act shall be liberally construed and applied in order to fully promote its underlying purposes.

(b) The provisions of this act shall not be amended by the Legislature except to further its purposes by a statute passed in each house by roll call vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electorate.

(c) If any provision of this act or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Proposition 104: Analysis

Continued from page 102

- Permits, but does not require, insurance companies to offer an unspecified "good driver" discount.
- Enacts other insurance-related provisions, and reenacts many provisions related to various lines of insurance which are currently in law.
- Provides that if this measure receives a higher number of votes than other measures on this ballot, then those provisions in other measures that relate to the business of insurance shall have no effect.

No-Fault System

Starting July 1, 1989, this measure establishes a no-fault motor vehicle insurance system that (1) applies only to bodily injury and (2) permits individuals to sue for losses which exceed specified limits.

This measure applies to private and commercial motor vehicles including automobiles, trucks, buses and trailers. It does not apply to motorcycles and "off-road-type" vehicles which are not registered with the Department of Motor Vehicles.

This measure contains the following features.

1. **"Basic" Benefits.** Requires the following minimum basic benefits to be paid by insurance companies to injured persons regardless of who is at fault:
   - Up to $10,000 for medical expenses;
   - Up to $15,000 for lost wages; and
   - $5,000 for funeral benefits, in case the injuries result in death.

In general, the basic benefits would not be provided to an uninsured motorist, a person driving a stolen car, or a person engaged in the commission of a felony.

This measure provides that the basic benefits shall be available only to pay medical expenses and lost wages to the extent that these expenses are not covered by workers' compensation and disability benefits.

Any dispute concerning payment of basic benefits would be decided by arbitration, and not by court trial. The arbitration would be conducted in accordance with procedures established by the Insurance Commissioner.

2. **Recovery of Workers' Compensation Costs.** Restricts the ability of employers to be reimbursed for medical expenses and wage losses paid under workers' compensation and other similar programs when employees are injured in motor vehicle accidents. Currently, an employer may recover the cost of benefits—such as workers' compensation—it provides to an employee who was injured in an accident by another person who was at fault.

3. **Additional Recovery.** Permits an injured person to recover costs in excess of the no-fault basic benefits by suing the party at fault for the accident.

4. **Noneconomic Losses.** Prohibits recovery for noneconomic losses (such as pain and suffering), except in cases involving (a) death or (b) serious and permanent disfigurement or injury. It would not limit the right to sue for damages in cases involving (a) the operation of an uninsured vehicle, (b) harm caused intentionally, or (c) specified crimes.

5. **Attorney Fees.** Limits plaintiffs' attorney contingency fees in motor vehicle accident cases involving bodily injury to the following: (a) 15 percent of the basic no-fault benefits recovered; (b) 33.3 percent of the first $50,000 recovered over the basic benefits; (c) 25 percent of the second $50,000 recovered over the basic benefits, and (d) 15 percent of the recovery over $100,000.

6. **Premium Reduction.** Requires insurance companies to reduce—by 20 percent for a two-year period (July 1989 through June 1991)—their average statewide premium rates for specified types of motor vehicle insurance. This would include rates for basic bodily injury liability, uninsured motorist and basic no-fault benefits provided under this measure. This reduction does not apply to the personal property liability damage, collision and comprehensive portions of a motor vehicle insurance policy.

Other Insurance-Related Provisions

The measure enacts other motor vehicle insurance-related provisions including the following.

1. **Claims Settlement Practices.** Requires that disputes between an insurance company and persons other than policyholders be settled by arbitration rather than by court action.

2. **Penalty.** Increases the penalty from an "infraction" to a "misdemeanor" for second and subsequent convictions for violation of the current financial responsibility laws.

3. **Insurance Fraud.** Increases the authority of the Insurance Commissioner to investigate and prosecute insurance fraud.

4. **Premium Discounts.** Permits, but does not require,

EXHIBIT H

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 FREMONT STREET, 23RD FLOOR
SAN FRANCISCO, CA 94105

JOHN GARAMENDI, *Insurance Commissioner*

December 18, 1991

The Supreme Court
of the State of California
303 Second Street
South Tower, 8th Floor
San Francisco, CA 94107

Re: **FARMERS INSURANCE EXCHANGE v. SUPERIOR COURT OF LOS ANGELES COUNTY**
Supreme Court No. S017854

Dear Chief Justice Lucas and Associate Justices:

We have recently learned that the above-entitled case is set for argument before the Court on January 9, 1992. The issue presented is whether the Attorney General is required to exhaust administrative remedies before the Department of Insurance prior to bringing an enforcement action under Business and Professions Code section 17200 et seq., that is premised upon an underlying violation of the Insurance Code.

