



INDUSTRY COMMENTS ON CFA STUDY OF INSURANCE REGULATION IN CALIFORNIA

Background:

In June, 2001, CFA released its report on insurance regulation in America, “Why Not the Best? The Most Effective Auto Insurance Regulation in the Nation.”¹ This report was undertaken by CFA in response to the National Association of Insurance Commissioners announcement in March 2001 that they would be studying personal lines regulation to determine best practices.

The initial CFA study found that California’s auto insurance regulatory system, established by the people of California when they enacted Proposition 103 in 1988, was the best system in the nation, producing a reduction of 11.8% in auto insurance expenditures over the 1989 to 1999 period. The national change in a typical state was an increase of 37.2%. California’s average expenditure, which was 33% above the national average prior to the passage of Prop. 103 is now 5% below the nation. Californians have saved at least \$25 billion due to the incentives and requirements of Proposition 103. The assigned risk plan has declined by 96% and the uninsured motorist population has fallen by almost 40%.

And the profits for the insurers in California were the highest in the nation during the period as well.

You would think that the insurance companies would applaud such wonderful results benefiting both consumers and insurers, but you would be wrong. The insurance industry and its consultants, while confirming all of the key findings of the report as to better results in California today than under the previous open competition system of California, argue that it was despite Proposition 103, not because of it, that wonderful things occurred.

Not bothering much with detailed analysis, the insurers and their consultants have made a series of claims that they say shows that Proposition 103 has not contributed much to the good results observed in California – and nowhere else – since its enactment.

Should We Believe the Industry when it Claims that Prop. 103 is ineffective?

The industry has not had a good track record in analyzing Proposition 103. During the 1988 campaign regarding the Proposition, the industry claimed:

¹ Available on CFA’s web page at www.consumerfed.org

Industry Claim: “Prop 103 could make it impossible for 40% of Californians to find auto insurance, drive 35 companies out of business and another 40 to the brink of financial collapse, and create chaos for California drivers. Don’t let New Jersey happen here.” (Advertisement of Californians Against Unfair Rate Increases, “A Coalition of Independent Agents and Insurers”)

CFA Comment: More Californians are insured in the voluntary market than ever before. There has been an increase in company groups writing auto insurance in the state of 17%. No insurers went insolvent due to Prop. 103.

Industry Claim: Prop 103 is “a New Jersey-style, State run Auto Insurance Bureaucracy for California” “Keep Big Government out of the Auto Insurance Business...” The measure “destroys California’s free market approach to auto insurance...mandates massive and costly government intervention.” (Id.)

CFA Comment: Prop. 103 did not create a state run auto system in California. Indeed, Prop. 103 increased private insurer competition.

Industry claim: Prop 103 does “nothing to reduce the costs driving up auto insurance.” (Id.)

CFA Comment: Prop. 103’s good driver provisions caused a huge drop in loss costs in the state as drivers avoided accidents and tickets to gain the 20% discount and maintain the right to get insurance from the company of their choice.

Industry claim: USAA says that it anticipates “a massive withdrawal of insurance companies from California” and that it has “concerns for assuring the financial stability of the Association.” “...it may not be possible for any auto insurer to pay dividends in the future.” (USAA letter to policyholders)

CFA Comment: Prop. 103 did not cause a massive withdrawal of companies from the state...and USAA has continued to pay dividends there.

Industry claim: Farmers Insurance says that Prop 103 “does nothing to address the real problems of fraud, uninsured motorists and runaway accident litigation. This initiative...could ultimately destroy our insurance system, rather than to help reform it.” (Farmer’s letter to policyholders)

CFA Comment: Prop. 103 did destroy the awful “open competition” system that preexisted it, and the positive results are powerful and compelling.

Industry claim: Southern California Physicians Insurance Exchange said, “...Nader’s purpose in Prop 103 is to force the insurance companies out and put the state in the insurance business.” (Letter to policyholders)

CFA Comment: Pardon me?

Industry claims: State Farm says that Prop 103 does not “provide for a reduction in the costs that make up the rates” but adds “costs by imposing a maze of bureaucratic regulation and judicial review procedures.” (Letter to policyholders) The Automobile Club of Southern California says that Prop 103 “only treat(s) the symptoms and not the underlying causes of today’s auto insurance crisis” and that it does “nothing to stabilize rates for the long term.” (Letter to policyholders)

CFA Comment: Under the Proposition, California auto insurance costs are down and rates have thus fallen sharply.