We apologize for the lateness of this letter and do not intend to address the legal arguments at great length. We do wish, however, to inform the Court that it is the Commissioner's view that the Attorney General is not and should not be required to exhaust administrative remedies under circumstances such as are presented in this case. To the contrary, the Commissioner welcomes the assistance of law enforcement officials and individuals acting as private attorneys general in seeking compliance with various provisions of the Insurance Code. Indeed, it is the Commissioner's view that Proposition 103 amended the Insurance Code precisely to encourage such actions by law enforcement officials and consumers. (See Ins. Code § 1861.03, subd. (a).)

In the Commissioner's view, the drafters of Proposition 103 understood that the Department, even under an elected Insurance Commissioner, could not reasonably be expected to respond to all allegations of violations of its newly enacted reforms. For that reason, the initiative specifically made the business of insurance subject to Business & Professions Code section 17200 et seq. (Ins. Code § 1861.03.) In this manner, those organizations or individuals who have sufficient resources to pursue an unfair business practices lawsuit

involving insurance rating practices or other claims would be able to do so, without having to rely solely upon the Department to investigate and prosecute their claims. Requiring such parties to exhaust their administrative remedies would seem to weaken the effectiveness of that remedy, if not destroy it altogether.

Finally, the Commissioner perceives that little disruption to the Department's ongoing enforcement efforts is likely to result from other parties' pursuit of independent actions under the Business and Professions Code. Far from interfering with the Department's efforts, the independent enforcement authority created by Business and Professions Code section 17200 et seq., serves as a valuable complement to the Commissioner's own authority in this area.

Once again, we apologize for the lateness of this filing. Although the Department does not feel the need to make a presentation of its views at the January 9th argument, we will be sending a representative to the hearing in the event that the Court wishes to make any further inquiries regarding the Department's position.

Very truly yours,

JANICE E. KERR
General Counsel

DECLARATION OF SERVICE BY MAIL

Case Name/No.: FARMERS INSURANCE EXCHANGE, et al. v. THE SUPERIOR COURT OF LOS ANGELES

Case No. S017854

I, **RACHEL D. GUPTA**, declare that:

I am employed in the County of San Francisco, California. I am over the age of 18 years and not a party to this action. My business address is State of California, Department of Insurance, 45 Fremont Street, 23rd Floor, San Francisco, California, 94105.

I am readily familiar with the business practices of the San Francisco Office of the California Department of Insurance for collection and processing of correspondence for mailing with the United States Postal Service. Said ordinary business practice is that correspondence is deposited with the United States Postal Service that same day in San Francisco, California.

On December 18, 1991, following ordinary business practices, I caused a true and correct copy of the following document(s):

Letter to Supreme Court

to be placed for collection and mailing at the office of the California Department of Insurance at 45 Fremont Street, San Francisco, California, with proper postage prepaid, in a sealed envelope(s) addressed as follows:

The Honorable Rober M. Mallano
Los Angeles Superior Court
110 North Hill Street
Los Angeles, CA 90012

Gail Hillebrand
Nettie Y. Hoge
Consumers Union of U.S., Inc.
1535 Mission Street
San Francisco, CA 91403

Paul E. Lee
Legal Aid Foundation of L.A.
1550 W. 8th Street, 2nd Floor
Los Angeles, CA 90017

M. Howard Wayne
Deputy Attorney General
110 "A" Street, Suite 700
San Diego, CA 92101

Robert Fellmeth
Center for Public Interest
Robert Fellmeth
Alcala Park
San Diego, CA 92110

Clerk of the Court of Appeal of the State of California
Second Appellate District
300 South Spring Street, Rm. B228
Los Angeles, CA 90013

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed at San Francisco, California, on December 18, 1991.

12/18/91
DATE

RACHEL D. GUPTA

AMENDED
DECLARATION OF SERVICE BY MAIL

Case Name/No.: FARMERS INSURANCE EXCHANGE, et al. v. THE SUPERIOR COURT OF LOS ANGELES

Case No. S017854

I, **RACHEL D. GUPTA**, declare that:

I am employed in the County of San Francisco, California. I am over the age of 18 years and not a party to this action. My business address is State of California, Department of Insurance, 45 Fremont Street, 23rd Floor, San Francisco, California, 94105.