Why does the Industry Fear the Truth about Prop. 103?

After the Proposition passed, the insurers engaged in a scorched earth strategy ranging from lawsuit to hyperbole, the intent of which was to discredit the workings of the Proposition and intimidate other states from considering similar law changes. They do not want to credit Proposition 103 with any success because it undermines their long-term strategy to discredit the Proposition.

Why should we believe the industry now when it denies the great benefits of Proposition 103 to the people of California? They fought against it before it passed, spending \$85 million in their unsuccessful attempt to head it off. They fought it every step of the way after passage, filing lawsuit after lawsuit. And, year-after-year, they misrepresented the successes of Proposition 103 throughout the nation, in an unfortunately successful attempt to hold off other states from following California’s brilliant lead.

We should not believe the industry any more today than in 1988 when they made their clearly wrong statements about what Proposition 103 would do and in their lawsuits and hyperbole since. Again they attack the Proposition, without substantial analysis, claiming that it did not produce the very results they admit have occurred.

Materials Reviewed in this Analysis:

The materials we have reviewed put out by the industry are as follows:

- June 8, 2001 – State Farm Insurance Company – Letter to CFA
- June 14, 2001 – Personal Insurance Federation of California – Letter to CFA
- June 21, 2001 – National Association of Mutual Insurance Companies – Testimony before the House of Representatives
- June 21, 2001 – National Association of Independent Insurers and Alliance of American Insurers – Testimony before the House of Representatives
- June 21, 2001 – Phillip O’Connor – Testimony before the House of Representatives
- June 29, 2001 – American Insurance Association – Press Release and letter to CFA
- July 16, 2001 – Association of California Insurance Companies – letter to CFA

Analysis:

Here are the arguments we have seen that the industry/consultants have made, followed by our comment.

ISSUE 1: Profits will be higher under regulation because insurers will be “fearful of being trapped in rates lowered to reflect falling loss costs.” (O’Connor, P.9) NAII and NAMIC say a similar thing.

CFA Response: This issue was fully covered in the original report at pages 43 and 44. We pointed out that consumer groups noted the high profits and a series of requests made for hearings on the matter, as called for under the terms of Proposition 103, were rejected by Commissioner Quackenbush who was later forced to resign. It can hardly be the fault of the Proposition that a shamed commissioner, while taking monies from insurers, refused to do his duty under the law.

ISSUE 2: “Dramatic drop-off in auto insurance loss costs” not from Prop. 103 but from other factors: (O’Connor P.13)

- Prop. 103 “may well have had some positive effects” on giving incentive to drivers to drive safely. (O’Connor P.14)
- But more important were seat belt laws, drunk driving enforcement, and the California Supreme Court’s Moradi decision. (O’Connor P.15)

O’Connor claims that the physical damage loss costs have risen while liability loss costs have fallen, which he says belies the claim that the 20% good driver discount has helped hold down loss costs, albeit the discount “may be helpful.” (O’Connor P.15) NAII/AAI say Moradi, mandatory seat belt law and improved drunk driver laws were what why California auto “decline in rates.” NAMIC credits Moradi, seat belt laws, no pay, no play, and anti-fraud efforts. AIA credits stronger drunk driving laws, seatbelts, airbags and no pay/play. AIA says CFA report “completely ignores” Moradi.

CFA Response: The Moradi decision was fully analyzed in our report on pages 44 and 45 (we wonder if AIA critics actually bothered to read the report before criticizing it, given their claim that we ignored the issue). O’Connor does comment on our analysis of other state laws (he does not give any credit to the fact that states with laws similar to Moradi had greater rate increases than the nation generally, albeit he shows no data to refute our findings that show this). O’Connor does not even address the fact that we showed that, even if the other state data are ignored, Proposition 103 contributed at least 62% of the savings realized by California consumers since 1989.

Seat belt law impacts were also fully discussed in the original CFA report at pages 45-47. Although many commentators say that greater seat belt use deserves more credit for the California results than Proposition 103, none shows any data to prove it. Indeed, in our analysis, we showed that the seat belt use in California had risen by 34% over the 1989-1998 period but that the national increase was 54%. If anything, all other influences equal, insurance prices in California would have risen relative to the nation on the change in seat belt usage over the test period. Instead, they dropped.

Drunk driver laws are credited by some as a reason insurance prices have dropped in California. This claim is made with no analysis. We can find no research that shows that California has been tougher in enforcing drunk driver laws than elsewhere in the nation. The national efforts of Mothers Against Drunk Driving (MADD) have been effective in Washington and across the country.

The “no pay, no play” law limits the legal rights of uninsured motorists who are innocent victims of a car accident to obtain compensation for pain and suffering. The law was enacted in 1996 and upheld as constitutional by state Supreme Court in 1997. There are several other cases, some still ongoing. Obviously, the law could have no pre-1996 effect. And, given the finding of constitutionality was not until 1997, little, if any, before the end of 1997.

Our review of the change in motor vehicle lawsuits in California over the time since Proposition 103 was passed would indicate that the no pay no play law had little, if any, influence on lawsuits. It would no doubt discourage lawsuits brought by innocent uninsured motorists. But how many would that be? Uninsureds, who tend to be poor, were very unlikely to actually go to a lawyer prior to this law’s passage. The poor do not use the courts as frequently as the more affluent.

Consider these data:

YEAR	NUMBER OF MOTOR VEHICLE CIVIL FILINGS	YEAR-TO- YEAR-TO- PERCENT CHANGE
1989/90	82,886	
1990/1	80,208	-3.2
1991/2	70,687	-11.9
1992/3	55,495	-21.5
1993/4	49,513	-10.8
1994/5	47,554	-4.0
1995/6	47,841	0.6
1996/7	43,947	-8.1
1997/8	42,252	-3.9
1998/9	44,576	5.5

Source: 2000 Court Statistics Report,
Judicial Council of California, Page 46

The average annual decline in the number of lawsuits filed in the period 1989/90 to 1995/6 was 8.5% per year. For the period after no pay, no play, the number of filed suits dropped at an annual rate of 2.2%.

There is simply no evidence of a major shift in California lawsuits due to the 1996 no pay, no play law.

Anti-fraud efforts are credited by some as a reason insurance prices have dropped in California. This claim is made with no analysis. While Proposition 103 is recognized by law enforcement as a catalyst for improved anti-fraud and safety efforts by the industry in California (as noted in our original report at page28) it also kicked off national efforts by the industry which had similar effects across the nation. For instance, most insurers started Special Investigative Units (SIU) units shortly after Proposition 103 was passed. These units had national effects, not local. There is absolutely no evidence that anti-fraud efforts saved more in California than elsewhere.

The use of airbags is credited by some as a reason insurance prices have dropped in California. This claim is made with no analysis. We can find no research that shows that California has greater use of airbags than the nation. The insurers/consultants presented no evidence.

O'Connor says that physical damage premiums rising in California while liability premiums fell from 1989 to 1999 show that the good driver protections of Proposition 103 do not do much good. He conveniently leaves out the fact that, while California liability premiums improved relative to the nation by 40%, Comprehensive premiums improved relative to the nation by 39% and Collision premiums improved by 17%. So the physical damage premiums did have positive impact too, by 62% of the impact of liability premiums, as the original CFA report makes clear.

ISSUE 3: Prop. 103 was not fully implemented. The 20% rollback was far short of full application, premium and loss data have not been collected by ZIP Code, territorial rating has not been banned, the courts have prevented independent lawsuits against rates already approved by the commissioner, permanent ratemaking rules have not yet been adopted, the comprehensive buyer's guide has not been developed. (O'Connor P.15) AIA also claims that lack of full implementation means limited impact on auto insurance results. ACIC claims that the \$1.3 billion in rollbacks are "possible" but faults CFA for having a different number (\$125 million) also in the report.

CFA Response: This is an amazing argument from an industry that used lawsuits, lobbying, media, corruption of one commissioner and every other means to delay and deny full application of Proposition 103 for the benefit of the people of California.

In fact, \$1.3 billion in rollbacks were paid (per the Department of Insurance web page as we reported in footnote 4 in our original study), a total of over \$25 billion has been saved for California's consumers, some of the ZIP Code data are now available to the public, consumer information systems are up in the state both at the Department of Insurance and privately, territorial rating has been modified to have less impact (in a process known as "sequential analysis") although not as much as the statute contemplated and the interim ratemaking rules are state-of-the-art rules which CFA believes all states should emulate.

The fact that the fabulous results we reported were achieved even though the industry had to be brought kicking and screaming into this most modern of regulatory systems, is great tribute to the brilliance and power of the Proposition.