I am readily familiar with the business practices of the San Francisco Office of the California Department of Insurance for collection and processing of correspondence for mailing with the United States Postal Service. Said ordinary business practice is that correspondence is deposited with the United States Postal Service that same day in San Francisco, California.

On December 18, 1991, following ordinary business practices, I caused a true and correct copy of the following document(s):

Letter to Supreme Court

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The Honorable Robert M. Mallano
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M. Howard Wayne
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Robert Fellmeth
Center for Public Interest
University of San Diego
Alcala Park
San Diego, CA 92110

Paul E. Lee
Legal Aid Foundation of L.A.
1550 W. 8th Street, 2nd Floor
Los Angeles, CA 90017

Clerk of the Court of Appeal of the State of California
Second Appellate District
300 South Spring Street, Rm. B228
Los Angeles, CA 90013

Additionally, on December 19, 1991, I caused a true and correct copy of the above-referenced document to be mailed to:

Richard D. Barger
Royal F. Oakes
Larry Golob
Linda Johnson
Barger & Wolen
530 West Sixth Street, Ninth Floor
Los Angeles, CA 90014

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed at San Francisco, California, on December 19, 1991.

12/19/91
DATE

RACHEL D. GUPTA

EXHIBIT I

STATE OF CALIFORNIA

Steve Poizner, *Insurance Commissioner*

DEPARTMENT OF INSURANCE

Legal Division, Office of the Commissioner
45 Fremont Street, 23rd Floor
San Francisco, CA 94105

Adam M. Cole
General Counsel
TEL: 415-538-4010
FAX: 415-904-5889
E-Mail: colca@insurance.ca.gov
www.insurance.ca.gov

By Hand Delivery

November 19, 2010

The Honorable Chief Justice Ronald George
and Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

Re: Request to Depublish *MacKay v. Superior Court*, Case Nos. B220469 & B223772, California Court of Appeal, Second Appellate District, Division 3, Decision Filed October 6, 2010

Dear Chief Justice George and Associate Justices:

The Insurance Commissioner of California respectfully requests that the Court depublish *MacKay v. Superior Court (21st Century Insurance Co.)*, Case Nos. B220469 & B223772, California Court of Appeal, Second Appellate District, Division 3, Decision Filed October 6, 2010. In the alternative, the Commissioner urges the Court *sua sponte* to review *MacKay* and issue a decision clarifying the law in this area.

I. The Commissioner's Interest

The Insurance Commissioner is the government official entrusted with administering the Insurance Code, including the provisions added by the people through the adoption of Proposition 103, a voter initiative enacted in 1988 and in effect in California since 1989. Proposition 103 and amendments to it are codified at Insurance Code Sections 1861.01 to 1861.16. In his official capacity, the Commissioner frequently has conveyed his views on the functioning of Proposition 103 to this Court and the Courts of Appeal in amicus briefs and other submissions. (See, e.g., *Farmers Ins. Exch. v. Superior Court* (1992) 2 Cal.4th 377; *Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968; *Poirer v. State Farm Mut. Auto.Ins. Co.* (2004) 2004 Cal. App. Unpub. LEXIS 9365; *State Farm Mut. Auto. Ins. Co. v. Garamendi* (2004) 32 Cal.4th 1029; *Foundation for Taxpayer & Consumer Rights v. Garamendi* (2005) 132 Cal.App.4th1354; *Association of Cal. Ins. Cos. v. Poizner* (2009) 180 Cal.App.4th 1029.)

II. Why the Court Should Depublish *MacKay* or Clarify the Interpretation of Proposition 103

MacKay is inconsistent with this Court's decision in *Farmers Insurance Co. v. Superior Court* (1992) 2 Cal.4th 377, which holds that consumers have an original right of action in court to assert violations of Proposition 103. *MacKay* also is at odds with the longstanding Department of Insurance ("Department") interpretation of Proposition 103 and associated practices implementing that initiative in place over nearly 20 years.