As to ACIC's claim that we also had a lower, different number for the rollbacks in the report, it is clear from the report that the \$125 million was the rollbacks paid at the time the Calfarm decision was handed down by the California Supreme Court, not the ultimate rollback, which is \$1.3 billion. Ultimate full implementation of the few parts of the Proposition that have not been implemented will bring further benefits to California's consumers.

ISSUE 4: The Association of California Insurance Companies (ACIC) claim that Prop.103 did not require the insurers "to open their books to justify rate increases."

CFA Response: This is really an unbelievable claim by ACIC. Prior to Prop. 103, California had a "no-file" law where the insurers did not even have to send in a copy of a rate filing.

ISSUE 5: Several of the trade groups claim that consumers fare better under the deregulation system they prefer, Illinois (albeit they often do not disclose that Illinois does regulate forms and is in the midst of attempting to regulate credit scoring -- part of rate establishment). AIA for example points out that California average expenditure is \$659.35, \$13.29 more than Illinois' \$646.06

CFA Response: No analysis is made of the claim that Illinois must be doing better in regulating than California because of this \$13 "savings." So, CFA took a look at a factor that many in the industry argue drives auto insurance prices² more than most others, traffic density, viz.:

STATE	1999 Ave.	Traffic	Expenditu	Density
			re	

TABLE 1

Alabama	612.45	0.87
Alaska	750.85	0.53
Arizona	788.56	1.25
Arkansas	596.90	0.44
California	659.35	2.57
Colorado	743.85	0.69
Connecticut	824.16	2.11
Delaware	862.67	2.13
Dist. of Col.	988.02	3.46
Florida	761.83	1.77
Georgia	660.52	1.27
Hawaii	734.90	2.82
Idaho	492.78	0.43
Illinois	646.06	1.09
Indiana	581.98	1.1
Iowa	466.20	0.38
Kansas	542.01	0.3
Kentucky	609.66	0.94
Louisiana	813.03	0.99
Maine	514.38	0.89
Maryland	756.63	2.38
Massachusetts	889.24	2.19
Michigan	705.92	1.15
Minnesota	687.91	0.56

² And use for their pricing models throughout the nation.

Mississippi	655.34	0.69
Missouri	605.11	0.78
Montana	511.23	0.2
Nebraska	527.01	0.28
Nevada	821.19	0.73
New Hampshire	697.85	1.14
New Jersey	1033.88	2.67
New Mexico	644.15	0.55
New York	942.96	1.63
North Carolina	546.56	1.29
North Dakota	468.80	0.13
Ohio	577.89	1.34
Oklahoma	576.26	0.56
Oregon	621.29	0.73
Pennsylvania	692.66	1.25
Rhode Island	833.61	1.96
South Carolina	575.31	0.98
South Dakota	484.11	0.14
Tennessee	582.29	1.07
Texas	696.24	1.03
Utah	615.48	0.77
Vermont	560.42	0.69
Virginia	566.62	1.51
Washington	697.45	0.96
West Virginia	684.12	0.78
Wisconsin	545.25	0.75
Wyoming	490.56	0.42
Countrywide	665.56	
(Simple Average of above)		
Countrywide	683.27	1

Source: Expenditures: State Average Expenditures and Premiums for Personal Automobile Insurance, National Association of Insurance Commissioners, 1995 and 2000 Editions

Density: FHA Highway Statistics, 1998 related to national density (reported by NAIC in Auto Insurance Database).

Regressing density against expenditure, we see a very strong correlation of about 73% between the two data sets.³

Using the regressions, the anticipated auto insurance expenditure for Illinois with its traffic density of 1.09 of the national average would be \$661 (the actual experienced expenditure was \$646, so Illinois was a bit below the anticipated expenditure – perhaps due to the regulatory efforts of the state). California has a traffic density of 2.57, which implies an expenditure of \$855. California drivers actually expended \$659, an amazing result and further tribute to Proposition 103. The fact is the California regulatory approach has done much more to hold auto insurance rates down than the Illinois approach.

ISSUE 6: ACIC claims that insurers were not provided with a financial incentive for efficient performance under Proposition 103.