III. Discussion

The Holding in *MacKay*. The court in *MacKay* held that consumers may not file lawsuits to challenge the legality of rates, or the rating factors used to determine an individual motorist's premium, if the Commissioner approved the rate or rating factor. Rather, under *MacKay*, a consumer harmed by an illegal rate must file a complaint with the Commissioner. If the Commissioner finds the rate to be illegal, the Commissioner issues an order prohibiting the insurer from using the rate going forward. If the Commissioner finds the rate to be legal, the consumer may challenge the Commissioner's decision by filing a petition for a writ of mandate in superior court. If the court finds the rate to be illegal, the court prohibits the insurer from using the rate going forward.

Since its enactment, the Department has interpreted Proposition 103 to allow a consumer to go directly to court to challenge the legality of a rate regardless of whether the Commissioner approved the rate. That position is founded on two provisions of Proposition 103:

> "[A]ny person may initiate or intervene in any proceeding permitted or established pursuant to this chapter, challenge any action of the commissioner under this article, ***and enforce any provision of this article.***" (Ins. Code § 1861.10(a) [emphasis added].)
>
> "***The business of insurance shall be subject to the laws of California applicable to any other business, including, but not limited to, the Unruh Civil Rights Act (Sections 51 to 53, inclusive, of the Civil Code), and the antitrust and unfair business practices laws (Parts 2 (commencing with Section 16600) and 3 (commencing with Section 17500) of Division 7 of the Business and Professions Code).***" (Ins. Code § 1861.03(a) [emphasis added].)

MacKay's conclusion that consumers must pursue a complaint process at the Department in lieu of filing an original action in court conflicts with prior case law and previous interpretations by the Department of Sections 1861.10(a) and 1861.03(a).

The court in *MacKay* concluded that two provisions of the 1947 McBride-Grunsky Insurance Regulatory Act, ("McBride Act"), Ins. Code §§ 1860.1 and 1860.2, immunize insurers from lawsuits challenging components of approved rate filings. However, the Department consistently since enactment of Proposition 103 has taken the position that Sections 1860.1 and 1860.2 immunize insurers only for lawsuits alleging improper ***concerted*** activities authorized by

the Insurance Code; Sections 1860.1 and 1860.2 do not immunize insurers from lawsuits alleging that an ***individual insurer's*** rates or components of rates are illegal.

The court in *MacKay* referred to *Walker v. Allstate Indemnity Co.* (2000) 77 Cal.App.4th 750. *Walker* held that the interplay of Proposition 103 and the immunity sections of the McBride Act preclude a direct lawsuit in court to challenge a ***rate***, as distinct from a rating factor approved by the Department. By its terms, *Walker* does not cover the situation here: Department approval of a rating factor, as distinct from a rate.

This Court's Decision in *Farmers*. *MacKay* is inconsistent with *Farmers Insurance Co. v. Superior Court* (1992) 2 Cal.4th 377. In *Farmers*, the Attorney General, acting on behalf of the people, filed a lawsuit in Superior Court under Business and Professions Code Section 17200 alleging that Farmers violated Proposition 103 by (1) refusing to offer and sell good driver discount policies to all qualified drivers; (2) refusing to offer qualified drivers a 20% good driver discount; (3) using the absence of prior insurance as a criterion for determining eligibility for a good driver discount and for ratemaking and premium setting; and (4) unfairly discriminating against consumers in rates and premiums by not offering good driver discounts to all qualified customers. (*Farmers, supra*, 2 Cal.4th at p. 490.)

The Court held that the Attorney General was permitted to bring a lawsuit directly in court. The Court explained that the Attorney General's Section 17200 claim is "***originally cognizable in the courts***." (*Farmers, supra*, 2 Cal.4th at p. 496 [internal quotation marks omitted] [emphasis added].) However, because the complaint raised technical issues related to Proposition 103, *Farmers* held that the trial court must stay the case and refer those issues to the Department for consideration under the "primary jurisdiction" doctrine. (*Id.* at p. 503.)

The availability of a primary jurisdiction referral protects insurers' interests. If a superior court believes a case involves technical issues within the Commissioner's expertise, the court may stay the case and refer issues to the Commissioner for his input. On referral, the insurer may defend an approved rate as legal. If the Commissioner agrees, he will so notify the court. The court will have the benefit of the Commissioner's input when it decides the case on conclusion of the referral process.

The Insurance Commissioner's Longstanding Position. For nearly 20 years the Commissioner has advised this Court and the Courts of Appeal that consumers have a right to go directly to court to assert violations of Proposition 103. For example:

- In 1991, Commissioner Garamendi sent a letter to the Court in *Farmers, supra*, 2 Cal.4th 487, supporting the right of consumers and the Attorney General to go to court to assert violations of Proposition 103.