CFA Response: The regulations implementing Prop. 103 make it clear that insurers with inefficient expense levels can not pass through these inefficiencies but insurers with low

³ Regression shows R-square of over 50% -- impressive for one variable. The coefficient of density is highly significant -- 99.9999%. The coefficient is also substantial --the intercept is 518 and the impact of the traffic density factor is from \$20 to \$400 (ND v. DC) on total average premium.

costs can make a higher profit as a result. Further, Prop. 103 regs required identification of certain expenses (such as fines and bad faith lawsuit verdicts) and disallowed these cost. These innovations were done first in California under Prop. 103.

ISSUE 7: ACIC claims that the consumer intervention program is “a euphemism for ‘personal injury lawyer’ because plaintiff lawyers are the major source of funding for the so-called consumer groups that routinely appear at Department of Insurance proceedings. Prop. 103 created job security for lawyers who sue insurance companies for a living, plain and simple....”

CFA Response: ACIC, of course, offers no evidence for this amazing claim, because there is none.

Other items of interest in the industry responses:

The industry responses do accept all of the CFA report’s findings related to the excellent results under Proposition 103 such as:

- Auto insurance expenditures *fell* 11.8% from 1989 to 1999 in California while *rising* 37.2% in the typical state. California’s performance was the best in the nation.
- California auto insurer profits for the period were the highest in the nation.
- The assigned risk plan dropped in size by 96%.
- The UM population fell by 38%.
- A 17% rise in company groups competing in the California market occurred.

Indeed, insurers reported that these were correct findings and differed with each other and with our report only on why these results were achieved.

They also had some positively nice things to say about the market in California, such as:

- NAMIC says “auto insurance rates have fallen and complaint volume at the California Department of Insurance is low.”
- Nicole Mahrt, spokeswoman for the American Insurance Association, said consumers knew that better products were available at a better rate. (Press release responding to the failure of low cost auto policies to take off in California, June 2001) California’s healthy and competitive auto insurance market has given consumers access to mainstream policies, she said.

Conclusion:

Later data now available from the NAIC shows that the remarkable results achieved by Proposition 103 have continued for another year. The savings for California drivers is an astounding 11.8% from 1989 to 1999. The people of California are now paying 5% less than the nation whereas under the failed open competition system in effect prior to the Passage of Proposition 103, the California rates were over 33% higher than the nation.

Yet the same industry advocates who told us the world would end if Prop. 103 became law, who spent \$85 million to try to defeat it, who filed lawsuit after lawsuit to delay and confuse the results of the Proposition and who consistently bad-mouthed the effects of the Proposition over the last decade, now ask us to believe the impossible. The industry agrees that the California auto rates have dropped by 12% since Prop. 103 passed compared with an almost 40% increase in the typical state, they agree that their profits were great, they agree that the UM population has declined by almost 40%, they agree that the assigned risk population has all but disappeared and so on. What they ask us to believe is that Prop. 103 had nothing at all to with all of this, that these wonderful things happened in spite of the Proposition. They offer no analysis, merely conclusions that comport neatly with their decade-long hype, to support their impossible view. In fact, the only thing they are willing to concede is that the Proposition caused their profits to be high, too high, which, of course, greatly upsets them.

The remarkably weak industry/consultant arguments against Proposition 103 makes us even more certain that Proposition 103 is the best practices model that NAIC should adopt for the nation.

We are preparing a model bill for NAIC consideration, based upon the provisions of Proposition 103. The draft is attached as Appendix A.

APPENDIX A

Text of Proposed Model Bill

This draft is based upon Proposition 103. On November 8, 1988, Californians passed the Insurance Rate Reduction and Reform Act, better known as Proposition 103.

Insurance Rate Reduction and Reform Act

Section 1. Findings and Declaration.

The People of <State> find and declare as follows:

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

Therefore, the People of <State> declare that insurance reform is necessary. First, property-casualty insurance rates shall be immediately rolled back to a level that assures fair profits to the insurance companies. 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 increasing competition and 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 <fill in>of the Insurance Code is amended to read:

Insurance Rate Rollback

<Code cite> (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 the effective date of this act, every insurer shall reduce its charges to levels which are the lowest possible, consistent with the insurer's ability to earn a fair, constitutionally required return.

(b) In establishing the rollback rates, the Commissioner is to test expenses to make sure that excess expenses and inappropriate expenses are removed. In doing this, the Commissioner should particularly be aware of the unneeded commission and service kick-backs that are found in such lines of insurance as credit insurance and forced-placed insurance.