- In 2003, Commissioner Garamendi submitted an amicus brief to the Court of Appeal in *Donabedian v. Mercury Insurance Co.* (2004) 116 Cal.App.4th 968. The Court of Appeal quoted the Commissioner's amicus brief with approval: "In enacting Proposition 103, the voters vested the power to enforce the Insurance Code in the

public as well as the Commissioner. As the plain text of Insurance Code Sections 1861.03 and 1861.10 make[s] clear, Proposition 103 established a private right of action for [its] enforcement." (*Donabedian, supra*, 116 Cal.App.4th at p. 982.)

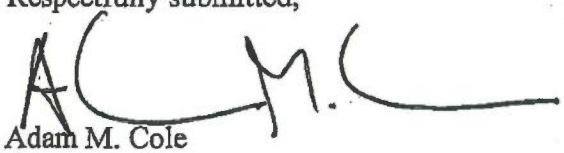
- Also in 2003, in an amicus brief filed in *Poirer v. State Farm Mutual Automobile Insurance Co.* (2004) 2004 Cal. App. Unpub. LEXIS 9365, Commissioner Garamendi explained that Insurance Code Sections 1860.1 and 1860.2 only immunize concerted activity among insurers, not action by individual insurers in the form of rate plans approved by the Commissioner. Commissioner Garamendi stated: "[A]n original private right of action exists for violations of the Insurance Code, whether or not the alleged violation concerns an insurer's rate or class plan approved by the Department." Attached is the portion of the Commissioner's brief conveying that position.

- In 1999, Commissioner Quackenbush sent a letter to this Court requesting depublication of *VPS Management Inc. v. Pacific Rim Assurance Co.*, Case No. B126145, California Court of Appeal, decision filed March 17, 1999. In *VPS*, the Court of Appeal relied on Section 11758 of the Insurance Code, which is in an article relating to workers compensation insurance rate making and is identical to Section 1860.1, to immunize a workers compensation insurer from a lawsuit alleging that it inflated expenses in developing rates, resulting in excessive premiums. In its letter requesting depublication, the Commissioner explained that Section 11758, like Section 1860.1, is designed solely to immunize against lawsuits alleging antitrust violations: "The *VPS* decision incorrectly stretches the immunity that is provided by Insurance Code Section 11758. The purpose of that section is to immunize insurers and rating organizations from anti-trust laws so that they can act in concert to make rates." Commissioner Quackenbush's 1999 letter is attached. The Court depublished the decision. (*VPS Mgmt. Inc. v. Pacific Rim Assur. Co.*, 1999 Cal. LEXIS 4209.)

IV. Conclusion

Because a conflict exists between *MacKay, Farmers* and other appellate decisions regarding the interpretation of Proposition 103; and because for nearly 20 years the Department has interpreted Proposition 103 in a manner inconsistent with *MacKay*, the Commissioner requests either depublication of *MacKay* or that the Court *sua sponte* accept review of *MacKay* and issue a decision clarifying the law in this area.

Respectfully submitted,



Adam M. Cole
General Counsel

Attachments

EXHIBIT J

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
300 CAPITOL MALL, SUITE 1700
SACRAMENTO, CA 95814
(916) 492-3500
(916) 445-5280 (FAX)
www.insurance.ca.gov

Dave Jones, *Insurance Commissioner*

By Hand Delivery

January 10, 2011

The Honorable Chief Justice Tani Cantil-Sakauye
and Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

Re: Request for Depublication of *MacKay v. Superior Court* (2010) 188 Cal.App.4th 1427

Dear Chief Justice Cantil-Sakauye and Associate Justices:

I write as the newly elected Insurance Commissioner of California. On November 19, 2010, under the administration of my predecessor, Steve Poizner, the Department wrote a letter to the Court requesting depublication of the *MacKay* decision. I write to affirm that request. The Court of Appeal's decision in *MacKay* fails to give effect to the right conferred by Proposition 103 on consumers to go directly to court to seek redress when insurers violate the law.

Respectfully submitted,

DAVE JONES
Insurance Commissioner of California

cc: See attached proof of service.

PROOF OF SERVICE

In Re *MacKay v. Superior Court*, Case Nos. B220469 & B223772, California Court of Appeal, Second Appellate District, Division 3, Decision Filed October 6, 2010

I am over the age of eighteen years and am not a party to this action. I am an employee of the Department of Insurance, State of California, employed at 45 Fremont Street, 19th Floor, San Francisco, California 94105. On January 10, 2011, I served the following document(s):

California Department of Insurance Letter dated January 10, 2010, to Superior Court of California Request for Depublication of MacKay v. Superior Court (2010) 188 Cal.App.4th 1427

on all persons named on the attached Service List, by the method of service indicated, as follows:

If **U.S. MAIL** is indicated, by placing on this date, true copies in sealed envelopes, addressed to each person indicated, in this office's facility for collection of outgoing items to be sent by mail, pursuant to Code of Civil Procedure Section 1013. I am familiar with this office's practice of collecting and processing documents placed for mailing by U.S. Mail. Under that practice, outgoing items are deposited, in the ordinary course of business, with the U.S. Postal Service on that same day, with postage fully prepaid, in the city and county of San Francisco, California.

If **OVERNIGHT SERVICE** is indicated, by placing on this date, true copies in sealed envelopes, addressed to each person indicated, in this office's facility for collection of outgoing items for overnight delivery, pursuant to Code of Civil Procedure Section 1013. I am familiar with this office's practice of collecting and processing documents placed for overnight delivery. Under that practice, outgoing items are deposited, in the ordinary course of business, with an authorized courier or a facility regularly maintained by one of the following overnight services in the city and county of San Francisco, California: Express Mail, UPS, Federal Express, or Golden State overnight service, with an active account number shown for payment.

If **FAX SERVICE** is indicated, by facsimile transmission this date to the fax number stated for the person(s) so marked.

If **PERSONAL SERVICE** is indicated, by hand delivery this date.

If **EMAIL** is indicated, by electronic mail transmission this date to the email address(es) listed.

If **INTRA-AGENCY MAIL** is indicated, by placing this date in a place designated for collection for delivery by Department of Insurance intra-agency mail.

Executed this date at San Francisco, California. I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Raquel Cano

Raquel Cano

SERVICE LIST

In Re *MacKay v. Superior Court*, Case Nos. B220469 & B223772, California Court of Appeal, Second Appellate District, Division 3, Decision Filed October 6, 2010

Party	Attorney	Method of Service
Mackay, Amber : Petitioner	Merak Eskigian, Esq. Mark Goshgarian, Esq. Goshgarian & Marshall 23901 Calabasas Road, #2073 Calabasas, CA 91302	U.S. MAIL U.S. MAIL
	Drew E. Pomerance, Esq. Roxborough, Pomerance & Nye 5820 Canoga Avenue, Suite 250 Woodland Hills, CA 91367	U.S. MAIL
Leacy, Jacqueline : Petitioner	Drew E. Pomerance, Esq. Roxborough, Pomerance & Nye 5820 Canoga Avenue, Suite 250 Woodland Hills, CA 91367	U.S. MAIL
21st Century Insurance Company : Real Party in Interest	Marina M. Karvelas, Esq. Pirapat Sadikali Sindhuphak, Esq. Steven H. Weinstein, Esq. Kent R. Keller, Esq. Bargen & Wolen 633 West Fifth Street, 47th Floor Los Angeles, CA 90071	U.S. MAIL
	Kent R. Keller Barger & Wolen, LLP 633 W. Fifth Street, 4th Floor Los Angeles, CA	U.S. MAIL
ACLU Foundation of Northern California, Inc. : Pub/Depublication Requestor	Richard A. Marcantonio Public Advocates, Inc. 131 Steuart Street, Suite 300 San Francisco, CA 94105	U.S. MAIL
ACLU Foundation of San Diego & Imperial Counties, Inc. : Pub/Depublication Requestor	Richard A. Marcantonio Public Advocates, Inc. 131 Steuart Street, Suite 300 San Francisco, CA 94105	U.S. MAIL