(c) Rates and premiums reduced pursuant to subdivision (a) may be only increased if the commissioner finds, after a hearing, that an insurer is would not be able to achieve a fair profit. All rates subject to this chapter must be approved by the commissioner prior to their use.

(d) Regulations to establish the rollback rules shall be adopted. The regulations are, to the maximum extent possible, to be modeled after the rollback regulations that were used in the state of California for rollback purposes.

Automobile Rates & Good Driver Discount Plan

<Code cite> (a) Rates and premiums for an automobile insurance policy, as described in subdivision <cite code>, 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.

In this section, “weight” shall mean that the dollar impact on consumers shall be greatest for the first factor, the next greatest for the second factor, the next greatest for the third factor and the least for all of the factors combined making up the fourth factor.

(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 those regulations prior to that date, provided that no such application shall be approved prior to that date.

Prohibition on Unfair Insurance Practices

<Code cite> (a) The business of insurance shall be subject to the laws of <State> applicable to any other business, including, but not limited to, the <Name of Civil Rights Act>, and the antitrust and unfair business practices laws (Cite).

(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

<Code Cite> (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

<Code Cite> (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 <cite> 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.

In any event, a rate change application shall be deemed approved 180 days after the rate application is received by the commissioner (A) unless that application has been disapproved by a final order of the commissioner subsequent to a hearing, or (B) extraordinary circumstances exist. For purposes of this section, "received" means the date delivered to the department.

<Code cite> 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.

<Code cite> All information provided to the commissioner pursuant to this article shall be immediately available for public inspection, and the provisions of <any contrary part of the Government Code or of the Insurance Code, such as trade secret exceptions> shall not apply thereto.

<Code cite> Hearings shall be conducted pursuant to <Code Sections of the Government Code>, except that:

- (a) hearings shall be conducted by administrative law judges for purposes of <Code Sections of the Government Code> or appointed by the commissioner;
- (b) hearings are commenced by a filing of a Notice in lieu of <Code Sections of the Government Code>;
- (c) the commissioner shall adopt, amend or reject a decision only under <Code Sections of the Government Code> and solely on the basis of the record.
- (d) discovery shall be liberally construed and disputes determined by the administrative law judge. as provided in <Code Sections of the Government Code>.

<Code cite> Judicial review shall be in accordance with Section <Code>. 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

<Code cite> (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) Policyholders shall have the opportunity to join an independent, non- profit corporation, which shall advocate the interests of insurance consumers in any forum. An interim board of public members designated by the commissioner and operated by individuals who are democratically elected from its membership shall establish this organization. The Commissioner's web page shall have a link to the Organization's web page. At the Organization's web page, consumers can obtain information about insurance, obtain membership applications, apply on-line and vote for organizational leaders.

Group Insurance Plans

<Code cite> 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

<Code cite> This article shall apply to all insurance on risks or on operations in this state, except life insurance.

Enforcement & Penalties

<Code cite>. Violations of this article shall be subject to the penalties set forth in <Code cite>. 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 that fails to comply with the provisions of this article.

Section 4. Elected Commissioner

<Code cite> is added to the Insurance Code to read:

- The commissioner shall be elected by the People in the same time, place and manner and for the same term as the Governor.
- By declaring their intention to stand for election as insurance commissioner, candidates for office and political committees formed for their benefit shall

voluntarily surrender the right to solicit for and accept, directly or indirectly, financial contributions from any person, company or organization licensed or authorized by the department of insurance.

- By declaring their intention to stand for election as insurance commissioner, candidates for office and political committees formed for their benefit shall voluntarily surrender the right to represent the insurance industry before public officials and their organizations for a period of five years after completing service as insurance commissioner.
- By declaring their intention to stand for election as insurance commissioner, candidates for office and political committees formed for their benefit shall voluntarily surrender the right to consult or advise the insurance industry when interacting with government officials for a period of five years after completing service as insurance commissioner.
- By declaring their intention to stand for election as insurance commissioner, candidates for office and political committees formed for their benefit shall voluntarily surrender the right to solicit or accept money, property or in kind services from the insurance industry during the duration of his/her term as insurance commissioner.

Section 5. Insurance Company Filing Fees

<Code cite> is added to the Insurance Code to read:

Notwithstanding the provisions of <Code Section>, 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 this Act.

Section 7. Repeal of Existing Law

As necessary in any state adopting the model.

Section 8. Technical Matters

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

(b) 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.