ACLU Foundation of Southern California, Inc. : Pub/Depublication Requestor	Richard A. Marcantonio Public Advocates, Inc. 131 Steuart Street, Suite 300 San Francisco, CA 94105	U.S. MAIL
Consumer Action : Pub/Depublication Requestor	Kathryn Marie Trepinski Attorney at Law 509 S. Beverly Drive Beverly Hills, CA 90212	U.S. MAIL
Consumer Federation of California : Pub/Depublication Requestor	Leslie Eileen Hurst Blood Hurst & O'Reardon, LLP 600 "B" Street, Suite 1550 San Diego, CA 92101	U.S. MAIL
Consumer Watchdog : Pub/Depublication Requestor 1750 Ocean Park Boulevard Suite 200 Santa Monica, CA 90405	Harvey J. Rosenfield, Esq. Foundation for Taxpayer & Consumer Rights 1750 Ocean Park Boulevard, Suite 200 Santa Monica, CA 90405	U.S. MAIL
Consumers for Auto Reliability and Safety : Pub/Depublication Requestor	Kathryn Marie Trepinski Attorney at Law 509 S. Beverly Drive Beverly Hills, CA 90212	U.S. MAIL
Consumers Union of the United States : Pub/Depublication Requestor	Mark Savage Consumer Union of the United States, Inc. 1535 Mission Street San Francisco, CA 94103	U.S. MAIL
Disability Rights Education & Defense Fund : Pub/Depublication Requestor	Mark Savage Consumer Union of the United States, Inc. 1535 Mission Street San Francisco, CA 94103	U.S. MAIL
Equal Justice Society : Pub/Depublication Requestor	Mark Savage Consumer Union of the United States, Inc. 1535 Mission Street San Francisco, CA 94103	U.S. MAIL
Impact Fund : Pub/Depublication Requestor	Mark Savage Consumer Union of the United States, Inc. 1535 Mission Street San Francisco, CA 94103	U.S. MAIL

Mexican American Legal Defense & Educational Fund : Pub/Depublication Requestor	Michael Lee Cohen Cohen McKeon, LLP 1910 W. Sunset Boulevard, Suite 440 Los Angeles, CA 90026	U.S. MAIL
Southern Christian Leadership Conference of Greater L.A. : Pub/Depublication Requestor	Michael Lee Cohen Cohen McKeon, LLP 1910 W. Sunset Boulevard, Suite 440 Los Angeles, CA	U.S. MAIL
United Policyholders : Pub/Depublication Requestor	Amy Bach United Policy Holders 222 Columbus Avenue, Suite 412 San Francisco, CA 94133	
Roxborough, Pomerance, Nye & Adreani : Pub/Depublication 5820 Canoga Avenue, Suite 250 Woodland Hills, CA 91367	Mark Goshgarian, Esq. Goshgarian & Marshall 23901 Calabasas Road, #2073 Calabasas, CA 91302	U.S. MAIL
	Drew E. Pomerance, Esq. Roxborough, Pomerance & Nye 5820 Canoga Avenue, Suite 250 Woodland Hills, CA 91367	U.S. MAIL
City and County of San Francisco : Pub/Depublication Requestor	Owen J. Clements Office of the City Attorney 1390 Market Street, 7th Floor San Francisco, CA 94102	U.S. MAIL
Robbins Geller Rudman & Dowd LLP : Pub/Depublication Requestor 655 West Broadway Suite 1900 San Diego, CA 92101	Kevin K. Green Coughlin Stoia Geller Rudman & Robbins, LLP 655 West Broadway, Suite 1900 San Diego, CA 92101	U.S. MAIL
The Consumer Attorneys of California : Pub/Depublication Requestor	Brian S. Kabateck, Esq. Kabateck Brown & Kellner, LLP 644 S. Figueroa Street Los Angeles, CA 90017	U.S. MAIL
The People : Overview party	Office of the District Attorney 320 W. Temple Street, #540 Los Angeles, CA 90012 Contact Name: Appellate Division	U.S. MAIL

	Office of the Attorney General Consumer Law Section 300 South Spring Street Fifth Floor, North Tower Los Angeles, CA 90013	U.S. MAIL
	The Honorable Presiding Justice Joan D. Klein Associate Justices	U.S. MAIL
	H. Walter Croskey	U.S. MAIL
	Patti S. Kitching California Court of Appeal, Clerk's Office Division 3 300 South Spring Street Room 2217 Los Angeles, CA 90013 Phone No: 213-830-7000	U.S. MAIL
The Consumer Attorneys of California : Amicus curiae	Brian S. Kabateck, Esq. Kabateck Brown & Kellner, LLP 644 S. Figueroa Street Los Angeles, CA 90017	U.S. MAIL
Consumer Watchdog : Amicus curiae	Todd Michael Foreman, Esq. Pamela M. Pressley, Esq. Harvey J. Rosenfield, Esq. Consumer Watchdog 1750 Ocean Park Boulevard, Suite 200 Santa Monica, CA 90405	U.S. MAIL U.S. MAIL U.S. MAIL
The People : Overview party	Office of the District Attorney 320 W. Temple Street, #540 Los Angeles, CA 90012 Contact Name: Appellate Division	U.S. MAIL
	Office of the Attorney General Consumer Law Section 300 South Spring Street Fifth Floor, North Tower Los Angeles, CA 90013	U.S. MAIL

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 6330 San Vicente Blvd., Suite 250, Los Angeles, California 90048.

On January 21, 2020, I served the foregoing documents described as

AMICI CURIAE CONSUMER WATCHDOG, CONSUMER FEDERATION OF AMERICA, AND CONSUMER FEDERATION OF CALIFORNIA'S MOTION FOR JUDICIAL NOTICE; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF; DECLARATION OF HARVEY ROSENFIELD; PROPOSED ORDER IN SUPPORT OF PLAINTIFFS MANNY VILLANUEVA, ET AL.

on the interested parties in this action, as follows:

SEE ATTACHED SERVICE LIST

IF VIA ELECTRONIC SERVICE: I served the document via email.

IF VIA U.S. MAIL: I placed a true copy of the foregoing document in a sealed envelope addressed to each party as set forth on the attached service list. I placed each such envelope, with postage thereon fully prepaid, for collection and mailing at Los Angeles, California. I am readily familiar with the firm's practice of collection and processing correspondences for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on January 21, 2020, at Los Angeles, California.

Kaitlyn Gentile

SERVICE LIST

Taras Kick, Esq. The Kick Law Firm 815 Moraga Drive Los Angeles, CA 90049 taras@kicklawfirm.com	*Attorneys for Plaintiff / Appellant Manny Villanueva* *(Via Electronic Service)*
Mark A. Chavez Chavez & Gertler, LLP 42 Miller Avenue Mill Valley, CA 94941 mark@chavezgertler.com	*Attorneys for Plaintiff / Appellant Manny Villanueva* *(Via Electronic Service)*
Steven J. Bernheim Nazo S. Semerdjian The Bernheim Law Firm 11611 Dona Alicia Place Studio City, CA 91604 berniebernheim@gmail.com	*Attorneys for Plaintiff / Appellant Manny Villanueva* *(Via Electronic Service)*
Michael J. Bidart Shernoff Bidart Echeverria LLP 600 South Indian Hill Boulevard Claremont, CA 91711 mbidart@shernoff.com	*Attorneys for Plaintiff / Appellant Manny Villanueva* *(Via Electronic Service)*
Michael J. Gleason Steven A. Goldfarb Hahn Loeser & Parks LLP 600 West Broadway, Suite 1500 San Diego, CA 92101 mgleason@hahnlaw.com sagoldfarb@hahnlaw.com	*Attorneys for Defendant / Appellant Fidelity National Title Company* *(Via Electronic Service)*
Erica L. Calderas Hahn Loeser & Parks LLP 200 Public Square, Suite 2800 Cleveland, OH 44114 elcalderas@hahnlaw.com	*Attorneys for Defendant / Appellant Fidelity National Title Company* *(Via Electronic Service)*
Rupa Gupta Singh Niddrie Addams Fuller & Singh LLP 600 West Broadway, Suite 1200 San Diego, CA 92101-3314 rsingh@appealfirm.com	*Attorneys for Defendant / Appellant Fidelity National Title Company* *(Via Electronic Service)*

Ben Feuer Julia Partridge California Appellate Law Group 96 Jessie Street San Francisco, CA 83926 ben.feuer@calapplaw.com julia.partridge@calapplaw.com	*Attorneys for Defendant / Appellant* *Fidelity National Title Company* *(Via Electronic Service)*
Clerk Sixth District Court of Appeal 333 W. Santa Clara St., Suite 1060 San Jose, CA 95113	*Court of Appeal* *(Via U.S. Mail)*
Clerk Santa Clara County Superior Court 191 North First Street San Jose, CA 95113	*Trial Court* *(Via U.S. Mail)*
Xavier Becerra Office of the Attorney General California Department of Justice P.O. Box 944255 Sacramento, CA 94244	*Office of the Attorney General* *(Via U.S. Mail)*
Jeffrey F. Rosen District Attorney County of Santa Clara 70 West Hedding Street, West Wing San Jose, CA 95110	*Office of the District Attorney* *(Via U.S. Mail)*